

January 24, 2007

## **Hamilton Chamber of Commerce**

Submission to the House of Commons Standing Committee  
on Human Resources, Social Development and the Status of Persons with Disabilities.

---

### ***Bill C-257, an Act to Amend the Canada Labour Code, (Replacement Workers)***

***“The Hamilton Chamber of Commerce, as the voice of ethical enterprise, is committed to making Hamilton a great place to live, work, play, visit and invest by promoting growth and prosperity of individuals, businesses and the community.”***

## INTRODUCTION

The Hamilton Chamber of Commerce is one of Canada's most active local Chambers. Acting as Hamilton's recognized "Voice of Business" continually since 1845, we are, in fact, the oldest, largest and most broadly based business organization extant in the broader Golden Horseshoe, outside of the GTA. Today we are comprised of over 1,900 individual members who represent 1,150 businesses and organizations of all sizes and sectors that collectively employ 75,000 people full time from all parts of the City of Hamilton, plus, indeed many beyond our municipal boundaries.

It is essential to state that our broader membership does indeed include not-for-profit organizations and unionized corporations. In fact, we were one of the first chambers to actively embrace unions and welcome them to the city of Hamilton.

Hamilton is an important central transportation and distribution hub for road, air, marine, and rail. If Bill C-257 were passed, it would have an immense negative impact on our economy and industries – an effect that will be replicated all across Canada, from sea to sea to sea. Additionally, we show complete and utter support to the Canadian Chamber of Commerce regarding their views of Bill C-257.

## Specifics

The City of Hamilton has a superb transportation network, which is located at the centre of the Golden Horseshoe's industrial corridor. It has direct access to Toronto and points eastward and the United States via Detroit or Buffalo along Highways 401, 403 and the Queen Elizabeth Way (QEW).<sup>1</sup>

The Port of Hamilton handles over 12 million tons of cargo and is visited by over 700 vessels each year. This ranks Hamilton as the busiest of all Canadian Great Lakes ports.<sup>2</sup> A 2001 Stamm study determined that almost 4% of Ontario's GDP is directly or indirectly connected to the operations centred on the Port of Hamilton. For the Greater Hamilton region, that figure is over 30% of the GDP. This translates into an employment equivalent, (considering both indirect and direct impacts), of approximately 220,000 jobs.

Since privatization, Hamilton International Airport's airport-related workforce has grown from 726 to more than 1,300 full-time equivalent employees. Under TradePort management, passenger traffic at the Hamilton terminal has increased from 90,000 in 1996 to approx. 900,000 in 2002, and will grow dramatically over the next five years. Air cargo has increased by 50% since 1996; 91,000 metric tonnes of cargo passed through the airport in 2002.<sup>3</sup>

CN's Hamilton Metals Distribution Center (MDC) is positioned in the heart of Canada's largest steel consuming market. The facility is home to Canada's steel manufacturing, distribution and processing industry and is located in one of North America's largest vehicle production areas. Furthermore, CN's Hamilton MDC strategically positions your company to do business in the largest Canada-U.S. steel corridor.<sup>4</sup>

---

<sup>1</sup> <http://www.myhamilton.ca/myhamilton/CityandGovernment/CityDepartments/PlanningEcDev/EconomicDevelopment/transport.htm>

<sup>2</sup> <http://www.hamiltonport.ca/corporate/about.aspx>

<sup>3</sup> <http://www.flyhi.ca/about/history.shtml>

<sup>4</sup> [http://www.cn.ca/specialized/transloading/metals\\_minerals/hamilton/en\\_Transloading\\_Hamilton.shtml](http://www.cn.ca/specialized/transloading/metals_minerals/hamilton/en_Transloading_Hamilton.shtml)

## Direct Impact Testimony

*“...services that are vital to the Motor Carrier Industry, such as Customs, Ports, and others could have a crippling effect to the Industry within days of any work interruption by these sectors. With Canadian Industry relying on Motor Carriers to facilitate “Just on Time” deliveries to their plants and distribution centers, anything that could impact Industry is perceived as a risk. When there is a “Work Interruption” that may occur in the coming days or weeks, many major companies will have contingency plans which may include carrying additional inventories to off set the risk. This is an expensive insurance policy that most companies would like to see done away with, but unfortunately due to performance contracts (especially prevalent in Automotive) it is a necessary evil. Can Industry recover these costs? The answer obviously is they can’t, and it may have cost them millions of dollars in overtime, warehousing and additional transportation costs to full fill their contractual agreements. If Bill C-257 prevents essential Industries & Services from operating it will make things worse. We wonder why companies are moving south of the Border, it is thinking like this that makes people consider their options.”* – **Gord McNeil, Genesis Transportation, Chair of the Chamber’s Transportation Committee and VP of the Toronto Transportation Club.**

