

United Steelworkers submission to the Standing Senate Committee on Transportation and Communications regarding Sections 87.4 and 107 of the *Canada Labour Code*.



Submission of United Steel, Paper, Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union ("The United Steelworkers" or "USW")

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The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (“USW”) thanks the Standing Senate Committee on Transportation and Communications (the “Committee”) for the opportunity to provide commentary on Sections 87.4 and 107 of the *Canada Labour Code* (the “Code”) as it pertains to labour disputes in rail and marine sectors.

USW represents 250,000 members in Canada in a broad range of sectors, including approximately 5,200 in rail, marine, and related services. USW members and staff in the rail and marine sectors therefore have both recent and longstanding experience with bargaining under the Code and with the Code’s dispute resolution mechanisms.

We understand the Committee is tasked with studying labour stoppages in the federal rail and marine sectors, with particular relevance to recent disputes and administrative processes under sections 87.4 and 107 of the Code.

USW has frequently provided [commentary](#) and recommendations on issues around the maintenance of activities, government interference, and the right to strike in rail and other transportation and federal sectors. We attach and refer to our submissions of January 2023 to the Government of Canada consultation process on the maintenance of activities and we reiterate the recommendations made therein.

Since its writing in 2023, amendments to the Code included banning replacement workers and introducing time limits on the Canada Industrial Relations Board’s (CIRB) determination of maintenance of service arrangements when in dispute.

Further, as the Committee is aware, workers in rail and air transportation sectors have again faced government interference in bargaining during this time period. Federal ministers have relied on section 107 no less than seven times in 2024 alone, often so prematurely that strikes had not yet begun. Section 87.4 also continues to create hurdles and delays to efficient bargaining, most notably in rail and airport sectors as discussed below.

In considering these recent developments as well as this Committee’s review, we reiterate the settled law that the right to strike is an essential component of collective bargaining and that the right to strike must be as minimally impaired as possible for effective labour relations.

The High Bar for the Need for Maintenance of Services

To this point, we first remind the Committee of the distinction between economic damage or inconvenience and true threats to health and safety.

While understandable, concerns over economic consequences do not rise to the level of danger to life and limb. Indeed, employers raising concerns over economic outcomes are an indication that labour relations working as it is supposed to. The threat of economic consequences is one of the only countervailing pressures available to workers in the face of employer power. Economic concerns therefore encourage bargained settlements and any interference in this balancing distorts efficient and fair contracts – whether through significant curtailment of the

power of a strike due to maintenance of services under section 87.4 or through orders made under section 107.

Labour boards and courts have consistently highlighted this distinction in rail and marine sectors. While acknowledging the importance of the rail transportation sector to broader national interests, CIRB recently reiterated that:

It is clearly established that the Board has no jurisdiction to consider the economic impacts, financial hardships or harm to the national economy that can result from a work stoppage. The Board has no role in ensuring that the economic, commercial or other public interest considerations are insulated from the impact of a strike or lockout. Its analysis is limited to those considerations related to an immediate and serious danger to the safety or health of the public, nothing more.

...

There is no doubt that a work stoppage at CN would result in inconvenience, economic hardship and, possibly, as some groups and organizations have suggested, harm to Canada's global reputation as a reliable trading partner. While such possible harm is by no means insignificant, these are not factors that are to be considered by the Board when addressing a referral under section 87.4 of the *Code*.¹

Based on this reasoning, CIRB confirmed that rail transportation are not necessarily essential services, notwithstanding their importance to Canada's infrastructure.

