July 30, 2026

The Honourable Patty Hajdu, P.C., M.P.
Minister of Jobs and Families

The Honourable John Zerucelli, P.C., M.P.
Secretary of State (Labour)

Sent via email: esdc.nc.labour.consultations-travail.nc.edsc@hrsdc-rhdcc.gc.ca

RE: LABOUR AND SUPPLY CHAIN STABILITY — URGENT ACTION ON GEOGRAPHIC CERTIFICATION AND CANADA LABOUR CODE MODERNIZATION

Dear Minister Hajdu and Secretary of State Zerucelli,

The Independent Contractors and Businesses Association ("ICBA") is pleased to make this submission to the Minister of Labour in response to the July 2026 invitation to provide specific feedback on policy issues related to the *Canada Labour Code* (the "*Code*"). This submission follows ICBA's May 4, 2026 submission to the first phase of this consultation and our letter to you both of July 21, 2026, and goes deeper on the issues we raised there.

By way of background, ICBA is the largest construction association in Canada with some 6,000 member, client and affiliate companies, mainly in British Columbia and Alberta. The association is a strong advocate for open markets, fair and competitive public tendering, cost-effective regulation, and the responsible development of Canada's natural resources. While the construction industry does not fall under the jurisdiction of the federal government with respect to labour relations and employment standards matters, the industry has an important interest and stake in well-functioning and well-managed transportation and supply chain networks that enable Canada to participate and compete in global markets and ensure the efficient movement of goods within the country. Modern construction depends on a wide array of imported inputs – structural steel and rebar, glazing, elevators, mechanical and electrical equipment, HVAC systems, cement components and specialty fasteners – the vast majority of which reach Western Canadian projects through the Port of Vancouver and the Port of Prince Rupert. When the ports stop, our members' projects stop.

Economic Context

Canada today faces arguably the most complex and challenging economic backdrop the nation has experienced since the Second World War. We remain mired in a protracted, multi-faceted trade dispute with our largest export market (the United States), which is dampening business investment and weakening business confidence in Canada. Global supply chains for energy, agricultural goods and inputs, and several other traded commodities are under enormous stress due to disruptions stemming from the ongoing Gulf War and persistent geopolitical tension in some other regions. The post-pandemic inflation surge of 2021-24 has left a legacy of higher prices and costs in the construction sector as well as some other domestic industries. Finally, Canada is struggling to exit from a dismal economic decade that saw sluggish business capital spending, rising net outflows of foreign direct investment, lacklustre productivity growth, and waning overall competitiveness. An important factor contributing to the decline in Canada's global competitiveness since the mid-2010s has been a series of economically damaging work stoppages along critical parts of the nation's transportation supply chain.

Structure of the Workforce

Canada's construction industry is one of the great engines of our economy. Every day, more than 1.6 million skilled workers build the infrastructure that keeps our country moving. They pour the concrete, weld the steel, and raise the towers that define our skylines and connect our communities. More than 70% of Canada's construction workforce is open shop – meaning they are not affiliated with the traditional building trades unions. In B.C., fully 85% of the men and women working in construction work for open shop contractors; in Alberta, 88% are open shop. These independent workers earn good wages, enjoy strong benefits, and build world-class projects safely and efficiently. Some are members of non-building trades unions, while others work in non-union environments. They compete on skill and merit. They are the core of the Canadian construction workforce.

Rules and regulations that exclude or disadvantage open shop contractors remove the majority of the country's construction capacity from the bidding pool. This cannot be allowed to occur at the precise moment when federal housing, infrastructure, energy, clean economy and other nation-building commitments require every qualified contractor to be in the market.

The practical consequences of steering or directing work to the traditional building trades unions that account for only a modest share of the construction industry are fewer bidders on federal projects, reduced competitive pressure on bid prices, longer project timelines, and a lower likelihood that project targets are met on schedule, each of which represents a direct and avoidable draw on the federal fiscal framework.

Policy Feedback

i. Reviewing Section 107

The federal government's use of Section 107 of the *Code* has been responsive to urgent and disruptive interruptions to Canada's supply chain which have exacted a toll on the entire Canadian economy and harmed our global reputation. It has become almost trite to note that work stoppages at Canada's ports and railways result in impacts that extend far beyond the parties to the labour dispute. Indeed, the lasting damage done to other businesses and their employees because of transportation-related labour disputes is often more consequential than the economic costs incurred by the direct parties.

The recent Industrial *Inquiry Commission on Longshoring Disputes at Canada's West Coast Ports* highlighted this issue in the context of Canada's ports:

> *It is irrefutable that the history of labour disputes at the West Coast ports... exacerbated concerns about Canada's reputation as a reliable trading partner and caused economic harm to Canadian workers, communities, and within the broader supply chain. Given the interconnectedness of Canada's supply chain, even a short disruption can have a dramatic ripple effect on industries across the country including rail, trucking and numerous others... The need for reliability in Canada's ports has only been intensified by recent tariffs on Canadian products introduced and threatened by U.S. President Donald Trump, which are set to dramatically change the nature of importing and exporting in Canada.*[1]

This last point, referencing the impact of U.S. trade policies and the uncertainty and costs that result, applies across sectors and has only intensified since the Commission completed its report. These developments make the need for new options and tools to enable the federal government to address supply chain work stoppages that much more urgent.

