CANADIAN CIVIL LIBERTIES ASSOCIATION
ASSOCIATION CANADIENNE DES LIBERTES CIVILES

# Submission on Bill C-39,
# *An Act respecting certain measures to strengthen the economy*

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Canadian Civil Liberties Association

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## Canadian Civil Liberties Association (CCLA)

The CCLA is a national, non-profit, non-partisan and non-governmental organization founded in 1964 with a mandate to defend and foster the civil liberties, human rights, and democratic freedoms of all people across Canada. Key aspects of our mission include defending democratic principles and the rule of law, fighting against government overreach, and advocating for government accountability.

## Overview

The CCLA makes these submissions to highlight its strong opposition to two measures found in Bill C-39, *An Act respecting certain measures to strengthen the economy* ("Bill C-39" or the "Bill").[1]

Part 1, Division 2 of Bill C-39 would significantly expand the already controversial exemption powers introduced last year through Bill C-5.[2] It would allow Cabinet to designate entire "regions of national interest" where projects would receive a white glove fast-tracked approval service, without meaningful public participation or oversight. The exemption power tied to "regions of national interest" would be subject to even fewer safeguards than their equivalent for "national interest projects" under Bill C-5. Perhaps even more worryingly, Bill C-39 would transform Bill C-5's *temporary* exemption powers into *permanent* ones, regardless of the fact that powers to bypass existing laws must be the democratic exception, not the norm.

Part 3, Division 1 of the Bill would amend the *Canada Labour Code* to empower the Minister of Labour to direct the Canada Industrial Relations Board to end a legal strike that adversely affects, or *may* adversely affect, the national interest. In addition to not even requiring *actual* adverse effects before a strike can be shut down, the Bill does not define "adversely affect" or "national interest," effectively leaving their interpretation to the Minister's discretion.[3] Such broad discretion is constitutionally suspicious, as it severely undermines the right to strike, which the Supreme Court of Canada qualified as the "irreducible minimum" of the freedom to associate in Canadian labour relations.[4]

Bill C-39 pits the goal of strengthening Canada's economy against respect for the rule of law, the separation of powers and *Charter*-protected rights. This approach paints an increasingly bleak picture of the federal government's consideration for basic democratic principles designed to protect people of Canada from the arbitrary use of state power. We urge members of the Legislative Committee on Bill C-39 to remove the abovementioned provisions from the Bill.

## Problematic Legislative Process

The sweeping exemption powers granted to the executive branch in Bill C-5 were rushed through Parliament in just twenty days despite strong opposition from First Nations, environmental organizations, legal experts and civil society. At the time, the CCLA warned that the proposed

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[1] Bill C-39, *An Act respecting certain measures to strengthen the economy*, 1st Sess, 45th Parl, 2026 (first reading 21 September 2026) [**Bill C-39**].
[2] *Building Canada Act*, SC 2025, c 2, s 4 [***BCA***].
[3] Bill C-39, *supra* note 1, Part 3, Division 1, cl 334 (amending *Canada Labour Code*, RSC 1985, c L-2, s 107 [***CLC***]).
[4] *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, para 61.

*Building Canada Act* threatened the rule of law and urged parliamentarians to vote against it absent meaningful consultation through which crucial safeguards could be added.[5] The federal government ignored our concerns, and the Act is now being challenged in court.[6]

Bill C-39 is following the same procedural path. Rather than subjecting the proposed extraordinary powers to meaningful and detailed scrutiny through a distinct legislative process, the government has folded them into an omnibus bill of more than 230 pages amending close to twenty federal statutes. Introduced on September 21, 2026, the Bill passed second reading less than three weeks later, and the Senate is already examining its subject matter before the House has even completed its study.[7] Instead of asking the relevant Committees to review specific parts of this far-reaching Bill, the federal government created a dedicated Legislative Committee operating under a tight timeline.

## Analysis of Bill C-39

### 1. Amendments to the *Building Canada Act*

#### a. A Temporary Power Made Permanent

Instead of adding much-needed checks and balances to an already problematic framework, Bill C-39 would remove the five-year time limit that currently ensures exemption powers can be used only for a limited period.[8] Removing the five-year sunset clause would transform what the federal government presented as a temporary power into a permanent power grab by Cabinet.