Similarly, CIRB has repeatedly denied employer claims in the marine and ports sector that this work forms essential services under the *Code*.² Likewise, CIRB rejected economic harms and inconvenience as grounds to compel the maintenance of services in a labour dispute:

The Board does not intend to comment on all of the examples of likely disruptions as a result of a strike at the Port of Montréal cited by counsel for the MEA. For example, a potential break in the supply chain for building materials, fertilizers or sugar could certainly have consequences for businesses, including layoffs, and could certainly undermine supply chain logistics in the event of a protracted strike. Section 87.4 of the *Code* does not authorize the Board to consider the potential economic impact of a labour dispute on an industry. None of the direct evidence allows the Board to find that those inconveniences would cause an immediate and serious danger to the safety or health of the public within the meaning of section 87.4 of the *Code*. The same is true for food, fruits and vegetables imported through the Port of Montréal. No evidence demonstrates that a shortage of these imported commodities would endanger public health.³

¹ Canadian National Railway Company v Teamsters Canada Rail Conference (Re), 2024 CIRB 1154 (CanLII), para 55 and 98.

² Canada, Industrial Inquiry Commission pursuant to Section 108 of the Canada Labour Code on Longshoring Labour Disputes at Canada's West Coast Ports, *Industrial Inquiry Commission on West Coast Ports: Final Report* (2025) online: <https://www.canada.ca/content/dam/esdc-edsc/documents/programs/labour-relations/reports/industrial-inquiry-commission-longshoring-west-coast-ports/Report-Recommendations-EN.pdf>

³ Maritime Employers Association v Syndicat des débardeurs, Local 375 of the Canadian Union of Public Employees, 2020 CIRB 927, para 277.

The Federal Court of Canada agreed with this analysis in denying the appeal of the employer group.⁴ The Supreme Court of Canada subsequently denied the employer leave to appeal.⁵

While the disputes at hand in the above cases involved other unions and bargaining units, USW has intervened as bargaining agent for other workers with the same employers.

Much of USW's recent experience with section 87.4 is in our airport pre-board screening units. These employers have taken the position that 100 percent of services must continue in a strike, leading to lengthy proceedings at the CIRB. The related Crown agency (the Canadian Air Transport Security Authority) has intervened similarly arguing that services must be maintained at a 100 percent level. These delays have extended for months or even years and, in recent cases, for 11 and eight months, all while our members rights are in limbo.

While in a different sector, employer groups in the rail sector have similarly argued that all or nearly all of their operations are so essential as to require them to be maintained during a work stoppage: in other words, that rail workers should effectively be denied the right to strike.

We appreciate that recent amendments to the Code have placed an 82-day time limit on deliberations about the maintenance of activities. However, 82 days nonetheless represents an opportunity for employers and government bodies to slow the union's momentum and impede their bargaining efforts.

These delays undermine the ability of union members to engage in collective bargaining and delays disproportionately affect unions and their members.

Maintaining Efficient Processes within the Labour Relations Regime

As described, the existing statutory regime already presents avenues for CIRB review and adjudication – which can significantly delay and compromise the quality and effectiveness of bargaining.

While the idea of mediation or other resolution mechanisms for questions and disagreements about the maintenance of services has been floated, USW opposes introducing additional steps or parties to this process. It is duplicative of multiple existing dispute resolution and review mechanisms in the Code and is yet another opportunity for employers to add delay.

Further, involving mediators, arbitrators, or boards at additional stages also removes decision-making responsibilities from where they belong – with the employer and union themselves.

Deferring to or relying upon third parties to resolve contentious matter does not foster a productive bargaining relationship. It stalls progress on bargaining at each cycle as over time if parties know that third party intervention is the likely outcome. The increasing trend of

⁴ Maritime Employers Association v. Syndicat des débardeurs (Canadian Union of Public Employees, Local 375), 2023 FCA 93 (CanLII).

⁵ Maritime Employers Association, et al. v. Syndicat des débardeurs, section locale 375 du syndicat canadien de la fonction publique, et al., 2024 CanLII 22662 (SCC).

governments and employers to use these mechanisms (via section 87.4 or section 107) and to introduce new ones harms effective labour relations.

As with bargaining, the goal should always be for the employer and union to reach agreement on the maintenance of services on their own as they are the experts on the workplace and its operations.