The Standing Senate Committee on Transportation and Communications also recently reviewed the issue of labour disruptions in the transportation sector and commented:

> *In recent years, Canada's supply chains have experienced several disruptions, such as labour disputes in the transportation sector, extreme weather events, wildfires and pandemics. These disruptions, or the risk of such disruptions, have often resulted in slowing or shutting down operations in critical links of these chains, such as ports and railways, affecting the ability of Canadian companies to export or import goods. Since Canada's national transportation network is characterized by the concentration of activities in the hands of a small number of transportation service providers, users have little or no alternative when services are suspended.*[2]

These supply chain disruptions affect the ongoing viability of our members' businesses and their employees' job security, as well as the general economic environment in which our members operate.

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[1] Report and Recommendations of the Industrial Inquiry Commission on Longshoring Disputes at Canada's West Coast Ports, May 8, 2025, at page 7

[2] "Keeping Canada Moving: Labour, Management and Supply Chain in the Rail and Maritime Sectors" Report of the Standing Senate Committee on Transport and Communications, June 2026, at page 12

This is not an abstraction for ICBA members. In a 16-month span in 2023–24, waterfront operations and the associated rail and trucking at Canada's West Coast ports experienced 24 days of shutdowns, disrupting an estimated $19.2 billion worth of cargo. When ICBA surveyed our members in late 2023, 62% reported supply chain challenges. Of those, 79% said projects were delayed, 56% said they increased prices, and 23% said they turned down other work. Crews stand down, schedules slip, liquidated-damages clauses get triggered, and carrying costs pile up. The cost of every delay is ultimately paid by the Canadian buying a home, the taxpayer funding a school, or the investor backing a project.

In recognition of this, the Minister has used Section 107 of the *Code* on eight occasions since 2024 to cause the Canada Industrial Relations Board order an end to work stoppages, in many cases in the port and rail sectors. We submit that this startling fact alone suffices to make the case for significant policy changes in respect of the labour relations regime embodied in the *Code*.

While these government interventions were necessary, various parties have criticized this use of Section 107 and have alleged that its use in this way breaches the *Charter of Rights and Freedoms* (the "*Charter*"). Indeed, there is ongoing litigation on this issue.

Regardless of the arguments specific to Section 107, and recognizing that the section itself is broad and may be fairly characterized as a "blunt instrument", the need for a mechanism to allow the federal government to manage supply chain labour disputes in a manner that is consistent with the *Charter* and protects the country's broader economic interests is clear.

ICBA supports and encourages efforts to implement a supply chain-specific labour relations regime that considers the unique and often sweeping impacts of transportation sector work stoppages on Canadian businesses and employees that are not involved in the disputes.

The Standing Senate Committee on Transportation and Communications directly addressed this issue and recommended that a separate supply chain Act be established, or that the *Code* be amended, to implement a labour relations regime for ports and railroads that includes:

- *A mechanism for determining whether a supply chain work stoppage would adversely impact the national interest*
- *A mediation-arbitration process that respects the parties collective bargaining rights*
- *A binding arbitration option that includes a prohibition on strikes or lockouts*[3]

ICBA strongly supports a model that includes the above elements. In our view, a model along these lines would be in the national interest, would align closely with the federal government's goal of doubling non-U.S. exports within the next decade, and would

[3] Ibid. at page 10

appropriately balance the requirements set out by the Supreme Court of Canada in *Saskatchewan Federation of Labour*[4] and related cases that explain and confirm *Charter* collective bargaining and strike entitlements.

ICBA also supports the special mediator process recommended by the Industrial Inquiry Commission. Where conciliation fails to produce an agreement, the government should be able to appoint a special mediator whose report enables a neutral, third-party view of the facts. While the mediator is at work, and for ten days after the report is issued, both parties would be barred from issuing strike or lockout notice, giving the government time to weigh the evidence and act accordingly. Releasing the report publicly would increase transparency around collective bargaining. This is a targeted addition to the *Code*, and it is the kind of tool that would have been of use in each of the disputes that ended in a Section 107 referral.

While the consideration of industrial peace is included in Section 107, this is necessarily a broad notion that applies across sectors. As a result, it is less helpful with regard to specific sectors and would not provide the same level of predictability that a supply chain specific model would allow. Further, a specific supply chain labour relations model could, and should, include consideration of the broader public interest in a way that may not be necessary or appropriate for other sectors or employers regulated by the *Code*.

ii. Geographic Certification at Canada's West Coast Ports

The Ministry's consultation document states that its purpose is to gather deeper and more specific feedback on policy issues raised during the initial consultation period. Geographic certification is one of those issues. The first phase invited comment on bargaining approaches used in other jurisdictions, including geographic certification, and ICBA addressed this issue in our May 4, 2026, submission and again in our letter of July 21, 2026. We return to it here because it remains the most important structural fix available to the government, and because the window to act on it is closing.