This change reverses the very basis on which Parliament adopted these powers just over a year ago. It does so while the Act's constitutionality is still being challenged in court.[9] Nor does Bill C-39 offer anything to replace the sunset clause. It provides no legal threshold ensuring that these extraordinary powers to bypass laws can only be used in a clearly defined situation of crisis; no requirement that Cabinet justify the continued need for these powers to Parliament each year, failing which they would lapse; and no clear and narrow definition of "national interest" that would meaningfully limit Cabinet's discretion.

This is no small matter, as broad and permanent delegations of legislative powers to the executive jeopardize two key constitutional principles on which Canada's democracy is built.

The separation of powers between the legislative, executive and judicial branches of government is key to our democratic process.[10] The legislature plays a crucial role in holding the executive

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[5] Letter from the Canadian Civil Liberties Association to the Honourable Dominic LeBlanc regarding Bill C-5 (18 June 2025).

[6] *See e.g.* The Canadian Press, "First Nations Launch Legal Challenge Against Ontario, Federal Bills 5 and C-5", *CTV News* (15 July 2025), online: <https://www.ctvnews.ca/northern-ontario/article/first-nations-launch-legal-challenge-against-ontario-federal-bills-5-and-c-5/>; Centre québécois du droit de l'environnement, "The Opposition Is Growing: Eleven Organizations Seek to Intervene in the CQDE's Lawsuit Against C-5" (27 April 2026), online: <https://cqde.org/en/news/regulation-of-environmental-impacts/opposition-lawsuit-c-5/>.

[7] Parliament of Canada, "C-39 (45-1)", *LEGISinfo*, online: <https://www.parl.ca/legisinfo/en/bill/45-1/c-39>. Bill C-39 was introduced on 21 September 2026, and passed second reading and was referred to the Legislative Committee on Bill C-39 on 8 October 2026. On 1 October 2026, the Senate adopted a motion to sit as a Committee of the Whole on 6 October 2026 to examine the bill's subject matter.

[8] Bill C-39, *supra* note 1, cls 98(1), 100(3), 109–111 (amending *BCA*, *supra* note 2, ss 5(2), 8(4), 21(3), 22(2), 23(2)).

[9] *BCA*, *supra* note 2, s 24(2). On the pending legal challenges, see *supra* note 6.

[10] *Reference Re Secession of Quebec*, [1998] 2 SCR 217, para 68.

accountable and restricting the arbitrary exercise of government power. While there are times – such as wars and pandemics – when exceptional decision-making power may need to be vested in the executive, this must never become the norm.[11]

The rule of law principle guarantees that everyone, including the government and powerful individuals, is subject to and accountable under the same publicly known, equally enforced and independently adjudicated laws.[12] It reflects a decision that the people of Canada made long ago: that a small group of people in power should not make decisions behind closed doors that benefit a select few. Through Bill C-5 and now Bill C-39, the federal government threatens this pact made with the population.

The CCLA recognizes the economic pressures Canada faces, including the uncertainty created by tariffs imposed by our largest trading partner. But economic pressures, however real, cannot justify a permanent concentration of power in the hands of the executive. Once on the books, these powers would be available to any present and future government, for any project it favours, on any rationale it labels the "national interest." Granting such unchecked discretion to the executive is an open invitation to potential abuse, as the rapid erosion of democratic norms in the United States has made all too clear.

### b. Regions of National Interest: Broader Exemption Powers, Fewer Safeguards

Bill C-39's Part 1, Division 2 would give Cabinet broad discretion to designate "regions of national interest," where the findings required by many federal laws would be deemed made in favour of eligible projects.[13] In addition to the existing power to designate national interest projects individually, Bill C-39 would allow Cabinet to designate entire "regions of national interest," setting out in advance the types of projects eligible within them and the criteria they must meet.[14] Any project of an eligible type deemed to meet those criteria would then receive a single consolidated document standing in for its federal permits, and the findings that environmental and other federal laws require before a permit is issued would be deemed made in its favour.[15] A single designation could thus pre-approve an open-ended number of future projects, which would never be individually considered by Cabinet – let alone by Parliament.[16] The eligible types and criteria would be fixed in advance by Cabinet order for an entire region, on the basis of a regional assessment rather than an assessment of any particular site. Whether a given project meets those criteria would then turn solely on the Minister (or an official with delegated authority) being "satisfied" that it does.[17]

