2026

CONSULTATION ON THE CANADA LABOUR CODE



CBTU SMCC

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JUSTICE MATTERS

CBTU SMCC
CANADA'S BUILDING TRADES UNIONS
LES SYNDICATS DES MÉTIERS DE LA CONSTRUCTION DU CANADA
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Dear Minister Hajdu,

On behalf of Canada's Building Trades Unions (CBTU), representing over 500,000 unionized construction workers across Canada through 14 international affiliated trade unions, I am pleased to submit our recommendations in response to the Government of Canada's consultation on potential updates to the Canada Labour Code (the "Code").

CBTU's membership includes workers across more than 60 trades and occupations, many of whom are employed in federally regulated sectors. Our submission reflects both the lived experience of these workers and the broader need to ensure that Canada's labour laws promote fair, safe, and modern workplaces.

Our recommendations focus on five key areas of reform:

1) CBTU recommends the repeal of section 107 of the Canada Labour Code, or, at minimum, its substantial amendment. In its current form, section 107 grants the Minister broad discretionary powers to intervene in labour disputes, including to end lawful strike activity. We are concerned that this undermines constitutionally protected rights under section 2(d) of the Canadian Charter of Rights and Freedoms, including the right to strike as affirmed by the Supreme Court of Canada. We further recommend that, if the government decides to amend section 107 rather than repeal it fully (which we continue to support), the government should consider narrowing its use to defined exceptional circumstances, subject to mandatory mediation requirements and strengthened transparency obligations, including written public reasons for its use.

2) CBTU urges the Government to clarify the definition of "danger" under Part II of the Code to better reflect the realities of workplace health and safety. The current definition may insufficiently capture chronic and cumulative occupational hazards. We recommend amending the definition to explicitly recognize chronic injuries and illnesses as potential serious threats to health, and to provide clearer guidance that supports workers in exercising their right to refuse unsafe work.
We also strongly support national efforts to harmonize occupational health and safety standards across jurisdictions. Such harmonization would improve worker mobility, reduce barriers to training recognition, and help ensure consistently high safety standards across Canada's construction industry. Priority should be given to high-risk training and certification areas, including working at heights, fall prevention, rigging, and mobile elevated work platforms, in collaboration with provincial governments and union stakeholders.

3) While CBTU does not take a position on the introduction of sectoral bargaining in federally regulated industries, we offer our experience from the construction sector,

where sectoral bargaining has proven effective. It supports labour mobility, enhances efficiency, and contributes to stable labour relations. We encourage the Government to consider whether similar models may be beneficial in other federally regulated sectors such as rail, air, and ports.

4) We recommend that the Canada Labour Code be updated to address the growing use of artificial intelligence in federally regulated workplaces. At a minimum, employers should be required to disclose their use of AI in hiring, performance monitoring, and employee data processing, and to adopt transparent policies governing such use. These measures are essential to protecting privacy, ensuring fairness, and maintaining trust in increasingly automated workplace systems.

5) CBTU calls for stronger measures to combat employee misclassification, which remains a widespread form of wage theft in the construction industry and other sectors. We recommend introducing a statutory presumption of employment, modelled on the "ABC test," alongside joint and several liability across subcontracting chains and enhanced transparency obligations within contracting relationships. These reforms would improve enforcement, protect vulnerable workers, and help recover unpaid wages and entitlements.

Taken together, these recommendations are intended to strengthen Canada's labour framework by ensuring it reflects modern workplace realities while reinforcing the fundamental rights of workers. We believe these changes would promote fairer labour relations, safer workplaces, and a more resilient and equitable economy.

CBTU appreciates the opportunity to contribute to this important consultation and would welcome further engagement with the Government of Canada as these proposals are considered.

