



BILL NO. 128

Government Bill

*2nd Session, 61st General Assembly
Nova Scotia
59 Elizabeth II, 2010*

**An Act to Amend Chapter 475
of the Revised Statutes, 1989,
the Trade Union Act,
Respecting Powers and Duties
of Arbitrators and Arbitration Boards**

CHAPTER 76
ACTS OF 2010

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 10, 2010**

The Honourable Marilyn More
Minister of Labour and Workforce Development

*Halifax, Nova Scotia
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**An Act to Amend Chapter 475
of the Revised Statutes, 1989,
the Trade Union Act,
Respecting Powers and Duties
of Arbitrators and Arbitration Boards**

Be it enacted by the Governor and Assembly as follows:

1 Subsection 42(1) of Chapter 475 of the Revised Statutes, 1989, the *Trade Union Act*, is amended by

- (a) adding “and binding” immediately after “final” in the second line; and**
- (b) adding “, including any question as to whether a matter is arbitrable” immediately after “violation” in the last two lines.**

2 Section 43 of Chapter 475 of the Revised Statutes, 1989, the *Trade Union Act*, is repealed and the following Sections substituted:

43 (1) For greater certainty, Sections 43A to 43I, apply to an arbitration under Section 46A.

(2) Sections 42 and 43A to 43I apply *mutatis mutandis* to the adjudication of a rights dispute under the *Civil Service Collective Bargaining Act*, the *Highway Workers’ Collective Bargaining Act* and Schedule A to the *Corrections Act*.

43A In Sections 43B to 43I, “arbitrator” and “arbitration board” mean an arbitrator or arbitration board, as the case may be, appointed pursuant to this Act or a collective agreement.

43B (1) An arbitrator or the chair of an arbitration board may

- (a) require any party to furnish particulars before or during a hearing;
- (b) at any stage of a proceeding, require any party to or person bound by the collective agreement to produce documents or things that may be relevant to the matter before the arbitrator or the arbitration board, after providing the parties the opportunity to make representations;
- (c) fix dates for the commencement and continuation of hearings;
- (d) summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath or affirmation and to produce such documents and things as the arbitrator or the arbitration board deems requisite to the full investigation and consideration of a matter, whether admissible in a court of law or not; and
- (e) administer oaths and affirmations.

(2) An arbitrator or an arbitration board may

(a) receive and accept such oral or written evidence and information on oath, by affidavit, or otherwise as the arbitrator or arbitration board deems fit, whether the evidence or information is admissible in a court of law or not;

(b) determine the arbitrator's or arbitration board's procedure and consider submissions provided in such form or by such method as the arbitrator or arbitration board considers appropriate;

(c) determine all questions of fact or law that arise out of a dispute;

(d) have regard to the real substance of a matter in dispute between the parties;

(e) at any reasonable time enter any premises, other than a private dwelling, where work is being done or has been done by the employees or in which the employer carries on business or where anything is taking place or has taken place concerning any of the differences submitted to the arbitrator or arbitration board and inspect or view any work, material, machinery, appliance or article at the premises;

(f) authorize any person to do anything that the arbitrator or arbitration board may do under clause (e) and to report to the arbitrator or the arbitration board about it;

(g) make such orders or give such directions as the arbitrator or arbitration board considers appropriate to expedite proceedings or to prevent abuse of the arbitration process;

(h) treat as part of the collective agreement the provisions of any statute of the Province governing relations between the parties to the collective agreement; and

(i) correct in any award any clerical mistake, error or omission.

(3) An arbitrator or arbitration board, and each member of an arbitration board, has, without limiting the powers set out in this Section, the powers, privileges and immunities of a commissioner under the *Public Inquiries Act*.

43C (1) An arbitrator or an arbitration board may mediate the differences between the parties at any stage in the proceedings with the consent of the parties.

(2) Where the mediation is not successful, the arbitrator or arbitration board retains the power to determine the difference by arbitration.

43D An arbitrator or arbitration board may extend the time for the taking of any step in the grievance or arbitration procedure under a collective agreement notwithstanding the expiration of the time if the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the opposite party will not be substantially prejudiced by the extension.

43E An arbitrator or an arbitration board may issue an award implementing the settlement of a grievance.

43F (1) An arbitrator or arbitration board may give an oral decision and, in that case, the arbitrator or arbitration board shall

(a) give the decision promptly after hearings on the matter are concluded;

(b) give a written decision, without reasons, promptly upon the request of either party; and

(c) give written reasons for the decision within a reasonable period of time upon the request of either party.

(2) Where an arbitrator or an arbitration board renders a decision in respect of a dispute or difference, the arbitrator or the chair of the arbitration board shall transmit a copy of the written decision to the Minister and to the parties at the same time.

43G Where an arbitrator or arbitration board determines that an employer has imposed a penalty on an employee, the arbitrator or arbitration board may substitute any other penalty that to the arbitrator or arbitration board seems just and reasonable in the circumstances.

43H (1) Any person or organization affected by any order or decision of an arbitrator or arbitration board may, after fourteen days from the date on which the order or decision is made or given, or from the date provided in it for compliance, whichever is the later date, file in the Supreme Court of Nova Scotia a copy of the order or decision.

(2) On filing an order or decision of an arbitrator or arbitration board in the Supreme Court of Nova Scotia under subsection (1), the order or decision shall be registered in the Court and, when registered, has the same force and effect, and all proceedings may be taken thereon, as if the order or decision were a judgment obtained in the Court.

43I (1) The employer or the employers' organization and the trade union that are parties to the arbitration shall each pay one half of the fees of, and the expenses incurred by, an arbitrator.

(2) Where the arbitration is conducted by an arbitration board, the employer or the employers' organization shall pay the fees and expenses of the member appointed to the arbitration board by the employer or the employers' organization, the trade union shall pay the fees and expenses of the member appointed to the arbitration board by the trade union and the employer or employers' organization and the trade union shall each pay one half of the fees of, and the expenses incurred by, the chair of the arbitration board.

3 Section 2 applies only to matters referred to arbitration or adjudication after that Section comes into force and, for greater certainty, Section 43 of Chapter 475 as it read before Section 2 comes into force continues to apply to matters referred to arbitration or adjudication before Section 2 comes into force notwithstanding its repeal.

4 This Act comes into force on such a day as the Governor in Council orders and declares by proclamation.