Research bears out this conclusion. Extensive reviews of Canadian labour relations have found that contract arbitration produces delays to settlement, low settlement rates, and an overreliance on these inefficient mechanisms.⁶ While concentrated on the public sector, a study found that reliance on arbitrated or legislated settlements in a previous round of bargaining significantly decreased the likelihood of bargained settlements in subsequent rounds.⁷ Similarly, conciliation and mediation increased the probability of a strike in subsequent rounds of bargaining,⁸ suggesting that even less authoritative third party involvement interferes with the importance of building efficient and effective bargaining relationships between union and employer.

Intervening via mechanisms like section 107 or section 87.4 review processes may minimize economic impacts in the short term, but it does not produce healthy labour relations and bargaining relationships in the long term. This leads to a cycle of unproductive and fractious bargaining.

Encouraging the Appropriate Parties to Build Effective Labour Relations

Related to the above, it is our view that bargaining, including the resolution of work stoppages, should be left to the parties themselves, namely the union, employer, and under certain circumstances, CIRB. Neither CIRB, nor the federal government, nor a newly created mediator under these parts of the Code need novel or expanded powers.

The existing dispute resolution processes provide adequate relief for true threats to the safety of the public related to labour disputes. Section 87.4(7) expressly provides CIRB with the power to review, confirm, amend, or cancel any orders or agreements related to the maintenance of activities during a work stoppage if circumstances change such that a genuine danger to public healthy or safety exists. Further, CIRB, as a transparent body with specialized knowledge and experience in this area, is the more appropriate forum than ministerial orders and cabinet proceedings.

To this point, USW is also of the view that recent reliance on section 107 by federal labour ministers to pre-emptively involve CIRB or other decision-makers in bargaining is ultimately a

⁶ Eric Tucker, “Regulating Strikes in Essential Services – Canada” in Moti Mironi & Monika Schlacter eds., *Regulating Strikes in Essential Services: A Comparative ‘Law in Action’ Perspective* (The Netherlands: Wolter-Kluwers, 2019) 107-144; Joseph Rose, “Regulating and Resolving Public Sector Disputes in Canada” (2008) 50:4 *Journal of Industrial Relations* 545; and Michele Campolieti, Robert Hebdon & Benjamin Dachis, “Collective Bargaining in the Canadian Public Sector, 1978-2008: The Consequences of Restraint and Structural Change” (2016) 54:1 *British Journal of Industrial Relations* 192.

⁷ Campolieti, Hebdon & Dachis, *supra* note 5.

⁸ *Ibid.*

counterproductive circumvention and interference in the constitutional right of workers and unions to bargain collectively.

Furthermore, section 107 is superfluous and redundant to the existing panoply of powers held by government, cabinet, and the responsible ministers. As discussed, section 87.4 presents ample opportunity for CIRB to review the maintenance of essential services at any time during a work stoppage to ensure that public health and safety is maintained. These powers include ordering binding arbitration or other settlement means. Section 87.4 allows the minister to refer any similar question about safe levels of service to CIRB. Ministers can also, as always, introduce back-to-work legislation to end a federal sector strike. While USW opposes interference with workers' bargaining rights, back-to-work legislation at least requires the democratic scrutiny of the legislative process. In contrast, section 107 essentially allows a minister to, by fiat, halt a strike at any point, including before it has even begun.

USW is supportive of the repeal of section 107. Insofar as it is currently in force, much of the foregoing discussion about the importance of narrowly defining danger to health and safety of the public to not include circumstances of mere inconvenience or economic hardship likewise apply to considerations of appropriate occasions for a minister to make a referral under section 107.

If the concern is to "maintain and secure industrial peace", this is best achieved by the union and employer themselves. Just as the maintenance of services must be narrowly construed to avoid impacting the effectiveness of the right to strike, so must the conditions which are deemed serious or hazardous enough to intervene under section 107.

Conclusion

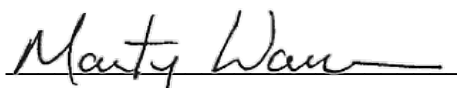
The goal of a labour relations regime should be to encourage the parties to negotiate fair collective agreements.