Sincerely,

Sean Strickland
Executive Director
Canada's Building Trades Unions

Canada's Building Trades Unions ("CBTU") serves as the national voice for over half a million construction workers in Canada. CBTU's affiliates include fourteen international trade unions representing construction workers in more than sixty different trades and occupations. While the construction workers CBTU represents work primarily in provincially regulated sectors of the construction industry, some CBTU affiliates also represents construction workers working on federally regulated construction projects, including in the telecommunications sector.

CBTU welcomes the opportunity to respond to the Government of Canada's call for submissions on whether updates are needed to the *Canada Labour Code* (the "CLC"). CBTU's submissions focus on the following areas: (1) repealing s. 107 of the CLC, (2) clarifying the definition of "danger" under Part II of the CLC and harmonizing occupational health and safety standards on a nation-wide basis, (3) introducing sectoral bargaining into federally regulated industries, (4) introducing new measures to deal with the use of artificial intelligence ("**AI**") by federally regulated employers, and (5) introducing new measures to combat the misclassification of employees.

I. Repealing Section 107 of the *Canada Labour Code*

CBTU adds its voice to those of the trade unions who have expressed concerns about s. 107, and urges the Government of Canada to consider repealing this section of the CLC. Under s. 107 of the CLC, the Minister of Labour is empowered to "do such things as to the Minister seem likely to maintain or secure industrial peace and to promote conditions favourable to the settlement of industrial disputes or differences".[1] To that end, the Minister is empowered under s. 107 to "refer any question to the Board [i.e., the Canadian Industrial Relations Board (the "**CIRB**")] or direct the Board to do such things as the Minister deems necessary".[2]

Very few restrictions are placed on the powers granted to the Minister under s. 107. These powers are not ones that can only be exercised in narrowly defined circumstances; rather, they are powers which may be exercised wherever and whenever the Minister deems necessary. Nor is the Minister restricted in the kinds of directions which she may give to the CIRB under s. 107. On a plain reading of s. 107, the Minister is effectively empowered to direct the CIRB to do anything she deems necessary to maintain or secure industrial peace or to promote conditions favourable to the settlement of industrial disputes or differences, regardless of the actual necessity of such directions and regardless of the circumstances surrounding a particular industrial dispute or difference.

[1] *Canada Labour Code*, RSC 1985, c L-2, s 107.
[2] *Canada Labour Code*, RSC 1985, c L-2, s 107.

CBTU is deeply concerned that s. 107 undermines the constitutionally protected right to strike, and it urges the Government of Canada to consider repealing s. 107 for this reason. Since 2024, s. 107 has been invoked with increasing regularity to halt or prevent legal job actions. In 2024 alone, s. 107 was invoked on eight occasions. Most recently, s. 107 has been invoked in the context of the August 2025 strike by Air Canada flight attendants. In that case, s. 107 was invoked in an effort to force striking flight attendants off the picket lines, less than twenty-four hours after legal job action had begun. Litigation as to the legality of this use of s. 107 remains ongoing.

These uses of s. 107 are contrary to the values enshrined in the *Canadian Charter of Rights and Freedoms* (the "***Charter***"). When s. 107 is used to order striking workers off the picket lines, it undermines meaningful collective bargaining and deprives workers of their rights to freedom of association under s. 2(d) of the *Charter*. As the Supreme Court of Canada determined in *Saskatchewan Federation of Labour v. Saskatchewan*, the right to freedom of association includes the right to strike. The right to strike is protected under the *Charter* because it is integral to meaningful collective bargaining, which is itself protected under s. 2(d). Withholding labour is one of the most powerful tools available to workers engaged in collective bargaining, as the Supreme Court of Canada has recognized. As the Supreme Court of Canada indicated in *Saskatchewan Federation of Labour*, depriving workers of this tool fundamentally undermines meaningful collective bargaining because it tilts the balance of power at the bargaining table in favour of employers.[3]

Not only is CBTU concerned that s. 107 may be used to deprive workers of their s. 2(d) rights, CBTU is also concerned that s. 107 disincentivizes employers from bargaining in good faith. If employers believe that the Minister will use s. 107 to order their striking employees back to work, then employers will have less incentive to try to reach a deal at the bargaining table. In this way, s. 107 fundamentally undermines the system of collective bargaining set out under Part I of the CLC.

