



BILL NO. 37

Government Bill

*1st Session, 62nd General Assembly
Nova Scotia
63 Elizabeth II, 2014*

An Act to Ensure the Provision of Essential Health and Community Services

CHAPTER 2
ACTS OF 2014

**AS ASSENTED TO BY THE ADMINISTRATOR OF THE PROVINCE
APRIL 4, 2014**

The Honourable Kelly Regan
Minister of Labour and Advanced Education

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act to Ensure the Provision of Essential Health and Community Services

WHEREAS the employers and the bargaining unit employees to which this Act applies are providing essential health and community services to Nova Scotians;

AND WHEREAS there is a need to ensure that essential health and community services continue to be provided in the event of a lockout or strike;

THEREFORE be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the *Essential Health and Community Services Act*.

2 (1) In this Act,

(a) “bargaining agent” means a bargaining agent referred to in clause 3(1)(c);

(b) “bargaining unit” means a unit referred to in clause 3(1)(b);

(c) “Board” means the Labour Board established by the *Labour Board Act*;

(d) “employee” means an employee referred to in clause 3(1)(b);

(e) “employer” means an employer referred to in clause 3(1)(a);

(f) “essential health or community service” means a health or community service, duty or function that is necessary to enable an employer to prevent or limit

(i) loss of life,

(ii) serious harm or damage to or deterioration of the mental or physical health of one or more persons, or

(iii) serious harm or damage to or deterioration of property required for the performance of an essential health or community service in relation to sub-clause (i) or (ii);

(g) “essential health or community services agreement” means an essential health or community services agreement made pursuant to this Act;

(h) “essential health or community services employee” means an employee who, during a lockout or strike, is required to work under an essential health or community services agreement;

(i) “Minister” means the Minister of Labour and Advanced Education.

(2) Except as otherwise provided in this Act, words and expressions used in this Act have the same meaning as in Part I of the *Trade Union Act*.

(3) Where there is a conflict between this Act or the regulations and any other Act or regulation or any collective agreement, arbitral or other award or decision, obligation, right, claim, agreement or arrangement of any kind, this Act and the regulations prevail.

3 (1) Subject to Section 31, this Act applies to

(a) any employer who employs employees in a bargaining unit to provide health or community services, including, without limiting the generality of the foregoing,

(i) health services as defined in the *Health Authorities Act*,

(ii) ambulance services and emergency health services, as defined in the *Emergency Health Services Act*,

(iii) services provided by a communications centre as defined in the *Emergency Health Services Act*,

(iv) services provided in a home for special care as defined in regulations made pursuant to the *Homes for Special Care Act*,

(v) services provided under the mandate of the Department of Health and Wellness or the Department of Community Services to support a person in the person's place of residence, including, without limiting the generality of the foregoing,

(A) home-support services to assist a person with the person's activities of daily living and instrumental activities of daily living,

(B) nursing services, and

(C) palliative care services,

(vi) services provided in a child-caring facility as defined in the *Children and Family Services Act*, and

(vii) services provided by the Mi'kmaw Family and Children's Services of Nova Scotia, an agency as defined in the *Children and Family Services Act*,

and its successors;

(b) the bargaining unit employees of an employer referred to in clause (a); and

(c) the bargaining agent of the employees referred to in clause (b) and its successors.

(2) This Act binds Her Majesty in right of the Province.

4 The Minister has the general supervision and management of this Act.

ESSENTIAL HEALTH OR COMMUNITY SERVICES AGREEMENTS

5 (1) Each employer and each bargaining agent for employees of that employer shall enter into an essential health or community services agreement.

