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THE HARMFUL CONSEQUENCES OF THE ADOPTION OF A FEDERAL LAW BANNING REPLACEMENT WORKERS

By Gabriel Giguère

A bill banning temporary replacement workers during a strike or lockout in federally regulated sectors was adopted in the House of Commons on May 27, 2024.¹ This legislation against the freedom to work, also known pejoratively as an “anti-scab law,” may entail harmful consequences for Canadian workers. Less investment and more frequent and lengthy strikes are to be anticipated for affected sectors. The adoption of Bill C-58, *An Act to amend the Canada Labour Code and the Canada Industrial Relations Board Regulations, 2012*, could also lead to a deterioration of the reliability and quality of services offered to the Canadian population when it comes into effect 12 months after having received royal assent.

LONGER AND MORE FREQUENT STRIKES

The economic literature shows that a law banning replacement workers, in addition to other factors like reinstatement rights and compulsory dues,² has a direct effect on the length and frequency of strikes.³ The length of strikes can thus increase by up to 60% according to some estimates.⁴

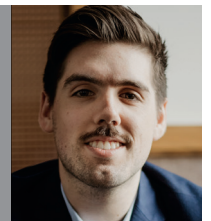
Quebec and British Columbia are the only two Canadian provinces to have adopted laws prohibiting employers from providing good and services by hiring replacement



workers.⁵ In these two provinces, the number of days not worked is relatively higher, adjusted for number of workers (see Figure 1). Indeed, in Newfoundland and Labrador, with no ban on replacement workers, we find just over half the number of days not worked as in Quebec, while in Saskatchewan, with the second-most days not worked among provinces without a ban, there are less than a third as many. As for Alberta, it has around 1/64 as many days of work lost as Quebec.⁶

Work stoppages are generally more numerous and longer in provinces that ban replacement workers during a strike.⁷ For purposes of comparison, over the past decade, a work

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stoppage lasted an average of 56 days in Quebec and 55 in British Columbia, while Ontario was far behind with an average of just 35 days.⁸

The adoption of this bill banning replacement workers thus risks having a direct impact on increasing the lengths of work stoppages triggered by the employees of federally regulated companies. Moreover, resorting to strikes in cases of disagreement with an employer could become more common,⁹ thus increasing pressure on employers.

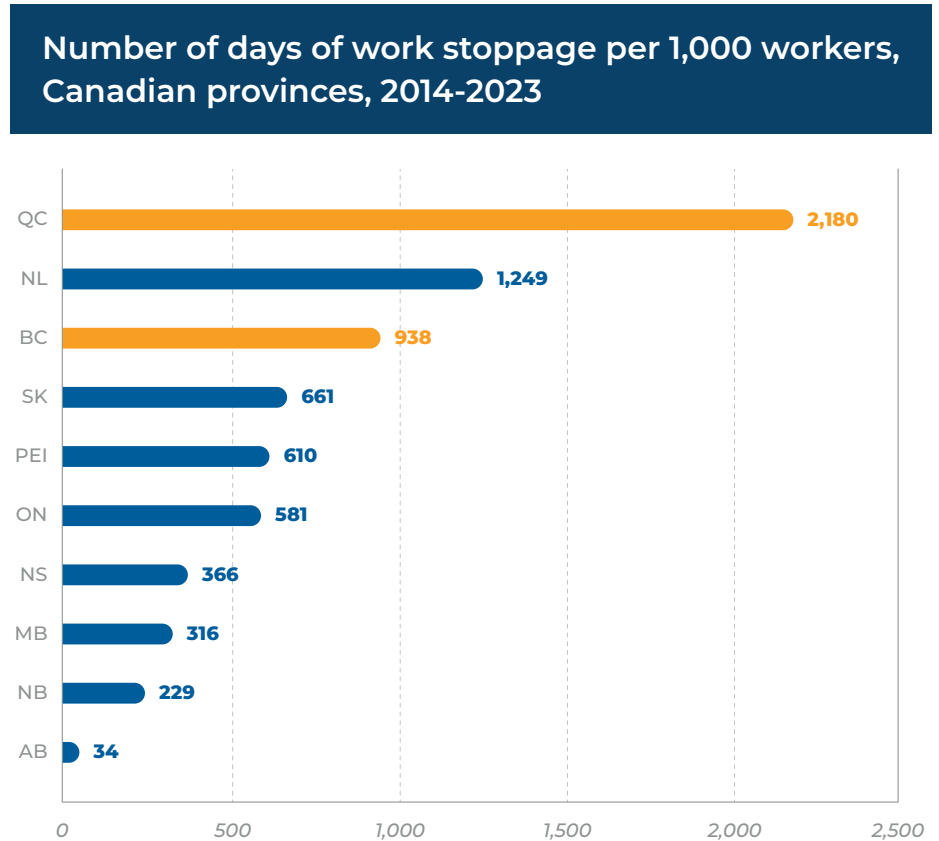
This law will create an imbalance, insofar as unionized workers on strike can find a replacement job, while the employer cannot continue to provide the company's goods and services by calling upon replacement workers. And this will inevitably have direct repercussions on the quality of services provided to the population.

