



BILL NO. 148

Government Bill

*2nd Session, 62nd General Assembly
Nova Scotia
64 Elizabeth II, 2015*

An Act Respecting the Sustainability of Public Services

CHAPTER 34
ACTS OF 2015

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 18, 2015**

The Honourable Randy Delorey
Minister of Finance and Treasury Board

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

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An Act Respecting the Sustainability of Public Services

Be it enacted by the Governor and Assembly as follows:

- 1 This Act may be cited as the *Public Services Sustainability (2015) Act*.
- 2 The purpose of this Act is
 - (a) to create a framework for compensation plans for public-sector employees that
 - (i) is consistent with the duty of the Government of the Province to pursue its policy objectives in accordance with the principles of responsible fiscal management prescribed under the *Finance Act*, and
 - (ii) protects the sustainability of public services,by placing fiscal limits on increases to the compensation rates and compensation ranges payable by public-sector employers that are in conformity with the consolidated fiscal plan for the Province;
 - (b) to authorize a portion of cost savings identified through collective bargaining to fund increases in compensation rates, compensation ranges or other employee benefits established by a collective agreement;
 - (c) to limit the scope of arbitral awards to comply with the principles of responsible fiscal management prescribed under the *Finance Act*; and
 - (d) to enable and encourage meaningful collective bargaining processes.
- 3 In this Act,
 - (a) “bargaining agent” means a union that acts on behalf of employees
 - (i) in collective bargaining,
 - (ii) as a party to a recognition agreement with their employer, or
 - (iii) as a party to a collective agreement with their employer;
 - (b) “Board” means the Public Services Sustainability Board established by Section 7;
 - (c) “collective agreement” means
 - (i) a collective agreement as defined in the *Civil Service Collective Bargaining Act*,
 - (ii) a collective agreement as defined in the *Highway Workers Collective Bargaining Act*,
 - (iii) a professional agreement, as defined in the *Teachers’ Collective Bargaining Act*, between the Minister of Education and the Nova Scotia Teachers’ Union,
 - (iv) a collective agreement as defined in the *Trade Union Act*,

(v) an agreement between Her Majesty in right of the Province and the Nova Scotia Crown Attorneys' Association for defining, determining or providing for working conditions and terms of compensation for crown attorneys,

(vi) any other agreement between a group of two or more public-sector employees established for collective bargaining and a public-sector employer for defining, determining or providing for working conditions and terms of compensation, or

(vii) an award, decision or order that, by operation of law or agreement, governs working conditions and terms of compensation for a group of two or more public-sector employees,

but does not include an agreement between the Professional Association of Residents in the Maritime Provinces and a public-sector employer for defining, determining or providing for working conditions and terms of compensation for postgraduate medical doctors who have been accepted for residency training by Dalhousie University and are involved in a university-operated educational program;

(d) "collective bargaining" means negotiating with a view to the conclusion of a collective agreement or the renewal or revision thereof;

(e) "compensation" means salary, wages, stipends, honoraria, bonuses, fees and commissions;

(f) "compensation plan" means the provisions, however established, for the determination and administration of a public-sector employee's compensation;

(g) "compensation range" means a range of compensation rates established under a compensation plan;

(h) "compensation rate" means a rate of remuneration, including cost-of-living adjustments, or, where no such rate exists, any fixed or ascertainable amount of remuneration established under a compensation plan;

(i) "effective date" means

(i) in respect of a compensation plan set out in a collective agreement and in respect of every public-sector employee to whom that compensation plan applies,

(A) the date the collective agreement expired if, before the coming into force of this Act, the collective agreement expired and a new collective agreement has not been concluded, or

(B) the date the collective agreement expires if the collective agreement expires on or after the coming into force of this Act, or

(ii) in respect of a compensation plan other than one set out in a collective agreement and in respect of every public-sector employee to whom that compensation plan applies, the first date after March 31, 2015, on which public-sector employees to whom the compensation plan is applicable are entitled to receive an economic increase to their respective compensation rates or, where no such date exists, the date that this Act comes into force;

