Reflections on the Labour Code
Review and Outlook

Right to Work Committee – 39th Congress of the Conseil central du Montréal métropolitain–CSN

Working Paper

In Quebec, the world of work is governed by a quartet of cornerstone laws that shape our unionized landscape. Over the past few decades, through sustained union struggle, we have won significant protections enshrined in the Act respecting labour standards, the Act respecting occupational health and safety, and the Act respecting industrial accidents and occupational diseases. The Act respecting labour standards establishes the basic rules of the workplace, outlining how work is to be organized and negotiated between workers and employers. This law has been central to campaigns led by the Right to Work (RTW) Committee, including 5-10-15 and Minimum $18.

The Act respecting occupational health and safety defines the rules governing health and safety in the workplace. It establishes both prevention measures and compensation mechanisms for occupational accidents and illnesses. This law is especially familiar to us, as it has long been central to the concerns of the Conseil central and the focus of numerous union struggles since its inception.

While these three laws play a crucial role in our union action, a fourth piece of legislation governs our very capacity to act as unions: the Labour Code. Often overlooked by the general public and less prominent in our day-to-day organizing, this law nonetheless underpins the very structure of union activity. Since its adoption in 1965, the Labour Code has regulated the exercise of the right to association in the workplace. It legalizes and normalizes the existence of unions and obliges employers to recognize them. Importantly, the Labour Code is not concerned with individual workers directly; it instead sets the framework for how unions and employers must relate to each other.

The Labour Code has undergone numerous reforms over the past fifty years. Unfortunately, these changes have not always served the interests of unions, let alone those of workers. Two major reforms in particular have significantly undermined our bargaining power: essential services and section 45.

To recall, section 45 was designed to ensure the continuity of union representation following the sale of a business. However, in the 2000s, this article was diluted to exclude subcontracting. As a result, when a company is sold, any subcontracted activities are no longer automatically covered by existing union certifications.

These reforms are the result of the anti-union attacks we have faced since the advent of neo-liberal policies in the 1980s. Today, the Labour Code no longer ensures a balance of power favourable to the working class, largely due to the changes it has undergone over the years.

With this in mind, and in light of the rise of neoliberal and conservative governments, the 38th Congress mandated the RTW to initiate a reflection on the Labour Code. Accordingly, the

38th Congress adopted the following motion:

> ***WHEREAS*** *the Labour Code was adopted more than 50 years ago;*
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> ***WHEREAS*** *Quebec society has undergone significant changes over that period;*
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> *IT IS PROPOSED*
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> ***THAT the Conseil central du Montréal métropolitain–CSN*** mandate the Right to Work Committee to initiate a reflection on the Labour Code and the changes needed to ensure it reflects societal evolution and provides real power to workers; that allied organizations and member unions be invited to engage in the same process; and that a report be presented at the next congress.

This report is the result of our reflection. It has been a long and intense process, which has produced a series of six key claims, broken down into several areas for consideration. However, we wished to present to this congress three elements that, for us, are essential in our struggle. We have not reviewed all the rules of the Labour Code. In our opinion, certain elements should be addressed by other components of the CSN movement.

With this in mind, we did not address issues related to arbitration and essential services, as we believe these fall under the scope of bargaining and labour relations, which are the responsibility of the federations. We also chose not to address special regimes, such as those in the construction and forestry sectors. In our view, these matters should be tackled in collaboration with the workers directly affected.

Finally, in consultation with the CSN's unionization department, we reviewed the sections of the Labour Code related to unionization. By mutual agreement, we decided to maintain the status quo on those provisions.

It's worth noting that labour laws in other provinces are less favourable. For example, in Ontario, a secret ballot is automatically required, regardless of how many union cards have been signed.

So, we focused on six key areas:

- Robotization and artificial intelligence (AI)
- Telecommuting and the notion of establishment
- Strikebreakers
- The right to strike and lockout
- Picket lines
- Public services and the civil service

Of these six, we chose to present three essential demands to the congress: the right to strike, telecommuting, and robotization and AI. The issue of strikebreakers is a cross-cutting one that intersects with several areas. We encourage you to review all the lines of thought we've developed. These elements will form the basis for the committee's future reflections.

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Right to Strike

One of our first observations concerned the right to strike. We quickly realized that we don't truly have a right to strike, but rather a strike permit. This permission is limited to specific conditions and specific times. For most unions, the right to strike is granted 90 days after the notice to bargain. In the public and parapublic sectors, it is acquired only after several months of negotiations. Moreover, a strike cannot be declared at just any time; it must always be tied to the bargaining process. And non-unionized workers simply do not have the right to strike at all. This, despite the fact that the right to strike is now constitutionally protected at the federal level by the Supreme Court of Canada's decision in *Saskatchewan Federation of Labour v. Saskatchewan*.