This system can function perfectly well without s. 107, as experience from other jurisdictions shows. Collective bargaining takes place in other jurisdictions without the kind of sweeping powers afforded to the Minister under s. 107 of the CLC. For example, collective bargaining functions well in Ontario despite the fact that the *Labour Relations Act, 1995* does not include equivalent provisions to s. 107.[4]

As experience from other jurisdictions shows, the sweeping powers afforded to the Minister under s. 107 of the CLC are not necessary to ensure the stability of the collective bargaining system set out under Part I of the Code. To the contrary, these powers fundamentally undermine this system insofar as they threaten to tilt the balance of power at the bargaining table against workers.

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[3] *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4 at paras 33-75.
[4] *Labour Relations Act, 1995*, SO 1995, c-1, Sch A.

If the Government of Canada determines that s. 107 should not be repealed, then CBTU urges the Government of Canada to amend s. 107 to restrict the circumstances in which this provision can be invoked.

To that end, CBTU recommends that the Government of Canada consider:

1. ***Amending s. 107 to provide that this provision can only be used to order an end to legal job actions in narrowly defined circumstances.*** For example, s. 107 could be amended to provide that it can only be used to order an end to legal job actions in cases where continuation of a job action would cause significant harm to public health, safety, or security. Alternatively, s. 107 could be amended to provide that it can only be used to order an end to legal job actions if a job action has been in effect for a protracted period of time, and if there is no reasonably foreseeable end to the underlying labour dispute.

2. ***Requiring the Minister to appoint a mediator and to receive a report from that mediator before invoking s. 107.*** As a prerequisite to invoking s. 107, the Minister should be required to order the parties involved in a labour dispute to participate in mediation through the Federal Mediation and Conciliation Service. Mediators appointed by the Minister as a prerequisite to invoking s. 107 should be empowered to issue non-binding recommendations to both the Minister and the parties involved in the underlying labour dispute. These mediators should be appropriately resourced, and should be given enough time to meaningfully engage with the relevant parties before being required to issue their report to the Minister.

3.

Implementing these measures would ensure greater predictability around the use of s. 107 by providing trade unions and employers with guidance as to when and where s. 107 may be invoked by the Minister. Implementing these measures would also ensure that the powers granted to the Minister under s. 107 are more compatible with the system of collective bargaining set out under Part I of the CLC. For example, implementing these measures would provide better safeguards for the right to strike and would also promote the resolution of labour disputes through mediated dialogue between trade unions and employers, rather than through governmental intervention.

In addition to the above amendments, and in the absence of a complete repeal of s.107, CBTU also recommends that the Government of Canada introduce changes to the CLC to provide increased public transparency around the use of s. 107. Should the Minister decide to invoke s. 107, CBTU recommends that the Minister be required to provide written reasons for this decision to the relevant parties and to make those reasons publicly available. Providing written reasons for invoking s. 107 will ensure that trade unions and

employers, as well as the Canadian public more broadly, understand why the Minister has deemed it necessary to intervene in a labour dispute by invoking this provision of the CLC. Not only would this increased transparency allow for greater public accountability concerning the use of s. 107, but it would also provide trade unions and employers with greater clarity as to when and why the Minister is likely to invoke s. 107 to intervene in labour disputes.

II. Clarifying the Definition of "Danger" under the *Canada Labour Code* and Harmonizing Occupational Health and Safety Standards

Clarifying the Definition of "Danger"

Many of the workers CBTU represents frequently encounter health and safety hazards in the course of their work. It is crucial that the Government of Canada ensure the CLC provides robust protections to workers who may encounter such hazards, and who may be asked to perform unsafe work.

From CBTU's perspective, Part II of the CLC would benefit from clarifying the definition of "danger" which is set out under s. 122(1) of the Code. Clarifying this provision would provide employees with better insight into the kind of dangers which could give rise to a right of work refusal, empowering them to exercise this right in cases where they might otherwise be more reluctant to do so.