The right of workers to strike effectively is an important component of facilitating efficient negotiations as it is the counterbalance to the overwhelming power of employer and government.

Any curtailment of that right, whether by requiring the maintenance of essential services in a dispute or by imposing arbitration, must be exceptional and minimal and only after the parties have had a chance to meaningfully engage in the process.

USW thanks the Committee for the opportunity to provide our comments.

Respectfully submitted by:



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Date: December 15, 2025

**SUBMISSION OF THE UNITED STEELWORKERS ON
IMPROVING THE MAINTENANCE OF ACTIVITIES
PROCESS UNDER THE CANADA LABOUR CODE**

January 31, 2023



**United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied
Industrial and Service Workers International Union**

**Marty Warren
National Director**

WHO WE ARE

The United Steelworkers is an international trade union with over 250,000 members in Canada. Approximately 80,000 of these members work in Canada's federal jurisdiction.

Steelworkers are individuals of every social, cultural and ethnic background in every industry and job. In the federal jurisdiction, our members work in trucking, railways, courier delivery, banking, airlines, airport security, shipping, ferry service, and telecommunications.

The Steelworkers is dedicated to ensuring that employees in Canada, whether members of our organization or not, are treated with dignity, respect and equality in Canadian workplaces and communities. We negotiate strong collective agreements with good wages to ensure that the economic lives of our members and their families are improved, and that they are treated with dignity and respect in their workplaces. We negotiate secure benefits and pensions to ensure that our members and their families are able to enjoy their retirement years.

In October 2022, the Government of Canada launched consultations and requested submissions on how to improve the maintenance of activities process under the *Canada Labour Code* (the “Code”). To that end, the Union provides our submission below on how, in our experience, the Government may best achieve its goals. The USW welcomes the opportunity to meet with the Government in person to further discuss this submission.

BACKGROUND

The issue of maintenance of activities must always be considered in light of the right to strike, a key aspect of the fundamental freedom of association and central to the labour relations scheme under the *Code*.

In 2007, the Supreme Court of Canada recognized that the section 2(d) freedom of association guarantee in the *Canadian Charter of Rights and Freedoms* (the “Charter”) protects the right of employees to bargain together collectively for the purposes of advancing workplace goals: *Health Service & Support-Facilities Subsector Bargaining Assn. v. British Columbia* 2007 SCC 27.

In 2015, the Court confirmed that the right to bargain collectively as protected by section 2(d) of the *Charter* must, in order to be effective, also include the right of workers to withdraw their services, subject to the provisions of section 1 of the *Charter*: *SFL v. Saskatchewan* 2015 SCC 4. In doing so, the Court commented on the fundamental importance of the right to strike for working people in Canada:

.....it has long been recognized that the ability to collectively withdraw services for the purposes of negotiating terms and conditions of employment – in other words, to strike – is an essential component of the process through which workers pursue collective workplace goals. As Prof. H.D. Woods wrote in his landmark 1968 report, the “acceptance of collective bargaining carries with it a recognition of the right to invoke the economic sanction of the strike (*Canadian Industrial Relations: The Report of the Task Force on Labour Relations* (1969), at p. 175). The strike is “an indispensable part of the Canadian industrial relations system” and “has become a part of the whole democratic system” (pp. 129 and 176).

The right to strike is essential to realizing these values and objectives through a collective bargaining process because it permits workers to withdraw their labour in concert when collective bargaining reaches an impasse. Through a strike, workers come together to participate directly in the process of determining wages, working conditions and the rules that will govern their working lives (Fudge and Tucker, at p. 344). The ability to strike thereby allows workers, through collective action, to refuse to work under imposed terms and conditions. This collective action at the moment of impasse is an affirmation of the dignity and autonomy of employees in their working lives.

SFL v. Saskatchewan 2015 SCC 4 at paras. 46 and 54.