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[11] *Reference as to the Validity of the Regulations in Relation to Chemicals Enacted by Order in Council and of an Order of the Controller of Chemicals Made Pursuant Thereto*, [1943] SCR 1, at pp 10, 17-18.
[12] *Roncarelli v Duplessis*, 1959 [SCR] 121. See also *Democracy Watch v. Canada (Attorney General)*, 2026 SCC 28, para 1.
[13] Bill C-39, *supra* note 1, cls 96 (amending *BCA*, *supra* note 2, s 2), 103 (enacting *BCA*, ss 8.2(1), 8.3(1)), 113 (adding *BCA*, Schedule 3).
[14] Bill C-39, *supra* note 1, cl 103 (enacting *BCA*, *supra* note 2, s 8.2(1)(a)–(d)).
[15] Bill C-39, *supra* note 1, cl 103 (enacting *BCA*, *supra* note 2, ss 8.3(1), 8.4(1), 8.4(4)).
[16] Designation is by Cabinet order (new *BCA* s 8.2(1)); whether an individual project qualifies, and the issuance of its consolidated document, are decided by the Minister, without any further Cabinet order (new ss 8.3(1), 8.4(1)). See Bill C-39, *supra* note 1, cl 103.
[17] Bill C-39, *supra* note 1, cl 103 (enacting *BCA*, *supra* note 2, ss 8.2(1), 8.2(5), 8.3(1), 8.4(1-3).

Alarmingly, several of the safeguards Parliament included when it adopted Bill C-5 would not apply to regions of national interest.[18] For these regions, Bill C-39 does not require prior public notice or provincial consent, a conflict-of-interest screen, a process for the meaningful participation of affected Indigenous peoples with a public report, the publication of the studies and recommendations underlying a decision, or an annual independent review tabled in Parliament.[19] Orders designating regions, and the reasons for them, would also need to be published only "as soon as feasible" *after* they are made.[20]

Further, while the Minister must consult affected Indigenous peoples before a region is designated, the Bill leaves the adequacy of that consultation to the Minister's own satisfaction and allows it to be met through a broad regional study "or by any other means" – a far cry from the meaningful, rights-specific consultation required by the Crown's constitutional duty under s. 35 of the *Constitution Act, 1982*.[21]

### c. Transparency After the Fact

Currently, the *Building Canada Act* requires the Minister to make key information public at least 30 days *before* authorizing a national interest project. That includes the conditions that will apply, the full studies and impact assessments, the recommendations of federal departments and the reasons any were rejected, and a description of the regulatory process the project would otherwise have gone through.[22] In one stroke, Bill C-39 would change "before" to "after."[23]

The government describes this change as making publication obligations "administratively feasible."[24] In practice, it would turn public scrutiny into a notice of a decision already made. Disclosure would come only after the fact, once the project's authorizations have already been deemed granted. Transparency that comes after a decision is made offers no opportunity to question, challenge or change it. It is a sham, accountability in name only.

### d. Stripping Safeguards

Bill C-39 would also allow the Minister to *remove* – not just amend – project conditions, including those imposed by expert regulators before a project was designated.[25] Although the Minister would still have to consult the responsible federal minister and affected Indigenous peoples beforehand,

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[18] Bill C-39, *supra* note 1, cl 103 (enacting *BCA*, *supra* note 2, s 8.2(6)). *Compare BCA*, *supra* note 2, s 5(6). Section 4.1(1) of the *BCA*, which allows Cabinet to define "national interest" and set criteria, applies only "for the purposes of section 5", that is, to the designation of projects, not regions.

[19] Compare *BCA*, *supra* note 2, ss. 5(1.1), 5(6.1), 7(2.1), 7(9), 8.1 and 23.1, with Bill C-39, *supra* note 1, cl 103 (new *BCA* ss. 8.2 to 8.7). Under the new regime, the authorization document need only be made public "in the manner determined by the Minister" (new s 8.4(8)), and the Minister's powers may be delegated and subdelegated within the public service (new s 8.6).

[20] Bill C-39, *supra* note 1, cl 103 (enacting *BCA*, *supra* note 2, s 8.2(8)-(9)). Section 8.2(8) also excludes these orders from the *Statutory Instruments Act*, RSC 1985, c S-22.

[21] Bill C-39, *supra* note 1, cl 103 (enacting *BCA*, *supra* note 2, ss 8.2(7), 8.4(2)(d)); *Constitution Act, 1982*, s 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 at paras 16–25, 39–45.