(2) In order to enable an employer to continue to provide essential health or community services in the event of a lockout or strike, an essential health or community services agreement must

(a) identify the work functions that constitute essential health or community services;

(b) identify the classifications of employees, and the number of employees in each classification, who are required at any one time to perform essential health or community services during a lockout or strike;

(c) provide for a method by which employees competent to perform essential health or community services will be assigned to perform those services during a lockout or strike;

(d) in order to allow the employer to respond to an unanticipated increase in the need for essential health or community services during a lockout or strike, set out a procedure for identifying and assigning additional employees within the classifications identified pursuant to clause (b) who are required at any one time to perform the work functions identified pursuant to clause (a), including the immediate assignment of the additional employees;

(e) where the employer uses the procedure in clause (d), require the employer to immediately serve notice on the bargaining agent setting out the additional number of employees in each classification required to perform the work functions as a result of the unanticipated increase;

(f) in order to allow the employer to respond to an emergency during a lockout or strike, set out a procedure for

(i) identifying additional work functions as essential health or community services,

(ii) identifying additional classifications of employees, and the number of employees in each classification, who are required to perform additional work functions identified as essential health or community services, in an emergency, and

(iii) assigning these additional employees, including the immediate assignment of the additional employees; and

(g) where the employer uses the procedure in clause (f), require the employer to immediately serve notice on the bargaining agent setting out the additional work functions identified as essential health or community services and the additional classifications of employees, and the number of employees in each classification, who are required to perform those work functions in an emergency.

6 (1) Each employer and each bargaining agent who is a party to a collective agreement and does not have an essential health or community services agreement shall enter into negotiations for an essential health or community services agreement

(a) immediately, if the collective agreement expired before the coming into force of this Act;

(b) immediately, if the collective agreement will expire within six months after the coming into force of this Act; or

(c) six months before the expiry of the collective agreement, if the collective agreement expires more than six months after the coming into force of this Act.

(2) When the parties are required to begin negotiations in accordance with subsection (1), either the employer or the bargaining agent may, by written notice to the other, require

the other to begin negotiations for an essential health or community services agreement and thereupon they shall begin negotiations without delay.

(3) Notwithstanding subsection (2), within 21 days after notice is given pursuant to subsection (2), or within such further time as the employer and bargaining agent agree upon, the employer and bargaining agent shall meet or cause authorized representatives to meet on their behalf and begin negotiations with one another.

(4) Upon giving or receiving notice pursuant to subsection (2), the employer shall, without delay, provide the bargaining agent with the employer's proposed plan for maintaining essential health or community services in the event of a lockout or strike.

7 (1) Each employer and each bargaining agent for employees of that employer shall endeavour to reach an essential health or community services agreement through negotiations.

(2) The employer or the bargaining agent may request the Minister to appoint, and the Minister, upon such request, may appoint, a conciliation officer or mediation officer to assist them with their negotiations.

(3) For greater certainty, the involvement of a conciliation officer or mediation officer appointed pursuant to subsection (2) does not replace any obligation on the employer or the bargaining agent pursuant to the *Trade Union Act* to confer with a conciliation officer for purposes of concluding and entering into a collective agreement in accordance with that Act.

8 (1) An employer or a bargaining agent may make a complaint in writing to the Board that the other has failed to comply with subsection 6(2), (3) or (4) or 7(1), and the Board shall inquire into the complaint and may dismiss the complaint or make an order requiring either of them to do anything that, in the opinion of the Board, is necessary to secure compliance.

(2) A complaint made to the Board pursuant to subsection (1) must be resolved by the Board within three business days after the complaint is received by the Board.

9 (1) Where an employer and a bargaining agent are unable to conclude an essential health or community services agreement, the employer or the bargaining agent may apply in writing to the Board to settle the provisions of such an agreement and the Board shall, as soon as is practicable, serve notice on both of them of receipt of such application.

(2) Upon receiving the notice served pursuant to subsection (1), the employer and the bargaining agent shall each, without delay, give the Board a statement setting out the matters they have agreed upon, if any, and the matters upon which they cannot agree, with respect to an essential health or community services agreement.

(3) The Board may hold an oral hearing before making a decision pursuant to this Section, but is not required to do so.