For example, an extended strike of employees at a large international airport like Toronto-Pearson could easily paralyze air traffic in the country, given that some 30% of travellers in Canada pass through this airport.¹⁰

A work stoppage lasted an average of 56 days in Quebec, while Ontario was far behind with an average of just 35 days.

A strike in the railway sector would also have adverse effects on the mobility of people. Every form of transportation could be disrupted, or even paralyzed, by a strike, since employers will be formally prohibited from providing services to the population using

Figure 1



Note: The number of days lost varies considerably from year to year. Federally regulated companies are not included.
Sources: Author's calculations. Statistics Canada, Table 14-10-0352-01: Work stoppages in Canada, by jurisdiction and industry based on the North American Industry Classification System (NAICS), Employment and Social Development Canada - Labour Program occasional (number unless otherwise noted), consulted April 30, 2024; Statistics Canada, Table 14-10-0287-01: Labour force characteristics, monthly, seasonally adjusted and trend-cycle, last 5 months (x 1,000), consulted April 30, 2024.

replacement workers. Indeed, this is something that already happens in other countries.

THE CASE OF FRANCE

Every year, as vacation time approaches, the unionized workers of the Société nationale des chemins de fer français (SNCF) threaten to walk off the job.¹¹ In France, it is prohibited to call upon replacement workers in case of a strike.¹² This has contributed to the development of a "strike culture" within the SNCF, where we observe a ratio of 16,901 days lost per 1,000 workers over the past decade.¹³

In comparison, the ratio for employees of federally regulated transport companies in Canada is 1,037 days lost per 1,000 workers over the same period, or around 1/16 as many as their counterparts in the French rail sector¹⁴ (see Figure 2).

With the adoption of this bill in Canada, paralyzing the country will thus become an additional pressure tactic for workers whose jobs will be protected.¹⁵ With employers deprived of alternatives, the population will find itself held hostage by strikers, unable to reunite with their families or go on vacation.

ADVERSE ECONOMIC IMPACTS

Longer and more frequent strikes in the transport sector will lead to more supply chain interruptions. SMEs will be among the first collateral victims of the legislation, due to their greater difficulty in getting goods from their suppliers during strikes, whether in the transport sector or the port sector. SMEs generally have less flexibility in terms of financial resources and therefore have more trouble dealing with economic disruptions such as extended strikes.¹⁶

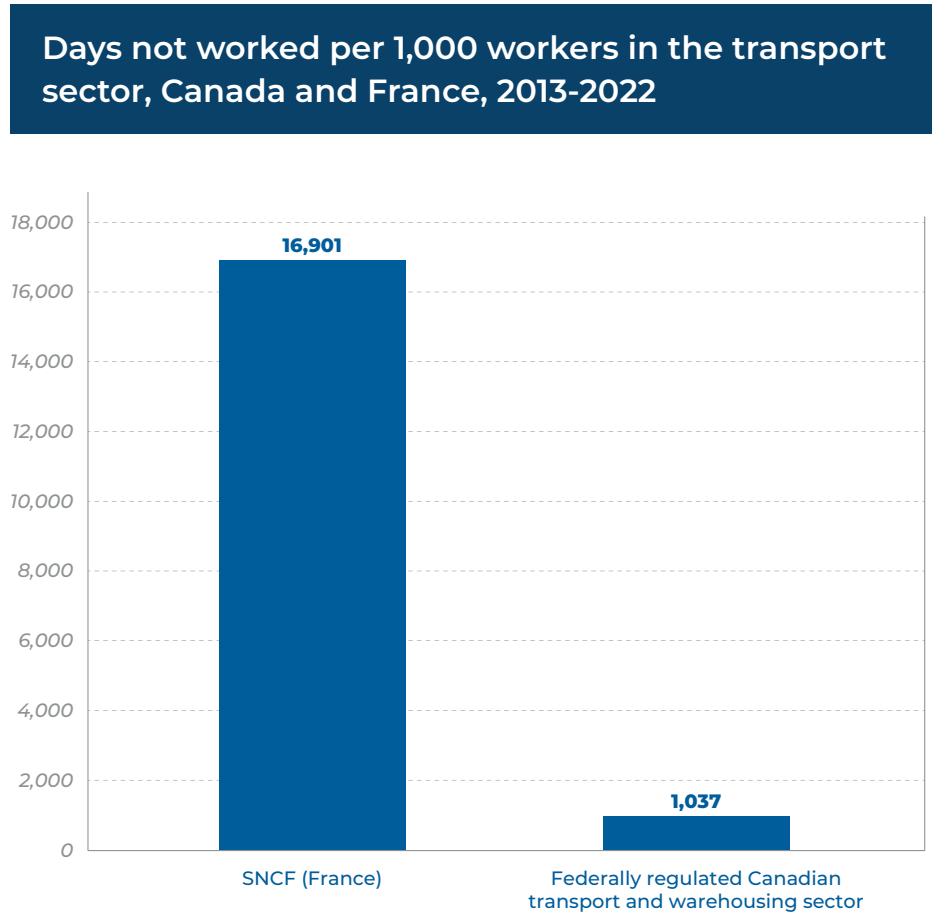
For example, if the employees of the Port of Montreal launch a strike, no replacement workers will be authorized to move goods to SMEs.