We consider this an unacceptable restriction on our freedom of expression and freedom of association. Strike action is an essential tool in our balance of power, one that allows us to express ourselves and push for meaningful changes in how our lives and work are organized.

Take, for example, a team suffering from excessive workloads: this burden affects their performance, and despite repeated requests from the union, the employer stubbornly refuses to hire additional staff. In such circumstances, we lack effective means to apply bargaining pressure. As the Supreme Court stated in its Saskatchewan decision, quoting Professor Michael Lynk: "[Without the possibility of the strike], bargaining risks being inconsequential—a dead letter." We believe the right to strike is a fundamental right that must be available whenever workers collectively decide it is the best path forward.

This is why we emphasize the importance of the right to strike and why we want it to be more broadly accessible to workers in all circumstances. What's more, this right was already partially present in the Labour Relations Act, the precursor to the current Labour Code, which was in force from 1940 to 1965.

Labour Strike, Social Strike

Not only do we believe that all unionized workers should have access to this pressure tactic at all times, we also believe that the entire working class should have the right to strike.

> ***Claim 1***
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> *The right to strike must be enshrined in the Act respecting labour standards.*
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> *Lockouts must be prohibited.*

By embedding the right to strike in the Act respecting labour standards, all workers, not just those in unions, would gain access to it. Currently, since the right to strike is contained only in the Labour Code, it is reserved for unionized workers. Yet, there are examples around the world where all workers have the right to strike. During our research, we looked at Belgium, where the entire working class is entitled to strike. This example, among many others, demonstrates that it is possible to establish a functional and equitable model that ensures a genuine balance of power for workers.

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Lastly, we believe the lockout is not a tool that promotes fair balance with the working class. Employers already have multiple tools to assert their power: production slowdowns, reduced work schedules, disciplinary measures, internal investigations, and more. Under the current system, the employer controls what is known as the right to manage. Through this right, they can exert substantial pressure on workers at any time to secure their interests. This imbalance must be corrected by eliminating the employer's right to lock out.

A Forest of Possibilities

We came to realize that the Labour Code currently recognizes only one form of workplace protest: **a concerted work stoppage**. In other words, the entire team must stop working simultaneously. Slowing down production, working to rule, or organizing passive demonstrations are not permitted. We believe this limitation is unacceptable and that the working class must be free to exercise a full range of actions in the workplace.

Claim 2

All forms of strike action—slowdown, work-to-rule, general, social, solidarity, and others—must be permitted under all circumstances.

Strike action is our most powerful tool for expressing opposition to the employer's tactics, decisions, and inaction. It must be flexible and adaptable to each situation, shaped by the needs and choices of the workers themselves. We cannot limit strike action to a single, rigid framework that fails to reflect the diverse realities of different sectors. For example, in the health sector, a full work stoppage is often impossible due to the imperatives of emergency response and public safety. In such contexts, alternative forms of pressure are vital, and workers are best placed to determine what will be most effective.

Moreover, the right to strike should not be restricted to the collective bargaining period. There are moments outside of negotiations when pressure must be applied. Consider the climate crisis: a truly existential threat to humanity. Yet many employers continue to ignore their responsibilities, refusing to implement recycling or composting programs, or to replace outdated, polluting equipment with cleaner alternatives, simply to protect their profit margins.

Workers must be able to take action to push these companies to change. After all, corporate actions impact the entire population, including their own employees. To apply pressure where it's truly needed, we, as a working class, must have the right to launch social strikes.

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Overtime

In essential services and other sectors, employers sometimes resort to overtime, or even compulsory overtime, to fill in for positions affected by a strike. This is unacceptable. Forcing employees to work overtime in order to compensate for delays caused by a strike shows blatant disregard for the workers' struggle. This practice must be explicitly prohibited.

> ***Claim 3***
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> *Overtime and compulsory overtime must be banned during a strike, including in essential services. The only exception should be when the employer can clearly demonstrate that the situation is urgent.*

Requiring employers to justify the urgency before imposing any overtime ensures that our rights are protected and that strike actions cannot be quietly undermined.

Telecommuting

Telecommuting has become an integral part of our lives, not only due to the widespread availability of technological tools but also because of the pandemic. What was once considered a privilege has become a necessity for many workers. Labour laws have not kept pace with this shift. There have been no significant updates in this area over the past decade, despite some important reforms (such as Bill 59: An Act to modernize the occupational health and safety regime). The only notable development is the Unifor v. Groupe CRH Canada case, which determined that telecommuting during a strike violates section 109.1 of the Labour Code (strikebreaking). Unfortunately, this key ruling is still under review following its reversal by the Superior Court. It is clear, then, that we must take the initiative in advocating for the Tribunal administratif du travail ruling to be integrated into our labor law framework.