(4) The Board shall hear the matter as a panel consisting of the Chair of the Board or a vice-chair of the Board as a sole adjudicator.

(5) Within 30 days after receiving an application pursuant to subsection (1), or within such further time as the employer and bargaining agent agree upon, the Board shall make an award settling the provisions of an essential health or community services agreement between the employer and the bargaining agent.

(6) In settling the provisions of an essential health or community services agreement pursuant to this Section, the Board shall accept, without amendment, any provisions agreed upon by the employer and the bargaining agent.

(7) On application by the employer or the bargaining agent, the Board may modify any determination, decision, order or direction made by the Board pursuant to this Section as the Board considers appropriate in the circumstances.

10 An essential health or community services agreement between an employer and a bargaining agent for the employer's employees is binding upon

- (a) the employer;
 - (b) every employee of the employer who is represented by the bargaining agent;
- and
- (c) the bargaining agent,

whether the terms of the agreement were settled by agreement or by the Board.

11 (1) The parties to an essential health or community services agreement may amend the agreement in writing.

(2) A party to an essential health or community services agreement may apply to the Board to amend the agreement.

(3) Upon receipt of an application pursuant to this Section, the Board may amend the essential health or community services agreement in writing and may make any other decision it considers appropriate in the circumstances.

12 (1) Recognizing that an essential health or community services agreement may need to be updated from time to time, either party to an essential health or community services agreement may terminate it on written notice to the other party effective the day the notice is given, which notice must be given to the other party

- (a) at least 12 months before the collective agreement between the parties expires; or
- (b) within 30 days after entering into a collective agreement, if that agreement has a term of less than 13 months.

(2) When an essential health or community services agreement is terminated, subsections 6(2), (3) and (4) and 7(1) and (2) and Section 9 apply, *mutatis mutandis*, to the negotiations for a new essential health or community services agreement.

13 An employer shall file with the Minister a copy of any essential health or community services agreement to which it is a party.

SETTLEMENT OF DISPUTES

14 (1) Either party to an essential health or community services agreement may notify the other in writing that it disputes

- (a) the manner in which the other party is interpreting, applying or implementing the agreement; or
- (b) any action taken by the other party under the terms of the agreement.

(2) Where the parties are unable to resolve a dispute referred to in subsection (1), either party may apply to the Board to resolve the dispute, by written notice to the other party and to the Board.

(3) Where a dispute is referred to the Board pursuant to subsection (2), the Board shall settle the dispute within three business days after the notice is received by the Board.

15 (1) Where a party to an essential health or community services agreement with respect to a bargaining unit considers that the level of activity that is required to be continued under the agreement has the effect of depriving the employees in the bargaining unit of a meaningful right to strike or depriving the employer of a meaningful right to lock out the employees, the party may apply to the Board, by written notice to the other party and to the Board, to request that the Board direct the parties to a binding method of resolving the issues in dispute between the parties.

(2) In deciding, in an application made pursuant to subsection (1), whether the employees in the bargaining unit are deprived of a meaningful right to strike or the employer is deprived of a meaningful right to lockout the employees, the Board

- (a) shall consider the number of employees identified in the essential health or community services agreement whose services the employer has used to provide the essential health or community services and, subject to the regulations, any other relevant factor; and
- (b) may consider the classifications of employees and the work functions identified in the agreement.

(3) The Board may hold an oral hearing before making a decision pursuant to this Section, but is not required to do so.

(4) The Board shall hear the application as a panel consisting of the Chair of the Board or a vice-chair of the Board as a sole adjudicator and, subject to subsection (7), shall make a decision within 30 days after receiving the application.