*“Canada’s airports are essential components of Canadian infrastructure. To the communities they serve, and indeed to the nation, Canada’s airports play a vital economic and social role. They also play an important part in the continued health and security of our nation,”* said CAC President and CEO Jim Facette. *“Unfortunately, if Bill C-257 becomes law, the continued operation of our airports during a strike action would be threatened. Under C-257 labour rules, one or a group of airports could be forced to cease operations in the event of a strike.”* – **Jim Facette, Canadian Airport Council.**

## Background

Part I of the Canada Labour Code came into being on January 1, 1999 after years of consultation through a legislative review process initiated by the then Minister of Labour, which included a Task Force headed by Andrew Sims, a former chair of the Alberta Labour Relations Board. There was an extensive consultative process, which included consensus meetings involving the Canadian Labour Congress, Confederation des syndicats Nationaux, and Fédération des travailleurs et travailleuses du Québec, and employer groups such as the Canadian Chamber of Commerce, FETCO, and the Canadian Bankers Association. This proved to be a constructive process as business and labour did reach consensus on several changes to Part I of the Canada Labour Code.

The primary objective of the Sims Task Force was to balance the interests of both employers and employees. The title of his report, dated January 31, 1996, was “Seeking a Balance”. Mr. Sims wanted to ensure that his report reflected the interest of all parties, not just those of one stakeholder group. Unfortunately, Bill C-257 would disrupt the balance.

## Impact of C-257

Section 2.4 of Bill C-257 states “The measures referred to in subsection (2.2) shall exclusively be conservation measures and not measures to allow the continuation of the production of goods or services other wise prohibited by subsection (2.1)”. This provision contained in Bill C-257 will have the following impact on the health and well being of Canadians:

Prevent the Delivery of Emergency and Essential Services to Canadians: Canadians expect businesses and government to deliver services that are essential to their health. Bill C-257 would undermine this expectation as companies would be forced to sit idle during a work stoppage. Federally regulated companies are responsible for delivering the food that people eat, ensuring that 911 services are operable and accessible, and for executing financial transactions, just to

name a few examples. In the opinion of the Canadian Chamber, it is unconscionable that a law, such as C-257, would be enacted that would put services essential to Canadians in jeopardy without any demonstrated purpose.

Negatively Impact Workers: The best protection for a worker who is on strike is to have confidence that there will be a job to return to, and that is best assured by allowing that enterprise to remain operational during a strike. While some suggest that banning the use of other workers, would result in more industrial harmony, studies, such as the HRSDC “Key Observations Regarding the Effect of Replacement Worker Legislation on Workers”, have shown that anti-replacement worker legislation often results in an increase in strike incidence and duration. Therefore, longer strikes with limits on the enterprise’s ability to continue operations can harm a worker’s job security.

Undermine the Dependability of Canada’s Infrastructure Industries: Continuity of service in the federally regulated infrastructure industries is important to virtually all-Canadian enterprises, not just those under federal jurisdiction. For example, if a work stoppage took place in the telecommunications industry and data transmission lines failed, the banks’ ability to settle domestic and international financial transactions would be seriously disrupted, damaging the confidence other countries have in Canada, in addition to the crippling effect it would have on domestic financial services. Similarly, the potential to have transportation services halted, ports closed, etc. would be felt by all Canadians and Canada’s trading partners who rely on an uninterrupted flow of goods. Most federal businesses are providers of services where the ability to stockpile goods does not exist.

Detract from Canada’s Attractiveness as a Place to Invest: in an era of global mobility of investment, potential investors to Canada would also negatively perceive such a provision.

### **Legislative Development at the Federal Level**

The tripartite process, involving government, labour and business, for developing labour legislation and regulations, has been in place for almost 30 years. As such, it is a well-established and effective process for developing federal public policy with regard to labour issues. This consultative approach developed by the labour and business stakeholders is now used elsewhere in government. The review of Part III of the Code (labour standards) that was headed by Professor Harry Arthurs has expanded the tripartite approach developed by Andrew Sims.

The huge value of the tripartite approach developed over the last quarter century is that it ensures workable legislation acceptable to all stakeholders. It balances the interest of all parties and ensures that amendments do not benefit one party to the detriment of another.

### **Federal Jurisdiction and Provincial Jurisdictions**

Industries that fall under federal jurisdiction differ significantly from sectors that fall under provincial jurisdiction. The industries are federally regulated because they are of importance to Canada as a whole. Unlike their provincially regulated counterparts, federal industries, such as transportation, telecommunications, and financial services, provide services essential to Canadians and Canadian business, as they constitute the framework of a well functioning Canadian society and economy. Federally regulated companies are service providers to all Canadians and bear the responsibility of ensuring that goods, services, capital and people flow freely across the country and across borders.

