

Amendment To BC Labour Relations Code Increases Risks For Supply Chain And Businesses In BC During Federal Work Stoppages



Under the unassuming title – Bill 9, Miscellaneous Statutes Amendment Act, 2024 – the BC government has introduced a set of small but significant changes (the “**Amendment**”) to the BC *Labour Relations Code* (the “**Code**”). Specifically, it has amended the definition of “strike” and “person” under the *Code* so that, as explained in the [information bulletin published on March 11, 2024](#):

...when employees under federal jurisdiction or that of another province are on strike, locked out, and establish a picket line in B.C., provincially regulated workers can choose to respect the picket lines without it being considered illegal strike action.

In simple terms, the Amendment means that *provincially regulated* unionized employees can now legally refuse to cross federal and other non-BC provincial pickets (i.e. picket lines related to a work stoppage in a federally regulated sector or another province).

Why does this matter?

Unlike provincially regulated unions in BC, federally regulated unions can lawfully picket anywhere. This means that even if your business operates with only an indirect connection, or even no connection at all, with a federally regulated business, your business could still be hit with a federal picket. And this where the unintended consequences of the Amendment arise.

In a situation involving provincial pickets, a provincially regulated employer can seek relief from the BC Labour Relations Board (the “**Board**”) based on the picketing restrictions in the *Code*. However, federal pickets are not restrained by the *Code*. They are regulated by the *Canada Labour Code* (the “**Canada Code**”) which does not contain such picketing restrictions, in part because it is illegal for federally regulated union employees to refuse to cross a federal picket (excepting of course employees on strike/locked out).

Provincial employers may be able to obtain relief from the effects of federal or non-BC pickets through the courts in certain cases, if there is tortious conduct that warrants relief, but such relief can be challenging to obtain. Despite this, we do note that the prohibition at section 66 of the *Code* on actions or proceedings being brought for certain potentially tortious conduct if it arises out of strikes, lockouts, or pickets permitted under the *Code* does not appear to have been expressly extended to federal or non-BC pickets at this time.

In summary, the Amendments means that a provincially regulated unionized employer could face a situation where they are targeted with a federal picket, their provincially unionized employees refuse to work, and unless there is tortious conduct that warrants injunctive relief from the courts, there is nothing the employer can do to resume operating.

What does the Amendment mean for Businesses operating in BC?

The reality is that based on the current state of the law, the Amendment expands the risk that, in the context of a federal (or non-BC) work stoppage, secondary picketing may affect neutral third parties. For example, many federally regulated unionized businesses that are critical parts of the supply chain (e.g. inter-provincial trucking companies and shipping terminals) operate in BC and, by their nature, intersect with provincially regulated business. Certain large multi-employer operations may also have federally regulated unionized employees and provincially regulated unionized employees working at or near the same site.

With these risks in mind, employers in BC should examine how exposed they are to federal pickets and consider if there are contingencies that could be used in the event of a federal work stoppage. While the legal options to obtain relief appear limited at this time, there may be other ways to mitigate the potential impact. For example, employers should consider reaching out to their own union ahead of any relevant work stoppage. Solidarity is of course an important principle to unions but there may be common ground that can be found that balances this principle with the interest of their own members in ensuring that your operation is not completely shut down by a work stoppage that is not directly related to your business. Your union may also be able to communicate with the union on strike in a productive and less formal way.

In addition, although a provincially regulated union does not need collective agreement language permitting employees to refuse to cross a picket line to benefit from this Amendment, the lack of such language, or the inclusion of other language, may provide a path to seek damages in the event that employees refuse to cross a picket line anyway, even if there is no (illegal) “strike” under the *Code*.

As a final comment, it is important to understand that this Amendment to the *Code* is part of a larger union-friendly legislative overhaul that appears set to continue (e.g. [2019 Code amendments](#) and 2022 amendment which [returned BC to card-based certification](#)). It is also noteworthy that the Amendment was announced without any consultation, and apart from, yet during, the ongoing *Code* review process.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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