(5) Where, upon considering the application, the Board is satisfied that the level of activity that is required to be continued under an essential health or community services agreement has the effect of depriving the employees in the bargaining unit of a meaningful right to strike or depriving the employer of a meaningful right to lockout the employees, the Board may

- (a) amend the essential health or community services agreement;
- (b) direct the parties to continue negotiations for a collective agreement;

(c) direct the parties to confer with a conciliation officer or mediation officer who shall endeavour to conclude a collective agreement;

(d) order that all matters remaining in dispute between the parties with respect to concluding a collective agreement be referred to an arbitration board for final and binding interest arbitration; or

(e) give any other directions the Board considers appropriate.

(6) The Board shall not order arbitration pursuant to clause (5)(d) before the day on which it would be lawful for the employer to unilaterally increase or decrease rates of wages or alter any other term or condition of employment of the employees pursuant to clause 35(b) of the *Trade Union Act*.

(7) Where, while an application is pending pursuant to this Section, the parties agree on all matters that remain in dispute between them and make a collective agreement, the Board shall dismiss the application without deciding it.

16 (1) This Section applies if the Board makes an order with respect to a bargaining unit for final and binding interest arbitration pursuant to clause 15(5)(d).

(2) While such an order is in effect, none of the employees in the bargaining unit shall strike and the employer shall not lockout any of the employees in the bargaining unit.

(3) Where the Board makes the order while any employees in the bargaining unit are on strike, those employees shall cease the strike.

(4) Where the Board makes the order while the employer is locking out any employees in the bargaining unit, the employer shall cease locking out those employees.

(5) Unless the employer and the bargaining agent agree otherwise, upon the making of the order, the rates of wages and all other terms and conditions of employment that were in effect immediately before it became lawful for the employer to unilaterally alter those rates, terms and conditions of employment pursuant to clause 35(b) of the *Trade Union Act* apply with respect to all employees in the bargaining unit until a collective agreement is in force.

17 (1) Where the Board makes an order with respect to a bargaining unit for final and binding interest arbitration pursuant to clause 15(5)(d), the arbitration shall proceed by way of an arbitration board composed of three persons, unless the parties to the arbitration agree to submit to an arbitration board composed of one person.

(2) The Minister shall select the method of arbitration and shall advise the arbitration board of the method.

(3) The method of arbitration must be mediation-arbitration unless the Minister is of the opinion that another method, including arbitration or final offer selection, is more appropriate.

18 (1) Subject to Section 19, the employer and the bargaining agent shall each, within seven days after the Board makes an order pursuant to clause 15(5)(d), give to the other party the

name of a person to act as its appointed member on the arbitration board and the two members so selected shall, within seven days after the day on which the second of them is appointed, appoint a third person to be a member and the chair of the board.

(2) Where a party to the arbitration fails to appoint a member to the arbitration board, the Minister, upon receiving the application of the other party, shall, within seven days, appoint a person to act on the board as the appointed member of the party who has failed to appoint a member.

(3) Where the two members appointed to the arbitration board fail or neglect to make the appointment of the third member and chair as required by subsection (1), either party may apply to the Minister for the appointment of a person to act as the third member and chair of the board.

(4) Upon receiving an application pursuant to subsection (3), the Minister shall, within seven days, appoint a person as the third member and chair of the arbitration board.

(5) Where a member appointed to an arbitration board pursuant to this Section ceases to act by reason of resignation, death or otherwise before the arbitration board has completed its work, the party for whom the person was the appointed member shall, within 10 days of the member ceasing to act, appoint a replacement and notify in writing the other party of the name and address of the replacement, and where the party fails to so appoint a replacement, the Minister shall appoint as a replacement such person as the Minister considers suitable and, where the parties to the arbitration agree, the arbitration board shall continue to function as if the replacement member were a member of the arbitration board from the beginning.

(6) Where the chair of an arbitration board is unable to enter on or to carry on his or her duties so as to enable the arbitration board to render a decision within a reasonable time after its establishment, the Minister shall appoint a person to act as chair of the arbitration board in his or her place and the arbitration shall begin *de novo*.