[22] *BCA*, *supra* note 2, ss 8.1(1), 8.1(3).

[23] Bill C-39, *supra* note 1, cl 102 (amending *BCA*, *supra* note 2, s 8.1(3)).

[24] Bill C-39, *supra* note 1, summary, Part 1, Division 2, para (c).

[25] Bill C-39, *supra* note 1, cls 100(1) (amending *BCA*, s 8(1)), 101 (enacting *BCA*, *supra* note 2, s 8.01).

consultation is not consent or agreement.[26] The Bill provides no opportunity for the public or affected communities to be notified or heard before a condition is removed. Changes would come to light only once they are made public, in a manner the Minister determines.[27] Conditions developed through careful regulatory review could thus be removed through a process closed to public scrutiny.

## 2. Amendments to the *Canada Labour Code*

Section 107 of the *Canada Labour Code* currently allows the Minister of Labour to take measures to "maintain or secure industrial peace." The federal government has repeatedly relied on it in recent years to end legal strikes without going to Parliament, leading to several ongoing legal challenges, including on *Charter* grounds.[28] Rather than reining in that problematic practice, Part 3, Division 1 of Bill C-39 would codify and broaden it, expressly authorizing the Minister to direct the Canada Industrial Relations Board to end a legal strike or lockout that adversely affects, or *may* adversely affect, the "national interest."[29]

Bill C-39 does not bother to define "adversely affect" or "national interest," effectively leaving their interpretation to the Minister's discretion. The Minister may take into account "any relevant considerations," including a strike's "significant impact on the Canadian economy" or "serious social disruption."[30] These non-exhaustive criteria are much less stringent than the standards set by the Supreme Court of Canada for essential services.[31]

The right to strike is protected by section 2(d) of the *Charter* (freedom of association) as an essential part of meaningful collective bargaining.[32] As with all fundamental rights, the freedom of association and the rights arising from it are not absolute. However, governments cannot substantially interfere with meaningful collective bargaining without justification. Hence, while the Supreme Court of Canada accepted that limiting the right to strike in order to maintain "essential services" is justified,[33] it emphasized that such a limitation could only apply in very narrow circumstances, for example with respect to services whose interruption would endanger the life, personal safety, or health of part or all of the population.[34] The *Canada Labour Code*'s existing mechanism for limiting work stoppages already reflects these parameters: it requires activities to be maintained during a strike or lockout only "to the extent necessary to prevent an

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[26] *BCA*, *supra* note 2, s 8(3), as amended by Bill C-39, *supra* note 1, cl 100(2); Bill C-39, cl 101 (enacting *BCA*, s 8.01(2)).
[27] *BCA*, *supra* note 2, s 7(8).
[28] *See e.g.* "Union launches court appeal over government move to end railway labour dispute", CBC News (30 August 2024), online: <https://www.cbc.ca/news/politics/teamsters-file-court-of-appeal-rail-stoppage-1.7309269>; CUPE Air Canada Component, "Bargaining Committee Update – 57 – Judicial Review Applications" (29 September 2025), online: CUPE Air Canada Component <https://accomponent.ca/bargaining-committee-update-57-judicial-review-applications-update/>; Notice of Application, *Canadian Union of Public Employees v Canada (Attorney General)* (22 September 2025), Ottawa, FCA A-297-25.
[29] *CLC*, *supra* note 3, s 107; Bill C-39, *supra* note 1, cl 334 (enacting *CLC*, s 107(1)–(2)).
[30] Bill C-39, *supra* note 1, cl 334 (enacting *CLC*, *supra* note 3, s 107(3)).
[31] *Saskatchewan Federation of Labour, supra* note 4, paras 84–86 (limiting the essential services justification to services whose interruption would endanger the life, personal safety or health of all or part of the population, and excluding mere inconvenience to the public).
[32] *Canadian Charter of Rights and Freedoms*, s 2(d), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4, para 3.
[33] *Saskatchewan Federation of Labour v Saskatchewan*, 2015 SCC 4, para 86.
[34] *Ibid*, *supra* note 4, para 84, citing *Reference re Public Service Employee Relations Act (Alta)*, [1987] 1 SCR 313, para 106 (Dickson CJ, dissenting).

immediate and serious danger to the safety or health of the public."[35] The Canada Industrial Relations Board has since applied it narrowly, in light of the constitutional protection of the right to strike.[36]