The work refusal provisions set out under s. 128(1) of the CLC are triggered when an employee reasonably believes that something constitutes a danger to themselves or another employee. The term "danger" is presently defined under s. 122(1) to mean "any hazard, condition, or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered".[5]

The term "danger" used to be defined differently under the CLC. Prior to the enactment of the *Economic Action Plan 2013 Act, No. 2*,[6] the term "danger" used to be defined as:
[...] any existing or potential hazard or condition or any current or future activity that could reasonably be expected to cause injury or illness to a person exposed to it before the hazard or condition can be corrected, or the activity altered, whether or not the injury or illness occurs immediately after the exposure to the hazard, condition or activity, and includes any exposure to a hazardous substance that is likely to result in a chronic illness, in disease or in damage to the reproductive system [...] [7]

[5] *Canada Labour Code*, RSC 1985, c L-2, s 122(1).
[6] *Economic Action Plan 2013 Act, No. 2*, SC 2013, c 40, s 176(2).
[7] *Canada Labour Code*, RSC 1985, c L-2, s 122(1) [Prior Version].

Under the old definition of "danger", employees seeking to invoke their right of work refusal under the CLC were not required to prove exactly when a potential workplace health and safety hazard would arise, nor were they required to prove that such a hazard would cause injury or illness every time it arose. Rather, employees only needed to identify the circumstances in which their work would involve a hazard, condition, or activity that could be expected to cause injury or illness, and to prove that there was a reasonable possibility that this hazard, condition, or activity would arise in future.[8]

The new definition of "danger" has involved a different test for employees looking to exercise their right of work refusal under the CLC, as employees must now prove that a hazard, condition, or activity poses either an imminent or serious threat to life and health.[9] The new definition of danger thus adds an "imminency" component to the risk assessment conducted under the work refusal provisions of the CLC, as well as a "severity" component.[10] This represents a narrowing of the former definition of "danger" under the CLC, which notably did not include a severity component.[11]

CBTU is concerned that the introduction of a severity component into the definition of danger may discourage employees from exercising their right of work refusal to protect themselves from hazards which can cause chronic health conditions. Employees who reasonably believe that something will pose a non-imminent risk to their health and safety may be less inclined to exercise their right of work refusal out of concern that the risks they face are not sufficiently serious to constitute a "danger" under the Code. CBTU is concerned that this could leave employees with fewer tools to protect themselves from hazards which could lead to potentially serious chronic health conditions. Chronic health conditions may originally manifest in less serious form before becoming more serious with repeated exposure to an underlying hazard. It is vital that employees be able to protect themselves from such hazards, including (where necessary) by exercising their right to refuse unsafe work.

While the Occupational Health and Safety Tribunal has cautioned against reading out hazards which could cause chronic illnesses or injuries from the present definition of "danger",[12] this definition makes no specific reference to chronic health conditions. This can be contrasted with the prior definition of "danger" under the CLC, which provided more detailed guidance as to the kinds of hazards which were intended to be captured under the definition.[13]

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[8] *Verville v. Canada (Service correctionnel)*, 2004 FC 767 at paras 35-36.
[9] *Correctional Service of Canada v. Ketcheson*, 2016 OHSTC 19 at para 199.
[10] *Correctional Service of Canada v. Ketcheson*, 2016 OHSTC 19 at para 186.
[11] *Laroche v. Canada (Attorney General)*, 2011 FC 1454 at para. 30.
[12] *Correctional Service of Canada v. Ketcheson*, 2016 OHSTC 19 at para 182.
[13] *Canada Labour Code*, RSC 1985, c L-2, s 122(1) [Prior Version].