Further, while the Court recognized that the maintenance of essential public services was necessary in some circumstances, it warned (in its section 1 analysis) that the services at issue must be properly interpreted to ensure that they were indeed “essential” to the public and that the right to strike was minimally impairing: *SFL v. Saskatchewan*, *supra*, at para. 80-86.

The maintenance of activities provisions at section 87.4 of the *Code* inherently limit the right to strike by requiring the continued supply of services, operation of facilities, or production of goods “to prevent an immediate and serious danger to the safety or health of the public”. Importantly, section 87.4 provides for a narrow set of purposes for which activities must be maintained - it does not mandate the continuation of activities for the purpose of protecting broad notions of the “public interest” or the economic interests of various stakeholders.

The Government has not called for submissions on the substantive aspects of the maintenance of activities provisions of the *Code* through this consultation process. The USW is aware that some employers are interested in further diminishing the right to strike by expanding the scope of activities mandated to continue under section 87.4 under broad claims that such activities are necessary for the “public interest”. The USW views such claims as an attempt to further undermine the right to strike and render powerless any legislative changes the Government could enact for the purpose of banning the use of replacement workers. It is crucial that the scope of activities mandated to continue under section 87.4 of the *Code* not be expanded any further following these consultations.

The right to strike is deeply impacted by the procedural aspects of the maintenance of activities provisions of the *Code*. Any procedures which delay or limit the ability of workers to strike in a timely and effective manner inherently harms the ability of workers to use their right to withdraw their labour in concert with one another in order to advocate for better terms and conditions of employment. The process involved must be fair, efficient, and effective, prioritizing workers' ability to exercise their rights instead of aiming only for low costs and convenience. Any changes to the procedures involved in administering section 87.4 of the *Code* must be made with a view to protecting the right to strike to the greatest extent possible.

GENERAL: THE USW'S EXPERIENCE WITH THE MAINTENANCE OF ACTIVITIES PROCESS

As set out above, the USW represents workers in several industries governed under the *Code*. Our experience with the maintenance of activities process has varied depending on the employers which with we deal.

Some employers have been willing to negotiate over and exchange information relating to maintenance of activities. In such cases, the USW has been able to negotiate maintenance of activities agreements with those employers without resorting to the Canada Industrial Relations Board (the "Board") for a determination of the activities which must be maintained during a work stoppage.

However, other employers have not been so willing to negotiate over maintenance of activities. Some of these employers consistently take a firm stance that 100% of activities must be maintained in the event of a strike and appear unwilling to negotiate any further, essentially asking the USW to accept that its members will have no right to strike. In light of such unyielding positions taken by these employers, the USW has been unable to arrive at maintenance of activities agreements with them.

Where the USW has been unable to resolve these issues through negotiations, the parties have then brought the maintenance of activities issue to the Board. The process involved in doing so has often been a source of frustration and confusion for our members, especially because of the length of processing times for maintenance of activities applications brought by the parties. When faced with employers offering little to no improvements to the terms and conditions of employment, our members should be able to engage in strike action in a prompt manner. However, when a section 87.4 application is before the Board, our members are unable to engage in strike action until such an application is resolved. This has meant that, in some cases, our members have been unable to strike for many months and even years. This can lead workers to feel powerless in the bargaining process if their rights as unionized workers cannot be exercised in practice. The delay can cause unions and their members to feel pressured to accept sub-standard collective agreements. The length of processing times leaves the maintenance of activities process rife for exploitation by employers who can essentially prevent unionized workers from striking by simply filing a maintenance of activities application.

The maintenance of activities issue has been especially present in the context of airport pre-board screening employees. The security companies that employ USW members in this sector often take the position that 100% of services must continue in the event of a strike. The inflexibility of the employers in this sector is likely informed, at least in part, by the involvement of the Canadian Air Transport Security Authority (“CATSA”), the Crown Corporation which contracts with the security companies for the provision of pre-board screening services at airports. In the past, CATSA has intervened at the Board in section 87.4 applications and taken the position that 100% of activities must be maintained in the event of a work stoppage. The involvement of CATSA further complicates matters because while it exercises influence over employers in the security sector, CATSA itself is not at the bargaining table. As such, the USW cannot engage directly with CATSA to negotiate over the maintenance of activities issue.