The Supreme Court of Canada has further found that limits on the right to strike could also be justified to avoid the interruption of services that would threaten national *security* or the administration of the rule of law. The Court also made clear that mere inconvenience to members of the public does not fall within the ambit of the essential services justification for removing the right to strike.[37]

By authorizing the Minister of Labour to end a strike that adversely affects, or may adversely affect, what the Minister of the day will see as the "national interest," the Bill deviates significantly from the constitutional constraints on limiting the right to strike established by the Supreme Court of Canada. It makes workers vulnerable to government intrusion in the bargaining process whenever a legal strike causes significant dissatisfaction among a segment of the population, turning a constitutional right into a privilege that can be revoked for political reasons.

Strikes are, by design, economically and socially disruptive – that is the source of workers' bargaining power. Giving broad discretion to the executive to end legal strikes because of undefined adverse impacts – or the impacts they *may* have – strikes at the very essence of the right. There can be no meaningful bargaining when one side lacks the power to negotiate on equal footing, and workers are weakened from the outset when employers can expect the Minister to step in if the strike becomes inconvenient.

Finally, we note that ending a strike has traditionally been done through back-to-work legislation, which has sometimes been used unconstitutionally.[38] Enacting clear and narrow criteria, and a requirement for Cabinet to seek the advice of an independent expert panel before introducing back-to-work legislation in Parliament, could have been a step in the right direction. Instead, Bill C-39 doubles down on Cabinet's recent use of section 107 to end strikes and lockouts by ministerial direction.[39] By making this problematic practice a routine executive power, the federal government is, here again, choosing ministerial whim over democratic deliberation.

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[35] *CLC*, *supra* note 3, s 87.4(1).

[36] See also *Maritime Employers Association v Syndicat des débardeurs, section locale 375 du Syndicat canadien de la fonction publique*, 2023 FCA 93, paras 11-12, 30 (upholding the Board's refusal to order the maintenance of all longshoring activities at the Port of Montreal, and noting that, since *Saskatchewan Federation of Labour*, maintenance orders should be issued only where shown to be required).

[37] *Saskatchewan Federation of Labour*, *supra* note 4, para 84.

[38] See for example *Canadian Union of Postal Workers v Canada (Attorney General)*, 2016 ONSC 418 (federal); *Les avocats et notaires de l'État québécois v Québec*, 2021 QCCA 559 (provincial) (leave to appeal denied, SCC File No. 39695, 2021/10/14).

[39] See Employment and Social Development Canada*, TRCM Committee Briefing Binder: Appearance by the Minister of Jobs and Families* (11 March 2026), online: <canada.ca/en/employment-social-development/corporate/reports/committe-binders/2026-mar-11-trcm-hadju.html> (reporting ten section 107 referrals since 2023, nine of them to end or pause a strike or lockout or to impose arbitration); Mayra Perez-Leclerc, "Constitutional Protection of the Right to Strike" (7 October 2025), online (blog): *HillNotes* <hillnotes.ca/2025/10/07/constitutional-protection-of-the-right-to-strike> (noting that section 107 has historically been used "sparingly").

## Conclusion

Just over a year ago, Parliament was asked to accept extraordinary executive powers in twenty days, on the understanding that they would be temporary. Bill C-39 now asks Parliament, once again in haste, to go much further: to make these powers permanent, to extend some of them to entire regions, to let the Minister strip away conditions set by expert regulators, and to postpone public disclosure until *after* decisions are made. In the same omnibus bill, Parliament would give the Minister of Labour an open-ended power to end lawful strikes on the basis of the Minister's own view of the "national interest."

As noted, the CCLA recognizes the economic pressures Canada is confronting. But if the federal government believes certain laws are ill-suited to these challenges, it should bring forward targeted legislative amendments and engage in a genuine democratic dialogue with parliamentarians, First Nations, and civil society. Canada can and should pursue a stronger, more independent, and more sustainable economy, but not by weakening the democratic foundations on which that economy depends.

Granting the executive broad authority to bypass legislative safeguards in the name of economic growth, without meaningful checks and balances, is a proposition that any liberal democracy should firmly reject.

For these reasons, the CCLA urges members of the Legislative Committee on Bill C-39 to remove Part 1, Division 2 and the amendment to section 107 of the *Canada Labour Code* from the Bill.