CBTU believes that the CLC would benefit from an update to clarify that chronic injuries and illnesses may constitute serious threats to life and health under the Code. More specifically, CBTU believes it would be helpful for s. 122(1) to be amended to include a non-exhaustive list of examples of chronic health conditions which may constitute serious threats to life and health, including chronic mental health problems, chronic pain or mobility problems, and chronic reproductive health conditions. Adding such language to s. 122(1) would ensure that the longer-term health impacts of occupational health and safety hazards are taken into account when evaluating the severity of a particular danger, and it would strengthen the right of work refusal for employees who may be at risk of developing potentially serious chronic health conditions over the course of their work.

Harmonizing Occupational Health and Safety Standards

CBTU strongly supports efforts to harmonize the occupational health and safety standards that apply to construction workers working across federal and provincial jurisdictions. Cross-jurisdictional differences in occupational health and safety standards have posed problems from a labour policy perspective for many decades now.[14] Among other things, different federal and provincial standards pose a significant problem for the inter-provincial mobility of construction workers, making it harder for workers to get to the job sites where their skills are most needed. Harmonization is needed to better facilitate the inter-provincial mobility of construction workers.

CBTU commends the Government of Canada, **the federal department of Labour** and Employment and Social Development Canada more specifically, for the important work it has already been doing to facilitate harmonization. However, further work will be needed to achieve the cross-country harmonization of occupational health and safety standards. It is imperative that harmonization efforts be properly resourced and funded in order to ensure that harmonization can be achieved as quickly as possible.

Continued collaboration between governments and construction trade unions will be of the utmost importance to the success of harmonization efforts. While ongoing discussion and collaboration will be needed to effectively harmonize occupational health and safety standards, CBTU recommends that the Government of Canada begin by prioritizing harmonization efforts in the following areas:

1. Entry-level construction worker training standards;
2. Construction supervisory training standards;
3. Mobile elevated work platform operator training standards;
4. Working-at-heights training and safety standards;

[14] See e.g., Larry Dunn, Shaun Hohman and E Jane Sidnell, "The Collision between Federal and Provincial Occupational Health and Safety Regimes on Energy and Resource Projects" (2013) 51:2 Alberta Law Review 313, 2013 CanLIIDocs 70.

5. Fall prevention training and safety standards;
6. Hoisting and rigging training and safety standards; and
7. Trenching and shoring training and safety standards.

CBTU recommends that these areas be prioritized, as these areas capture some of the highest-risk tasks on construction projects. These areas are also ones which pose significant barriers to the inter-provincial mobility of construction workers, in the experience of CBTU and its affiliate trade unions.

While most construction work falls under provincial jurisdiction, CBTU nevertheless believes that the Government of Canada will have a key role to play in facilitating the harmonization of occupational health and safety standards across Canada. CBTU urges the Government of Canada to develop a plan for deeper consultation with provincial governments and construction trade unions, including CBTU's affiliate trade unions, on harmonization efforts. Further cross-jurisdictional discussion will be needed to chart an effective course towards harmonization.

Further cross-jurisdictional discussion will also be needed to identify which standards represent the "gold standard" for occupational health and safety in the construction industry. Bringing together a variety of stakeholders from across Canada will allow stakeholders to compare and contrast their experiences with different jurisdictions' occupational health and safety standards, with a view to identifying which standards have proven to be most effective at ensuring workers' health and safety. The Government of Canada should work with the provinces to ensure that occupational health and safety standards are harmonized to the highest possible standard.

III. Introducing Sectoral Collective Bargaining into Federally Regulated Industries

CBTU does not take a position on whether a sectoral system of collective bargaining should be adopted in federally regulated industries. However, CBTU wishes to comment briefly on its experience with sectoral collective bargaining at the provincial level, which has been a positive one.

Sectoral bargaining allows for collective agreements to be negotiated and administered across more than one workplace or enterprise at a time, in contrast with the current model of decentralized, single-employer collective bargaining which exists under Part I of the CLC.

