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Bank of Canada reprimand highlights limits of new rules for replacement workers

'If the Board said no, that suggests they're applying a relatively stringent test'

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The Bank of Canada made headlines this month after the Canadian Industrial Relations Board (CIRB) ordered the bank, for the second time, to stop the use of replacement workers.

The CIRB found that the bank had "contravened" the Canadian Labour Code for continuing to use contractors as replacement workers during an ongoing strike with security workers, represented by the Public Service Alliance of Canada (PSAC).

During the strike, the bank used contractors from Garda Canada Security and Pinkerton Consulting & Investigation, as well as the services of union members.

Hugh Dyer, a senior counsel at Miller Thomson, says a case like this is an important reminder for federally regulated employers that the use of replacement workers is very limited under Bill C-58.

"You shouldn't anticipate that you'd be able to carry on operations using any kind of replacement worker during a strike except in very limited situations. Don't count on being able to do it," he says.

What counts as an exception?

The new legislation came into full force in June 2025 and added significant changes to the Canada Labour Code, specifically under newly added section 94(4).

Under the section, employers are prohibited from using contractors, dependent contractors, an employee of another employer, or students and volunteers during lawful strikes or lockouts.

The only exception for the use of replacement workers is when there are possible situations that present an imminent or serious threat to life, health, safety or property, or environmental damage.

Those exceptions are not only narrow but are written relatively broadly, which can make it harder to tell what qualifies, notes Dyer.

"Is it just a one-off, like an ad hoc type of thing where there's a peak risk, or is it something that may be of longer duration?" he says.

Although Dyer can't speak directly to the Bank of Canada case since he hasn't reviewed the CIRB's full decision, he says the board's wording around the exception can create a gap in how it is applied.

"It seems to me that on a superficial level, the Bank of Canada might have been saying, 'We need security people here even during a strike... to protect the health and safety of our personnel and the safety of the property,'" he says. "But if the Board said no, that suggests they're applying a relatively stringent test."

Not a blanket ban

However, Connie Cheung, a partner at Sherrard Kuzz, says it's important to note that it's not a total prohibition.

"Significantly, the CIRB has confirmed that section 94(4) does not contain a general prohibition on the use of replacement workers," she explains in an email. "Instead, Parliament chose to prohibit only the use of these categories of persons to perform the work of striking or locked-out employees."

This played out in a case this year between the Canadian Union of Public Employees, Local 4317, and Montreal Gateway Terminals Partnership, where the board dismissed the union members' complaint over the use of individuals to continue performing bargaining duties while on strike.

An analysis from Hicks Morley , an employment and labour law firm, called it a landmark case for replacement worker law and the first ruling to interpret the new replacement worker provisions under section 94(4) of the Code.

Shift in bargaining power

The important piece employers should take away from this new legislation under the Canada Labour Code is that it shifts leverage to the union side, explains Dyer.

Under the previous legislation, employers were broadly allowed to hire replacement workers during strikes or lockouts to continue operations. However, that was only provided they weren't using replacement workers to undermine the union and its members' right to representation.

These new expectations are far more stringent and restricted, says Dyer.

"Now, with this, the employer is effectively barred or very much restricted in its ability to continue to operate because it can't use replacements, but the employees can still go and find alternate work. So, it shifts the power balance," he says.

"It means putting a lot more pressure on the employer."

Preparing under new provision

So, how should employers prepare before disputes reach their table? Cheung emphasizes contingency planning well before an employer receives notice to bargain or a work stoppage.

This can be done by identifying which employees are eligible to step in during a work stoppage, she says.

"Identify non-bargaining unit employees, dependent contractors and managers who work at the work stoppage location and were hired before notice to bargain was given. These employees can perform bargaining unit work during a work stoppage," Cheung says.

She also suggests employers consider hiring additional non-bargaining unit employees before any notice to bargain is given, which could increase the number of employees available during a work stoppage or strike.

The one compliance risk that Cheung flags is the hard 15-day deadline for reaching a maintenance-of-activities agreement. The clock starts running the moment a notice to bargain is served. When an agreement is reached, it must be filed with the CIRB immediately. If an agreement is not reached, either the union or the employer can apply to the CIRB for a determination, but it's a process that can take up to 82 days.

Dyer echoes the same point. However, he emphasizes employers should go in with realistic expectations of what a strike could mean for operations.

"Realize there will be significant limits on your ability to operate," he says.