



BILL NO. 219

Private Member's Bill

*1st Session, 59th General Assembly
Nova Scotia
54 Elizabeth II, 2005*

An Act to Amend Chapter 475 of the Revised Statutes, 1989, the Trade Union Act

CHAPTER 61
ACTS OF 2005

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 8, 2005**

Darrell Dexter
Cole Harbour

*Halifax, Nova Scotia
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**An Act to Amend Chapter 475
of the Revised Statutes, 1989,
the Trade Union Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 4 of Chapter 475 of the Revised Statutes, 1989, the *Trade Union Act*, is amended by adding immediately after subsection (2) the following subsections:

(3) Notwithstanding subsection (1), Sections 46A, 54A and 56A apply to Her Majesty in right of the Province and employees of Her Majesty in right of the Province.

(4) Sections 55 to 57 and 78 apply to complaints of a failure to comply with Section 54A made against

(a) the Nova Scotia Government Employees Union or a person acting on behalf of the Union pursuant to the *Civil Service Collective Bargaining Act*;

(b) the Union determined pursuant to Part I of the *Corrections Act* or a person acting on behalf of the Union; or

(c) the Nova Scotia Highway Workers Union, CUPE Local 1867 or a successor union determined pursuant to the *Highway Workers Collective Bargaining Act* or a person acting on behalf of the Union.

2 Section 8 of Chapter 475 is amended by adding “or 46A” immediately after “42” in the second line.

3 (1) Subsection 16(4) of Chapter 475 is amended by

(a) striking out “another person as Vice-chairman” in the second line and substituting “other persons as Vice-chairmen”; and

(b) striking out “the” both times it appears in the sixth line and substituting in each case “a”.

(2) Section 16 is further amended by adding immediately after subsection (5) the following subsection:

(5A) Notwithstanding subsection (5), the Chairman of the Board or a Vice-chairman of the Board may sit alone to hear a matter with respect to

(a) an uncontested application or question; or

(b) a complaint under subsection (3) of Section 54A,

and, when doing so, may exercise all the powers of the Board.

(3) Section 16 is further amended by adding immediately after subsection (6) the following subsection:

(6A) Notwithstanding subsection (6), a decision of the Chairman of the Board or a Vice-chairman of the Board sitting alone under subsection (5A) is a decision of the Board.

4 Clause 19(1)(k) of Chapter 475 is amended by striking out “or 50” in the third line and substituting “, 50 or 56A”.

5 Section 43 of Chapter 475, as amended by Chapter 4 of the Acts of 2000, is further amended by adding immediately after subsection (4) the following subsection:

(5) For greater certainty, this Section applies to an arbitration under Section 46A.

6 Chapter 475 is further amended by adding immediately after Section 46 the following Sections:

46A (1) In this Section,

(a) “arbitration” means a process for determination of a dispute and includes an adjudication under the Civil Service Collective Bargaining Act, the Corrections Act or the Highway Workers Collective Bargaining Act;

(b) “dispute” means a dispute between the parties to a collective agreement relating to the interpretation, application or administration of the collective agreement or an allegation that the agreement has been violated and includes a rights dispute under the Civil Service Collective Bargaining Act, the Corrections Act or the Highway Workers Collective Bargaining Act.

(2) Subject to subsection (4), a party to a collective agreement may apply to the Minister or the Minister’s designate for an expedited arbitration on a dispute arising out of the collective agreement.

(3) The party making an application under subsection (1) shall send a copy of the application to the other party to the collective agreement.

(4) An application under subsection (2) may be made when

(a) the grievance procedure under the collective agreement has been exhausted;

(b) five months or more have passed since the date on which the dispute was referred to arbitration; and

(c) no hearings have been commenced.

(5) When a party applies under subsection (2), the Minister

(a) shall, where there is no arbitrator appointed, appoint a single arbitrator under subsection (2) of Section 42;

(b) shall, where there is no hearing date set, order the setting down of a hearing date within thirty days of the order unless the parties mutually agree to another date; and

(c) may

- (i) order that the decision of the arbitrator be rendered on or before a date specified, or
 - (ii) where the appointed arbitrator is not available, appoint a different single arbitrator under subsection (2) of Section 42.
- (6) An arbitrator appointed under subsection (5) has exclusive jurisdiction to hear and determine the dispute.
- (7) An arbitrator shall, when requested by the parties and where appropriate, issue an oral decision no later than seven days after the conclusion of the hearing.
- (8) Where an arbitrator provides an oral decision under subsection (7), the arbitrator shall issue to the parties written reasons for the oral decisions within thirty days of the conclusion of the hearing.
- (9) Where an arbitrator appointed under this Section withdraws, is incapacitated or otherwise unable to carry out the arbitrator's responsibilities, the Minister may at the request of either party and after consulting with the parties and the arbitrator, if possible, appoint a new arbitrator to hear and determine the dispute.
- (10) The decision of an arbitrator pursuant to this Section is final and binding upon the parties and upon any employee or employer affected by it.
- (11) The Minister may establish a list of approved arbitrators for appointments under this Section based upon advice provided by an advisory committee.
- (12) The Minister shall constitute an advisory committee with the following seven members for the purpose of advising the Minister respecting the selection of arbitrators and matters relating to arbitration:
- (a) three members representing trade unions;
 - (b) three representing employers; and
 - (c) a designated chair as chosen by the Minister.
- (13) The costs of arbitration pursuant to this Section must be shared equally between the parties.