The Industrial Inquiry Commission's central recommendation was a British Columbia-wide geographic certification as the appropriate bargaining unit for longshore workers, supported by a bargaining framework and a council of trade unions built around it. This provides the structure needed for effective, reliable bargaining by addressing the voluntary bargaining model, a central source of instability in West Coast port labour relations. It does so without removing the right to strike or lockout, which the Commission was careful to preserve as a *Charter* right.

Timing now matters more than anything else. The current collective agreement between the British Columbia Maritime Employers Association and the International Longshore and Warehouse Union expires on March 31, 2027, and bargaining is expected to begin this fall.

[4] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4

The next rounds at CN and CPKC follow closely behind. A bargaining framework put in place after those talks have started is of little use to the parties or to the country. ICBA recommends that the government act on geographic certification now, ahead of the next round of West Coast port bargaining.

iii. Expedited Grievance Arbitration

Expedited grievance arbitration processes have their place, however they are not appropriate for all disputes (particularly for complex matters or cases that require the introduction of expert evidence). For that reason, an expedited process should be available to parties on a voluntary basis, as the parties to the grievance are best situated to determine whether the issue before them can be adjudicated in a shorter timeframe.

For that reason, ICBA agrees with the employer and union submissions that, if established, expedited arbitration provisions should not override existing processes within collective agreements.

Some examples from other jurisdictions, such as British Columbia, have been noted in the invitation for submissions.

ICBA recommends that the B.C. expedited arbitration model <u>not</u> be implemented in the *Code*.

Under the B.C. model, either party can access the statutory expedited arbitration model over the objection of the other party, and without regard to any competing collective agreement provisions. This is so even in the case of a complex matter requiring significant evidence, raising procedural fairness issues if a party is not able to properly present its case. The result is that parties in B.C. have at times used expedited arbitration applications for tactical reasons, in order to pressure the other party on specific issues, or in advance of collective bargaining as part of the party's bargaining strategy.

iv. Bad Faith Bargaining

The consultation document asks whether financial penalties would be effective in promoting good faith bargaining. ICBA's interest here is specific: in the supply chain sectors, a party that stalls at the negotiating table imposes costs on thousands of businesses that have no seat at it. Any penalty regime should be built with that reality in mind, and should apply on the same terms to employers and unions. We would caution against a framework broad enough to convert ordinary hard bargaining into a complaint. The distinction the government makes between genuine concerns and frivolous complaints is the right one, and the Canada Industrial Relations Board is well placed to draw it.

v. Length of a Strike or Lockout Mandate

It is crucial, as a matter of fundamental employee rights, that a strike (or lockout) mandate expire within a reasonable period of time, so that a union is able to demonstrate the continued support of employees for such a significant measure. There is no other statutory mechanism for employees to demonstrate their support or rejection of their union's evolving bargaining position or tactics. The loss of one's employment income in support of a strike can have a profound impact on an individual. The suggestion that an employee should not have the ability to update or alter his/her support of a strike, no matter the duration of bargaining, would be an enormous limitation on the rights of affected employees.

ICBA strongly recommends that the current 60-day strike mandate be maintained.

vi. Other Potential Changes to the Code – Secret Ballot Certification Vote

ICBA urges the Minister to institute a secret ballot vote for employees in the case of a certification application. A secret ballot vote for certification applications is the process most consistent with Canada's democratic norms and, in our view, it is the only credible way to protect the fundamental right of freedom of association and choice.

A secret ballot vote is the same democratic safeguard Canadians rely on when electing governments, and there is no principled reason why union certification should be held to a lower standard. When certification occurs through card-signing alone, workers typically sign in front of co-workers and/or union organizers, which creates opportunities for social pressure, intimidation, or simply the discomfort of being a person who wishes to "say no". A secret ballot resolves the problem. Neither the employer nor the union ever learns how an individual voted, so the outcome reflects genuine employee preference rather than a preference that may be shaped by who might be watching.

The current card-check system is also vulnerable to manipulation in ways a ballot box is not, and there is little chance for an employee to reconsider in private before the decision counts. A secret ballot vote, conducted by a neutral Board over a defined period, gives workers time to hear from all sides and make a considered choice, away from the immediate pressure of a sign-up drive. It also ensures that, when a union is certified, it is because a genuine majority of employees freely wanted certification. If the outcome favours unionization, there is a stronger foundation for the union's legitimacy once bargaining begins.

Some argue that the exercise of a right to a secret ballot vote must be protected by meaningful and effective remedial authority in the case of employer interference, however the Canada Industrial Relations Board has many tools at its disposal to address such concerns.

ICBA therefore recommends that the *Code* be amended to require a secret ballot vote for all certification applications.

Two consecutive years of port shutdowns and a rail work stoppage that required emergency federal intervention are not the marks of a system that is working – they are evidence of a system that has run out of off-ramps. With bargaining in the ports and rail sectors only months away, the time to act is now.

ICBA appreciates the opportunity to provide comments and recommendations on this important matter.

Sincerely,
INDEPENDENT CONTRACTORS AND BUSINESSES ASSOCIATION

Chris Gardner
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