In provinces like Ontario, sectoral collective bargaining has proven to be a workable system for negotiating and administering collective agreements in the construction industry, which has traditionally been characterized by high levels of worker mobility from

project to project and from employer to employer. These characteristics make more decentralized forms of organizing and collective bargaining, namely those that are based around a single employer and a single work location, impractical for construction trade unions. Sectoral collective bargaining accounts for the realities of work in the construction industry by allowing for the negotiation of multi-employer collective agreements that will apply to construction workers even as they move from employer to employer and from job site to job site. This broader-based model of collective bargaining has proven to be an effective way of extending the benefits of trade union membership to larger numbers of workers. It has also proven to be a more efficient way of negotiating collective agreements, as bargaining large numbers of collective agreements with individual contractors would in many cases be expensive and inefficient for construction trade unions.

Sectoral collective bargaining has had enormous benefits for construction workers, as evidenced by the fact that unionization rates in the construction industry are higher than in many other industries. For example, while only 15% of private sector workers were covered by a collective agreement in 2025, over 30% of workers in the construction industry were covered by a collective agreement.[15]

The higher rate of unionization in the construction industry speaks to the importance of developing labour laws that account for the realities of work in a particular industry. The traditional, single-employer method of collective bargaining is not necessarily a good fit for all industries. The Government of Canada may wish to explore introducing sectoral bargaining in traditionally "hard to unionize" industries, including industries traditionally marked by higher levels of worker mobility.

Sectoral collective bargaining has also proved to be highly effective at facilitating stable, harmonious labour relations. Because sectoral collective bargaining allows for labour issues to be dealt with on a centralized scale, it can be an effective way of minimizing the frequency and impact of job actions in a particular industry or sector. Sectoral collective bargaining can also provide a key venue for trade unions and employers to engage in dialogue about issues which affect workers and employers across a particular industry. For example, in Ontario's construction industry, sectoral collective bargaining has allowed trade unions and employers to work together to develop systems for funding training and apprenticeship programs which keep unionized construction industry employers supplied with skilled labour. These programs are of benefit to both workers and employers.

Sectoral collective bargaining may bring benefits to trade unions, employers, and workers in industries beyond the construction industry. For that reason, the Government of Canada may wish to explore the possibility of adopting sectoral collective bargaining in federally regulated industries. For example, the Government of Canada may wish to explore

[15] Statistics Canada, "Union Status by Industry", Table 14-10-0132-01 (Release Date: January 9, 2026).

whether sectoral collective bargaining would achieve any benefits for labour relations in railways, airways, and ports.

IV. Introducing New Measures Concerning the Use of Artificial Intelligence

As more employers integrate AI into their operations, it will be important for the Government of Canada to introduce measures concerning the use of AI in federally regulated workplaces. At a minimum, the CLC should be updated to ensure that there is increased transparency around how federally regulated employers use AI to gather and store employee information.

Canadian employers are increasingly turning to AI to help them produce goods and deliver services.[16] Over the coming years, many employers will also turn to AI to help them manage their human resources, including by helping them to recruit and hire new employees. Many employers have already begun to integrate AI into their human resources management systems.

The increased use of AI by Canadian employers will inevitably have impacts on Canadian workers. For example, the increased use of AI will have implications for how employers gather and handle their employees' personal information, as well as for how employers gather and handle the personal information of job applicants. The increased use of AI could mean that employees will be increasingly subject to surreptitious performance monitoring at work. It could also mean that employee personal information will be increasingly vulnerable to access or use by third party operators of AI tools.

As AI becomes more closely integrated into the operations of Canadian employers, employers' use of AI will need to be approached as an employment standards issue. To that end, the Government of Canada should consider introducing provisions into Part III of the CLC which would address the use of AI in federally regulated workplaces, including the use of AI in job hiring processes.