> ***Claim 4***
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> *That the notion of establishment be replaced by "any place where work is carried out";*
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> *That the notion of telecommuting be governed by the Act respecting labour standards and the Act respecting occupational health and safety;*
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> *That telecommuting during a strike be treated as a case of strikebreaking.*

Historically, an establishment was the place where an employer could lock the doors. Today, the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) defines an establishment as "all the installations and equipment grouped on one site and organized under the authority of one person or of related persons in view of producing or distributing goods or services." In simpler terms, it is a place owned and controlled by the employer. This concept is central to the application of the Act respecting occupational health and safety and the exercise of the right to strike (i.e., strikebreaking). However, in 2024, many companies no longer have a traditional office, instead operating in shared spaces managed by third parties (coworking and telecommuting).

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As a result, the very foundations of our legal framework are being undermined by changes in the world of work. It's important to remember that the current notion of establishment was developed in the 1970s, and it's clear that today's work environment no longer fits those criteria. The implementation of preventive and remedial measures under occupational health and safety legislation must also be updated to reflect this new reality.

Since employers are no longer responsible for physical premises, whether in coworking spaces or employees' homes, they are increasingly distancing themselves from their responsibilities. The employer's obligations are currently ambiguous. For example, who is responsible for telecommuting equipment? Who is expected to pay for the computer needed to perform the job? Who ensures the security of this equipment? In our view, even in a telecommuting context, it remains the employer's responsibility to provide functional and appropriate equipment to carry out the work. Furthermore, as mandated by law, the employer is responsible for ensuring a healthy working environment.

Robotization and AI

To begin with, we approached this issue from a general technological perspective. We did not distinguish between robots, AI, or any software capable of performing specific tasks. For our purposes, we referred to all of it as automation. While we recognize that there are many differences between these technologies, those distinctions did not influence our thinking. Regardless of the technology involved, the central question remained the same: what happens to the worker? The conclusions we reached remain largely consistent with our historical positions.

> ***Claim 5***
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> *The implementation of AI robots, software, or tools must not proceed without consulting the workers. Furthermore, such implementation must not lead to job losses, and any affected employees must be trained or retrained by the employer.*

As mentioned above, technological change is not a new issue; the 23rd Congress (1983) already addressed it. Yet it remains just as relevant today. Consider our colleagues in the cultural sector whose jobs have been replaced by generative AIs. This represents not only job loss, but also a broader cultural loss. The same is true for many other roles, such as office clerks, where AI can now generate emails, or programmers, whose work may be replaced by code generation tools. We must therefore demand clear and precise regulations now.

Robotization and Strikebreaking

Finally, we considered the impact of robots and AI on strikes. Our conclusion was ultimately straightforward: if a robot or AI can perform or replace the work of an employee, it must be treated as such. Therefore, any robots or AIs introduced after the start of a labour dispute must be regarded as strikebreakers—we will elaborate on this point later. Currently, there are no regulations governing the use of these tools. Unfortunately for us, automation has advanced to the point where a single person can operate an entire plant.

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Claim 6

Any robot, software, or computer tool (e.g., Artificial Intelligence) introduced after the beginning of a labor dispute and used in the company must be considered an employee and subject to strikebreaking rules.

Strikebreakers

Last but not least, we addressed the important issue of strikebreakers throughout our reflections. We developed several lines of thought on the topic, but ultimately identified a key demand that reaffirms and strengthens our historic position.

Claim 7

A strikebreaker is any person, corporate entity, or tool (technological or otherwise) that performs the normal tasks and functions of employees.

With this new definition, we establish that any person or tool, regardless of status, that carries out the tasks or functions of an employee involved in a labour dispute is automatically considered a strikebreaker. This definition would mark a major step forward in strengthening our bargaining power. It would ensure that employers face a genuine work stoppage and cannot circumvent its effects.

Conclusion and Outlook

We have presented various elements of our thinking, omitting certain points to keep this presentation more accessible. The elements not highlighted are either technical clarifications or reiterations of our historical positions, which we did not feel needed to be emphasized here. However, we intend to preserve them carefully as they will continue to inform our work.

We want the next mandate to be one of action. Over the past three years, we have given considerable thought to the Code. Now it is time to act. As this document shows, we aim to push for meaningful, working-class change. Moreover, Minister Sonia LeBel's recent announcement of reforms to Bill 37 (An Act respecting negotiations in the public and parapublic sectors) presents a valuable opportunity to advance our demands.

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