The USW is also concerned with the possibility of employers using replacement workers to carry out essential services in the event of a strike. It is crucial that any work that is truly necessary for the purpose of preventing an immediate and serious danger to the safety or health of the public be given to the members of the relevant bargaining units instead of to any replacement workers. Employers ought not to be able to use the maintenance of activities provisions of the *Code* as an excuse to use replacement workers. Not only would allowing the use of replacement workers undermine the rights of the bargaining unit and the collective bargaining process, it would also be a less effective means of protecting the health and safety of the public. The members of the given bargaining unit would be best placed to continue any work necessary to fulfill the purpose of section 87.4 of the *Code* given that they

would be ones with the day-to-day experience of performing that work. As such, the health and safety of the public would be best protected by giving that work to the bargaining unit instead of replacement workers who would have to learn the skills needed to perform the work.

The spectre of back-to-work legislation can also loom large and hamper the ability to meaningfully resolve maintenance of activities issues. The idea that the Government may circumvent the section 87.4 process by passing back-to-work legislation leads unionized workers and unions to worry that any agreement or Board decision dealing with maintenance of activities may be rendered irrelevant. If the Government decides to override the right to strike even where the parties or the Board have thoroughly considered how to protect against immediate and serious dangers to the health and safety of the public, then section 87.4 of the *Code* cannot be truly effective.

In addition to requesting general views on the maintenance of activities process, the Discussion Paper calls for submissions on three specific issues:

1. The need (or lack thereof) for third party verification or review of maintenance of activities agreements reached between unions and employers,
2. The processing times for maintenance of activities applications at the Board, and
3. The involvement of the Ministry of Labour in the maintenance of activities issue.

Below, we will address these three issues.

ISSUE 1: THIRD PARTY VERIFICATION

The Government should not require employers and unions to submit their maintenance of activities agreements to the Board or any another third party for review or verification. The USW especially opposes any proposal that maintenance of activities agreements must be verified by a third party before our members can exercise their right to strike.

Maintenance of activities agreements are finalized between employers and the USW after an arduous process of exchanging and evaluating information to determine what activities must be maintained to prevent an immediate and serious danger to the health and safety of the public. These agreements, where they are reached, are the best indicator of what it would take to fulfill the requirements of section 87.4 of the *Code*. Our members are the ones who work every day at federally-regulated workplaces and, as such, are best placed to evaluate which activities are relevant with respect to protecting the health and safety of the public. In negotiating maintenance of activities agreements, the workplace parties thoroughly consider the list of jobs done by the relevant workers, the production processes used, the staffing needs of the workplace, any legislative or regulatory requirements for the given industry, and any other relevant factors in light of the impact of the activities of the workplace on public health and safety. The USW assesses this information to distill the level of activities necessary to meet the requirements of section 87.4 of the *Code* while protecting the right to strike to the greatest extent possible.

When negotiating over the maintenance of activities agreements, unions and employers are aware of their obligations under section 87.4 of the *Code*. They are also aware that section 87.4(7) of the *Code* allows the Minister, the employer, or the union to request that the Board review and amend any maintenance of activities agreement. Given these factors, the workplace parties have sufficient incentive to ensure that their maintenance of activities agreement do in fact meet the requirements of the *Code*.

Any requirement that the parties must then submit the maintenance of activities agreements to an external body for review and verification would lead to further delay in the ability of our members to exercise their *Charter*-protected right to strike. Any verification process would require the third party to review the same information about the activities at the given workplace, which would essentially be a repetition of the work already done by the workplace parties to reach a maintenance of activities agreement. The review and/or verification process would likely require unions and employers themselves to be engaged to some degree in providing information and taking part in discussions with the third party. This would require unions and employers to use time and resources which would be better spent at the bargaining table.