(j) "employee" means a person who performs duties and functions that entitle that person to compensation on a regular basis but does not include a consultant or an independent contractor;

(k) “employer” means the employer of an employee or the person, association or entity in the position of the employer of an employee, and includes a person, association or entity providing compensation to an employee;

(l) “minimum wage” means the minimum wage established under the *Labour Standards Code*;

(m) “public-sector bargaining agent” means a bargaining agent that represents a group of two or more public-sector employees;

(n) “public-sector employee” means

(i) an officer or employee of

(A) Her Majesty in right of the Province, or

(B) an organization that forms a part of the Government Reporting Entity as defined in the *Finance Act*,

(ii) a person appointed under an enactment of the Province as a public officer and including, without limiting the generality of the foregoing, a person so appointed as a member or chair of an agency, board, commission or tribunal,

(iii) a person employed by a member of the Executive Council or the member’s deputy,

(iv) an employee of an employer that provides health or community services within the meaning of clause 3(1)(a) of the *Essential Health and Community Services Act*, regardless of whether the employee is represented by a bargaining agent,

(v) an employee of Nova Scotia Hearing and Speech Centres,

(vi) the Chief Executive Officer or an employee of the Workers’ Compensation Board of Nova Scotia,

(vii) a member of the Nova Scotia Workers’ Compensation Appeals Tribunal,

(viii) a person employed under a personal services contract between the person and

(A) Her Majesty in right of the Province,

(B) an organization that forms a part of the Government Reporting Entity as defined in the *Finance Act*, or

(C) any other public-sector employer, or

(ix) a person designated by the regulations as a public-sector employee,

but does not include

(x) an employee of a municipality as defined in the *Municipal Government Act*,

(xi) a postgraduate medical doctor who has been accepted for residency training by Dalhousie University and is involved in a university-operated educational program,

(xii) a judge of the Provincial Court of Nova Scotia,

(xiii) a judge of the Family Court of Nova Scotia,

(xiv) a presiding justice of the peace as defined in the *Justices of the Peace Act*,
or

(xv) a person prescribed by the regulations as not being a public-sector employee;

(o) “public-sector employer” means the employer of a public-sector employee;

(p) “school board” means a school board as defined in the *Education Act*;

(q) “service award” means an award or benefit payable to

(i) a person, other than a teacher, who retires or resigns from a public-sector employer and who is eligible for or in receipt of a pension,

(ii) a teacher

(A) who retires or resigns from a school board and who is eligible for or in receipt of a pension under the pension plan continued under the *Teachers’ Pension Act*, or

(B) who otherwise ceases to be employed by a school board and satisfies any criteria for receipt of the award or benefit prescribed by the professional agreement, as defined in the *Teachers’ Collective Bargaining Act*, applicable to the teacher, or

(iii) the spouse, dependent children or estate of a teacher who dies while in the service of a school board,

and, for greater certainty, includes a public service award within the meaning of Article 32 of the Civil Service Master Agreement entered into on September 3, 2013;

(r) “teacher” means a teacher as defined in the *Teachers’ Collective Bargaining Act*;

(s) “union” means an organization of employees, formed for purposes that include regulating relations between employers and employees, that has a constitution and rules or by-laws setting forth its objects and purposes and defining the conditions under which persons may be admitted as members thereof and continued in membership.

4 This Act applies to public-sector employees, public-sector employers and the compensation plans applicable to public-sector employees.

5 In the case of a conflict between this Act or the regulations and any other enactment 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.

6 This Act is binding on Her Majesty in right of the Province.

PUBLIC SERVICES SUSTAINABILITY BOARD

7 (1) There is hereby established a Public Services Sustainability Board composed of such persons as may be appointed in accordance with the regulations.

(2) The Board may exercise any power conferred upon it by the regulations.

(3) The Board shall perform any duties imposed upon it by the regulations.