The latter will therefore have to face an additional challenge in terms of supply and delays, a situation that is far from ideal in a context in which “Canadian business insolvencies surged 41.4% in 2023, the largest increase in 36 years of records.”¹⁷

The difficulty moving goods would also have a negative impact on consumers. Not only could it be hard to find certain products, as was the case during the pandemic, but the available goods could undergo price increases, at least temporarily.

Simultaneous strikes like those that could soon be launched by the unionized employees of the Canadian Pacific Kansas City Limited (CPKC) and the Canadian National (CN) could have much more harmful conse-

Figure 2



Note: France has a law prohibiting temporary replacement workers during a strike, which has not been the case for Canada for federally regulated organizations.

Sources: Author’s calculations. SNCF, Journées perdues lors de mouvements sociaux chaque année depuis 1947, consulted April 30, 2024; Employment and Social Development Canada, Distribution of Employees in the Federal Public Sector and the Federally Regulated Private Sector, February 23, 2022; Statistics Canada, Table 14-10-0352-01: Work stoppages in Canada, by jurisdiction and industry based on the North American Industry Classification System (NAICS), Employment and Social Development Canada - Labour Program occasional (number unless otherwise noted), consulted April 30, 2024.

quences for SMEs after the law comes into effect, when it will no longer be possible for services to be ensured by replacement workers.¹⁸

Every year, as vacation time approaches, the unionized workers of the Société nationale des chemins de fer français (SNCF) threaten to walk off the job.

The adoption of Bill C-58 will also have repercussions in terms of investment. It has been observed in Canada that frequent work

stoppages and the regulatory framework that facilitates them put downward pressure on foreign direct investment in the affected sectors.¹⁹ According to one study, a province equipped with a law against replacement workers has an investment rate 25% lower than that of the other provinces.²⁰ This development across the country will have alarming consequences in a context of low private non-residential investment per worker in Canada, which is far below the OECD average.²¹

Such a drop in investment leads, in the long term, to a reduction in the productivity of affected sectors. According to a C.D. Howe study,²² employees end up with salaries that are lower than what they would have been in the absence of such legislation, up to 3.6% lower in the Canadian private sector.²³

Strikes like those that could soon be launched by the unionized employees of CPKC and CN could have much more harmful consequences after the law comes into effect.

Workers in the aviation and railway sectors, to name just these two examples, will thus probably see lower salaries within a few years compared to what they would have been without this legislation. This is therefore an extremely harmful law in the longer term, not only for employers and consumers, but also for unionized workers in federally regulated sectors.

TWO CLASSES OF WORKERS

Finally, this bill constitutes an obstacle to the freedom to work, and creates two classes of workers: unionized workers with rights, and non-unionized workers prevented from freely seeking a job with the employer of their choice at the time of their choosing.

While some are prevented from working under a fixed-term contract, as replacement workers, those on strike or locked out are entirely free to find themselves another job.

Yet, the pre-C-58 legislative framework already protected unionized workers and prohibited employers from calling upon replacement workers for the purpose of undermining union representation.²⁴ The point here is therefore not to modify the Labour Code for the good of all Canadian workers, but rather to benefit one very limited category of unionized workers, to the detriment of other workers, of employers, and of the Canadian population as a whole.

CONCLUSION

The federal government of Justin Trudeau had understood this imbalance when it first arrived in power. Indeed, in 2016, the former Liberal MP and Parliamentary Secretary to the Minister of Employment, Workforce Development and Labour, Rodger Cuzner, indicated his refusal to prohibit replacement workers by modifying the Labour Code, judging that this would unbalance employer-employee relations:

The code balances the union's right to strike with the employer's right to attempt to continue operating during a work stoppage. As the report recommends, "There should be no general prohibition on the use of replacement workers."²⁵

While the Liberal government's position has evolved politically over time, the adverse economic repercussions remain the same. The adoption of Bill C-58 goes against the goal of ensuring the proper functioning of the Canadian economy, the reliability of services provided to the population, and the well-being of all Canadian workers.

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