ISSUE 2: PROCESSING TIMES

As outlined above, the lengthy processing times for maintenance of activities applications at the Board has been a problem for the USW and its members. The months and even years long processing times at the Board has delayed the ability of our members to exercise their right to strike in a timely and effective manner.

In order to shorten the time it takes to get a decision on the maintenance of activities questions, the Government should invest the resources necessary to ensure that the Board can review maintenance of activities applications in a timely manner, hold hearings in an expedited manner, and give priority to maintenance of activities issues decisions after the conclusion of the relevant hearings.

Section 14 of the *Canada Industrial Relations Board Regulations*, 2012 (the “*Regulations*”) provides that an “expedited process” applies to certain matters under the *Code*. This includes matters such as applications for interim orders and unlawful strikes or lockouts. Notably, section 14 of the *Regulations* also provides for an expedited process for referrals to the Board by the Minister under section 87.4(5), which is the provision that allows the Minister to refer the maintenance of activities issue to the Board. When the Minister has done so, the Board implements an expedited process to decide that matter. However, where the maintenance of activities issue is brought to the Board by the employer or union themselves instead of by the Minister, there is no provision for an expedited process. One way through which the Government could shorten the processing times for maintenance of activities applications is by extending the scope of section 14 of the *Regulations* to allow for that expedited process to apply to all maintenance of activities applications.

The Government’s Discussion Paper asks whether the Government should create “a new body dedicated to resolving maintenance of activities issues”. The USW supports the idea of the Government dedicating resources *within* the Board to deal with maintenance of activities applications in a timely manner.

However, the Government should not create a new body external to the Board to focus on maintenance of activities issues. The Board, created under the *Code*, has a history of dealing with labour relations and the right to strike. As outlined in the preamble of Part I to the *Code*, the Board is part of a labour relations regime which is meant to recognize and support the freedom of association and free collective bargaining. A new body outside of the Board would not have the same deep history and understanding of how to deal with maintenance of activities issues in a manner that prioritizes the right to strike. The USW is concerned that a Government body created for the sole or primary purpose of dealing with maintenance activities issues would then be oriented towards the “public interest” more broadly in a manner that prioritizes economic interests and convenience for industries and consumers over the fundamental freedom of association and the right to strike.

ISSUE 3: MINISTER OF LABOUR’S INVOLVEMENT

It is the USW’s view that the Minister of Labour could have a greater role in facilitating negotiations and settlements of maintenance of activities agreements between employers and unions. This could be done through the Federal Mediation and Conciliation Service (“FMCS”), which is already involved in promoting cooperative labour relations between unions and employers governed by the *Code*.

We note that, when parties file the “Notice of Dispute and Request for Conciliation Assistance” (the “Notice of Dispute”) with the FMCS, they are asked to indicate whether any agreement on maintenance of activities was reached and to attach a copy of any such agreement. Given the information

solicited on the Notice of Dispute form, at the time which the Minister appoints a conciliation officer to parties involved in collective bargaining, the Minister already has information about whether or not the parties have been successful in resolving the maintenance of activities question. Where the Notice of Dispute indicates that this issue has not been resolved, the conciliation officer appointed by the Minister could encourage the parties to negotiate over this issue alongside collective bargaining and facilitate those discussions. This would be especially helpful in circumstances where employers have taken a hard-line position on maintenance of activities, as the intervention by the Minister (through a conciliation officer) could help encourage employers to reevaluate their position and negotiate meaningfully over this issue.

CONCLUSION

The maintenance of activities provisions of the *Code* have significant implications for the right workers have to withdraw their labour in hopes of achieving better working conditions. The process involved in dealing with the maintenance of activities thus needs to prioritize the ability of workers to exercise their right to strike to the greatest extent possible. We hope that our submissions above assist the Government in determining how to best improve the procedural aspects of the maintenance of activities issue in light of the right to strike.