At a minimum, federally regulated employers should be required to be transparent about their use of AI. Increased transparency could be achieved by, for example, introducing provisions into Part III of the CLC which would require employers to establish written policies concerning whether and how they use AI to gather and process employee information. Similarly, employers who use AI to screen job applications should be required

[16] Valerie Bryan et al., "Analysis on Artificial Intelligence Use by Businesses in Canada, Second Quarter of 2025" (Ottawa: Statistics Canada, 2025).

to disclose to prospective applicants that applications will be screened using AI. Similar measures are already being introduced in other jurisdictions.[17]

V. Introducing New Measures to Combat Employee Misclassification

CBTU wishes to stress the importance of combatting the misclassification of all federally regulated employees, including federally regulated employees working outside the trucking industry.

Misclassifying employees as independent contractors is a wage theft tactic that is commonly used in industries with higher rates of sub-contracting, including in the construction industry. CBTU's affiliate trade unions frequently encounter construction employers who use employee misclassification as a tool for underpaying their workers, or for depriving their workers of their entitlements to sick leave, vacation pay, and other benefits. The workers who are most impacted by employee misclassification often face barriers which make them uniquely vulnerable to employer abuse. For example, misclassified workers may face language barriers which make it difficult for them to assert their legal rights as employees. Misclassified workers with precarious immigration status may also be fearful of speaking out against employer misconduct.

It is imperative that that the Government of Canada develop mechanisms for challenging the misclassification of federally regulated employees, given that employee misclassification comes at a serious cost – both for the individual affected workers and for the Canadian economy more broadly. To give just one example of the economic impacts of misclassification, employee misclassification in Ontario's construction industry is estimated to have cost between $1,795 million and $3,113 million in revenue losses to governments and government agencies between 2013-17 alone.[18] Employee misclassification may be having similarly serious impacts in federally regulated industries and sectors, including in federally regulated aspects of the construction industry.

CBTU recommends the introduction of new measures into Part III of the CLC that are specifically designed to combat employee misclassification and to assist misclassified employees in recovering whatever wages and entitlements they may be owed under the Code.

For example, CBTU proposes that the Government of Canada consider amending the CLC to provide that:

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[17] For example, see *Rules and Exemptions Re Job Postings*, O. Reg. 476/24, Part 1, made under the *Employment Standards Act, 2000*, SO 2000, c 41. See also New York City's Local Law 144.

[18] Ontario Construction Secretariat, "The Underground Economy in Ontario's Construction Industry: Estimates of the Revenue Losses to Governments" (May 2019) at p 22.

1. *Workers are presumed to be employees for the purposes of Part III of the CLC unless the entity which hired them can establish otherwise using the "ABC Test"*. The "ABC Test" has already been implemented in certain foreign jurisdictions, including in California. Under this test, a worker is presumed to be an employee rather than an independent contractor unless the entity which hired the worker can establish the following:
    a. That the worker is free from the control and direction of the hiring entity in terms of the performance of work, both under the worker's contract and in fact;
    b. That the worker performs work which goes beyond or falls outside of the hiring entity's usual course of business; and
    c. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.[19]

2. *The contractors and sub-contractors who form part of the same sub-contracting chain can be held jointly and severally liable for any unpaid wages or other entitlements that may be owed to workers who fall at the bottom of the relevant sub-contracting chain*.

3. *Sub-contractors are required to provide any individual contractors they hire with basic information concerning their legal name and contact information, as well as the legal name and contact information for the contractor(s) above them in the sub-contracting chain*.

As worker advocates have highlighted,[20] introducing such measures would go some way towards making it harder for employers to misclassify their employees. Such measures would also make it easier for misclassified employees to recover lost wages and other entitlements which they may have been denied as a result of having been treated as independent contractors. Implementing these measures would bolster the Government of Canada's current anti-misclassification efforts.

[19] See Labour & Workforce Development Agency of the Sate of California, "ABC Test" (2026).
[20] See e.g., Workers Action Centre and Parkdale Community Legal Services, "Protecting Workers from the Underground Economy in the Construction Industry Consultation" (February 13, 2026); Government of Canada, "What we heard: Developing greater labour protections for gig workers" at s 2.4 (March 22, 2023).