(7) No person is eligible to be appointed as a member of the arbitration board or shall act as a member of the arbitration board if the person

(a) has a direct pecuniary interest in a matter before the arbitration board; or

(b) is acting or has, within a period of six months immediately before the date on which the dispute is submitted to the arbitration board, acted as a lawyer or agent of any of the parties to the arbitration.

(8) The employer shall pay the fees and expenses of the member appointed to the arbitration board by or on behalf of the employer, the bargaining agent shall pay the fees and expenses of the member appointed to the board by or on behalf of the bargaining unit and the employer and the bargaining agent shall each pay one half of the fees and expenses of the chair of the board.

19 (1) Where an employer and a bargaining agent agree that an arbitration board is to be composed of one person, they shall, within 10 days after the Board makes an order pursuant to clause 15(5)(d), attempt to agree on a person satisfactory to both to be the board and, where agreement is reached, that person is appointed as the board.

(2) Where the employer and the bargaining agent are unable to agree on a person to be the arbitration board, subsections 18(3) and (4) apply *mutatis mutandis*.

(3) Subsections 18(6) and (7) apply to an arbitration board that is to be composed of one person.

(4) The employer and the bargaining agent shall each pay one half of the fees and expenses of an arbitration board appointed pursuant to this Section.

20 (1) An arbitration board shall inquire into and decide on the matters that are in dispute and any other matters that appear to the board to be necessary to be decided in order to conclude a collective agreement between the parties, but in so doing the board shall not decide any matters that come within the jurisdiction of the Board.

(2) In making a decision, the arbitration board shall consider

(a) the terms and conditions of employment negotiated through collective bargaining for employees performing the same or similar functions in the same or similar circumstances as the employees in the bargaining unit;

(b) the employer's ability to pay, in light of the fiscal situation of the Government of the Province;

(c) the employer's ability to attract and retain qualified employees; and

(d) such other matters as the board considers fair and reasonable in the circumstances.

(3) Nothing in subsection (2) limits the powers of the arbitration board.

(4) The arbitration board remains seized of and may deal with all matters in dispute between the parties until a collective agreement is in effect between them.

(5) The arbitration board shall determine the procedure for the arbitration but shall permit the parties to present evidence and make submissions.

(6) The arbitration board shall begin the arbitration proceedings within 30 days after being appointed.

(7) The arbitration board shall make a decision

(a) within 90 days after being appointed; or

(b) where the parties agree to an extended time before or after those 90 days have passed, within that time.

(8) The decision of a majority of the members of the arbitration board is the decision of the board.

21 (1) Sections 43B and 43C of the *Trade Union Act* apply *mutatis mutandis* to an arbitration board and the proceedings and decisions of the board pursuant to this Act.

Act. (2) The *Arbitration Act* does not apply to arbitration proceedings pursuant to this

22 (1) Where, during a proceeding before an arbitration board, the parties agree on all matters that were in dispute and they put that agreement in writing and execute it,

- (a) that executed agreement constitutes a collective agreement; and
- (b) the arbitration proceeding is terminated.

(2) Where, during a proceeding before an arbitration board, the parties agree on some but not all of the matters in dispute, they shall notify the board of the items agreed upon and the board shall decide only upon the remaining matters and any other matters that appear to the board to be necessary to conclude a collective agreement.

(3) The date of the arbitration board's decision pursuant to subsection (2) is deemed to be the day the collective agreement is entered into.

PROHIBITIONS, OFFENCES AND PENALTIES

23 While there is no essential health or community services agreement in effect between an employer and the bargaining agent for the employees of that employer,

- (a) the employer shall not authorize, declare or cause a lockout of any of the employees represented by the bargaining agent;
- (b) the bargaining agent shall not authorize, declare or cause a strike by any of the employees represented by the bargaining agent against the employer; and
- (c) no employee represented by the bargaining agent shall participate in a strike against the employer.