A work stoppage impacting a large employer that operates under provincial jurisdiction would have a less significant impact on the economy than a strike or lockout that would involve companies under federal jurisdiction.

Whenever there is a work stoppage involving a federal sector employer, two outcomes generally occur. First, the work stoppage causes considerable national economic disruption. The shutdown of a federal employer - an airline, telecommunications provider, trucking company, pipeline, broadcaster, or postal service - has wide-ranging consequences on Canadian society and businesses, which depend on the uninterrupted provision of such services. Further, in some cases, the federal employer is often the only entity that provides the services with no alternative replacement available. This may lead to the second outcome: Parliament passes back-to-work legislation shortly after the commencement of the work stoppage, as the disruption of such services cannot be tolerated for any prolonged period.

### **Labour Relations Prior to the Sims Task Force**

In the 20-year period before the establishment of the Sims task force, Parliament was forced to legislate an end to federal work stoppages on 17 occasions. Fortunately, the Sims recommendations have been effective. Since the 1999 amendments to Part I of the Code, there has been no need to pass emergency back-to-work legislation. The amendments relating to replacement workers have therefore done what they were expected to. They have allowed employers to operate during a work stoppage but not in a way that would clearly undermine the union's ability to represent its members.

Since 1999 there have been work stoppages involving a number of federal operations – examples are Videotron, CPR, Telus, CBC, and Aliant, all providing an essential service but none requiring Parliamentary action. If Bill C-257 had been in effect, these organizations could not have operated, resulting in a huge disruption to Canadian business. A shutdown of any length would almost certainly have needed Parliamentary intervention.

Not once since the enactment of the 1999 amendments has the Canada Industrial Relations Board needed to adjudicate on this issue. If employers in fact were using replacement workers in an effort to undermine their unions, by now the issue would have been litigated.

### **Separating the Facts from the Myths**

Fact: Work stoppages are less frequent and are shorter in industries under federal jurisdiction than in Quebec

The number of work stoppages that fall under the Canada Labour Code is significantly lower than the number of work stoppages in Quebec.<sup>5</sup>

Federal Sector: In 2005, 0.05 work stoppages per 10,000 employees  
Quebec: In 2005, 0.12 work stoppages per 10,000 employees

There is no evidence that replacement workers legislation has reduced the average duration of stoppages. For example, despite Quebec's legislation, the average work stoppage in that province has risen from 37 days, on average, in 1975-1977, to about 47 days, on average, during 2003-2005.<sup>6</sup>

Federal Sector: In 2005, 43.9 days was the average duration of work stoppages under federal jurisdiction.

Quebec: In 2005, 46.6 days was the average duration of work stoppages in Quebec.

---

<sup>5</sup> Human Resources and Social Development Canada, Labour Program, "Key Observations Regarding the Effect of Replacement Worker Legislation on Workers", pg 2, October 24, 2006

<sup>6</sup> Human Resources and Social Development Canada, Labour Program, "Key Observations Regarding the Effect of Replacement Worker Legislation on Workers", pg 3, October 24, 2006

Fact: Violence on the picket line will not be eliminated if there is a prohibition on replacement workers

Picket line violence is rare in Canada. The reality is that it can be caused by the use of replacement workers, but it can be caused by other factors too – the workplace culture which might be highly adversarial; the nature of any company demands that could threaten workers' jobs; the ability of the union to control the picket line and ensure that employees do not act illegally, e.g. sabotage company equipment. There is no one single cause of picket line violence.

**Conclusion**

The Hamilton Chamber of Commerce shows their utter and complete support to the Canadian Chamber of Commerce regarding Bill C-257 and reiterates the following:

There is no evidence that enacting C-257 will result in reduced work stoppages and durations. There is credible data provided by the federal government that refutes the false assumption that enacting C-257 will bring fewer and shorter work stoppages.

We currently have a fair and balanced system, developed through consultation with both business and labour, which respects the interests of both employers and employees in dealing with work stoppages. In the opinion of the Canadian Chamber and the Hamilton Chamber of Commerce, Bill C-257 will disrupt the balance we currently have in place.

The stakeholders in the federal labour sector long ago developed a process to amend labour legislation in Canada. It has worked well and especially so since the 1999 amendments to the Canada Labour Code, developed after an exhaustive and cooperative process.

Efforts now are being made to undermine this by attempting to pass an amendment to the Code that would benefit one stakeholder to the detriment of others. Further, it would undermine – and perhaps destroy – the consultative process in place for the past quarter century.

There is no evidence that Bill C-257 will not reduce picket line violence or cut down the length of work stoppages. As drafted, C-257 will prevent essential industries from operating, disrupt the Canadian economy, potentially jeopardize public safety, and inconvenience the public. And it will bring the spectre of Parliament once again having to legislate an end to strikes and lockouts.

We have a fair labour code. Don't change it just to benefit one party to the detriment of society as a whole.