46B For the purpose of Section 46A,

- (a) the employer under the *Civil Service Collective Bargaining Act*;
- (b) the Nova Scotia Government Employees Union acting under the *Civil Service Collective Bargaining Act*;
- (c) the Employer under Schedule A to the *Corrections Act*;
- (d) the Union determined pursuant to Part I of the *Corrections Act*;
- (e) the Employer under the *Highway Workers Collective Bargaining Act*; and
- (f) the Nova Scotia Highway Workers Union, CUPE Local 1867, or a successor union determined pursuant to the *Highway Workers Collective Bargaining Act*,

are parties to disputes that relate to them under that Section.

46C Where an application or a number of applications under subsection (2) of Section 46A concerns several disputes arising under the collective agreement, on the request of both parties, the Minister may appoint an arbitrator under subsection (2) of that Section to deal with all of the disputes.

7 Chapter 475 is further amended by adding immediately after Section 54 the following Section:

54A (1) In this Section, “employee” includes an employee within the meaning of each of the *Civil Service Collective Bargaining Act*, Schedule A to the *Corrections Act* and the *Highway Workers Collective Bargaining Act*.

(2) In this Section and subsection (3) of Section 55, “trade union” includes

(a) the Nova Scotia Government Employees Union acting under the *Civil Service Collective Bargaining Act*;

(b) the Union determined pursuant to Part I of the *Corrections Act*; and

(c) the Nova Scotia Highway Workers Union, CUPE Local 1867, or a successor union determined pursuant to the *Highway Workers Collective Bargaining Act*.

(3) No trade union and no person acting on behalf of a trade union shall act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in a bargaining unit for which that trade union is the bargaining agent with respect to the employee’s rights under a collective agreement.

8 (1) Subsection 55(1) of Chapter 475 is amended by adding “or subsection (3) of Section 54A” immediately after “54” in the sixth line.

(2) Subsection 55(3) of Chapter 475 is amended by

(a) adding “or under subsection (3) of Section 54A” immediately after (1) in the second line; and

(b) adding “or subsection (3) of Section 54A” immediately after “54” in the fourth line.

9 Section 56 of Chapter 475 is amended by adding immediately after subsection (3) the following subsection:

(4) The Board may refuse to hear and determine any complaint made pursuant to Section 55 in respect of an alleged failure by a trade union or a person acting on behalf of a trade union to comply with Section 54A if the Board considers the complaint to be frivolous, vexatious or otherwise not worthy of a hearing.

10 Chapter 475 is further amended by adding immediately after Section 56 the following Section:

56A (1) Where the Board receives a written complaint that a trade union or a person acting on behalf of a trade union has contravened subsection (3) of Section 54A, the Board shall appoint an employee within the Department of Environment and Labour, or a person appointed by the Minister, as a review officer to review the complaint to determine whether there is sufficient evidence of a breach of the duty of fair representation.

(2) Where a review officer appointed pursuant to subsection (1) is not satisfied on initial review that there is sufficient evidence of a failure to comply with subsection (3) of Section 54A, the review officer shall dismiss the complaint.

(3) Where a review officer decides not to dismiss the complaint pursuant to subsection (2), the review officer shall serve notice of the complaint on the trade union against which the complaint is made and request a response from the trade union.

(4) Where a review officer has received a response from a trade union to a request made pursuant to subsection (2) and is not satisfied that there is sufficient evidence of a failure to comply with subsection (3) of Section 54A, the review officer shall dismiss the complaint.

(5) Where a review officer has received a response from a trade union to a request made pursuant to subsection (2) or the trade union has failed to respond to the request within such period of time as the review officer considers necessary, and where the review officer believes that there has been a failure to comply with subsection (3) of Section 54A, the review officer shall

(a) effect a settlement, if possible; or

(b) where not possible, refer the complaint to the Board for disposition.

(6) A review officer appointed pursuant to subsection (1) has the power to order the parties to produce any documents or other things that the review officer considers necessary for the full review of the complaint without holding a hearing.

(7) A decision of a review officer under this Section is final and conclusive and not open to question or review.

(8) Where a complaint has been referred to the Board for disposition pursuant to clause (b) of subsection (5), the Board may

(a) add a party to the proceeding at any stage of the proceeding;

(b) determine a complaint with or without holding a hearing; and

(c) where the Board is satisfied that the trade union or person acting on behalf of a trade union has contravened subsection (3) of Section 54A, the Board may make an order provided for in clause (e) of Section 57 and make an order provided for in Section 78.

(9) A complaint under subsection (1) may be withdrawn by the complainant upon such conditions as the Board may determine.

11 Section 57 of Chapter 475 is amended by

(a) striking out “and” at the end of clause (c);

(b) striking out the period at the end of clause (d) and substituting “; and”;

and

(c) adding immediately after clause (d) the following clause:

(e) in respect of a failure to comply with Section 54A, by order, require a trade union to rectify any act or omission complained of and refer the matter to arbitration and may order that time limits in a collective agreement be abridged or extended in respect of the arbitration.

12 Section 93 of Chapter 475, as amended by Chapter 35 of the Acts of 1994, is further amended by adding “and Sections 46A, 54A and 56A” immediately after “30” in the second line.

13 (1) This Act, except subsections 3(2) and (3), has effect on and after October 1, 2006.

(2) Subsections 3(2) and (3) have effect on and after October 1, 2007, upon proclamation by the Governor in Council.