24 While an essential health or community services agreement is in effect,

- (a) the employer shall not authorize, declare or cause a lockout of any employee who is an essential health or community services employee and required to work under the agreement;
- (b) the bargaining agent shall not authorize, declare or cause a strike of any employee who is an essential health or community services employee and required to work under the agreement; and
- (c) no employee who is an essential health or community employee and required to work under the agreement shall participate in a strike against the employer.

25 No person or organization shall

- (a) do anything to prevent or impede an employee's compliance with Section 23 or 24 or aid or abet an employee to not comply with Section 23 or 24; or
- (b) fail to do anything for the purpose of preventing or impeding an employee's compliance with Section 23 or 24 or for the purpose of aiding or abetting an employee to not comply with Section 23 or 24.

26 (1) Any lockout or strike between an employer and a bargaining agent that is taking place at the time this Act comes into force must cease until such time as the employer and bargaining agent have established an essential health or community services agreement.

(2) Where, on the coming into force of this Act, a conciliation officer has filed a report pursuant to subsection 38(1) of the *Trade Union Act* and the 14-day period provided for in subsection 47(1) of the *Trade Union Act* has begun, no further time of that period elapses until such time as the parties have entered into an essential health or community services agreement.

(3) Notwithstanding subsection 47(1) of the *Trade Union Act*, where a conciliation officer files a report pursuant to subsection 38(1) of the *Trade Union Act*, the 14-day period provided for in subsection 47(1) of the *Trade Union Act* may not begin until such time as the parties have entered into an essential health or community services agreement.

27 A person who contravenes this Act is guilty of an offence and is liable on summary conviction,

(a) in the case of an offence committed by an employer or a bargaining agent, or by a person acting on behalf of an employer or a bargaining agent, to a fine of not more than \$100,000 and, in the case of a continuing offence, to a further fine of \$10,000 for each day on which the offence continues; and

(b) in the case of an offence committed by any person other than one described in clause (a), to a fine of not more than \$1,000 and, in the case of a continuing offence, to a further fine of \$200 for each day on which the offence continues.

GENERAL

28 The provisions of the *Labour Board Act* and the *Trade Union Act* respecting the composition, powers, duties and decisions of the Board apply *mutatis mutandis* to the resolution of a complaint made pursuant to subsection 8(1), the settlement of the provisions of an essential health or community services agreement pursuant to Section 9, the decision of the Board pursuant to subsection 11(3) and the settlement of a dispute pursuant to Section 14 or 15.

29 (1) Any person or organization affected by any decision or order of the Board made pursuant to this Act may file a copy of that decision or order, certified by the Board, excluding the reasons, in the Supreme Court of Nova Scotia.

(2) On the filing of a certified copy of a decision or order of the Board in the Supreme Court of Nova Scotia pursuant to subsection (1), the decision or order must be registered in the Court and, upon registration, has the same force and effect, and all proceedings may be taken thereon, as if the decision or order were a judgment obtained in the Court.

30 (1) The Governor in Council may make regulations

(a) determining factors that are relevant or not relevant for the purpose of subsection 15(2);

(b) respecting the establishment and operation of an arbitration board referred to in this Act;

(c) defining any word or expression used but not defined in this Act;

(d) further defining any word or expression defined in this Act;

(e) respecting any matter the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

31 (1) The *Essential Home-support Services (2014) Act* continues to apply, and this Act does not apply, to an employer, an employee or a bargaining agent, as defined in that Act, until a collective agreement is entered into by the employer and the bargaining agent for the employees.

(2) An essential home-support services agreement entered into by an employer and a bargaining agent pursuant to the *Essential Home-support Services (2014) Act* is an essential health or community services agreement pursuant to this Act.

(3) For greater certainty, where but for subsection (1) this Act would apply to an employer, an employee or a bargaining agent, as defined in the *Essential Home-support Services (2014) Act*, this Act applies on and after a collective agreement being entered into by the employer and the bargaining agent for the employees.