8 (1) The Board may, upon application by an interested party, decide any question that arises under this Act, including any question that arises as to

- (a) whether this Act applies to a particular person, employer or compensation plan;
- (b) whether a compensation plan complies with this Act;
- (c) when a compensation plan came into effect or expired;
- (d) who is the public-sector employer for a particular compensation plan;
- (e) whether an increase in a person's compensation rate is in recognition of the person's
 - (i) length of time in employment or in office,
 - (ii) meritorious or satisfactory work performance,
 - (iii) completion of a specified work experience,
 - (iv) successful completion of a program or course of professional or technical education, or
 - (v) *bona fide* promotion to a different or more responsible position; or
- (f) any matter prescribed by the regulations.

(2) Subject to subsections (3) and (4), the Board shall decide any question referred to it and the decision or order of the Board is final and cannot be questioned or reviewed by any court or tribunal.

(3) The Board may, where it considers it advisable to do so and subject to the regulations, reconsider any decision or order made by it under this Act and vary or revoke any decision or order made by it under this Act.

(4) The Board does not have jurisdiction to

- (a) determine the constitutional validity or constitutional applicability of any enactment, including this Act, that is brought into question; or
- (b) determine whether a right conferred, recognized, affirmed or otherwise guaranteed by the Constitution of Canada has been infringed.

9 (1) The Board may by order authorize changes to a compensation plan upon application by

- (a) the public-sector employer and the public-sector bargaining agent if the compensation plan is contained in a collective agreement; or
- (b) the public-sector employer if the compensation plan is not contained in a collective agreement,

if

(c) the net effect of the proposed changes would not increase the total cost of all compensation payable in respect of the persons to whom the compensation plan applies;

(d) the proposed compensation rates do not exceed what is permitted by this Act; and

(e) the proposed changes are not contrary to the intent and purpose of this Act.

(2) Where the Board determines that

(a) this Act is not being complied with;

(b) a compensation plan does not comply with this Act; or

(c) a public-sector employer or other person is implementing, has implemented or is likely to implement an increase in a compensation rate or compensation range that does not comply with this Act,

the Board may make an order

(d) requiring compliance with this Act; or

(e) prohibiting the public-sector employer or other person from implementing the increase in a compensation rate or compensation range that does not comply with this Act.

10 An order of the Board is a public document and must be made available for inspection at the office of the Board during regular business hours.

COMPENSATION PLANS

11 (1) Every compensation plan in effect immediately before the coming into force of this Act is continued in effect until and including the fourth anniversary of the effective date.

(2) Where, before the coming into force of this Act,

(a) a compensation plan has expired; and

(b) a new compensation plan has not been established,

the expired compensation plan is continued in effect until and including the fourth anniversary of the effective date, effective from when it expired but for this subsection.

(3) Nothing in this Section extends the period of employment for any person.

12 (1) Notwithstanding Section 11 and regardless of whether a compensation plan was established before, on or after the coming into force of this Act, where

(a) a union was certified or recognized under an Act of the Legislature before, on or after the coming into force of this Act as the bargaining agent for public-sector employees who, immediately before the certification or recognition, did not have a certified or recognized bargaining agent; and

(b) a first collective agreement was not concluded before the coming into force of this Act,

the public-sector employer and the public-sector bargaining agent may conclude a first collective agreement.

(2) For the purpose of Sections 13 to 17,

(a) the initial compensation rate applicable to a person under the compensation plan set out in a first collective agreement concluded under subsection (1) is deemed to be the compensation rate applicable to the person immediately before the coming into force of this Act;

(b) the initial compensation range applicable to a person under the compensation plan set out in a first collective agreement concluded under subsection (1) is deemed to be the compensation range applicable to the person immediately before the coming into force of this Act; and

(c) the effective date in respect of a compensation plan set out in a first collective agreement concluded under subsection (1) and in respect of every public-sector employee to whom that compensation plan applies is the date this Act comes into force.

13 (1) Subject to Sections 15 to 17, the compensation rate applicable to a person immediately before the effective date may not be increased by a public-sector employer before the second anniversary of the effective date.

(2) Subject to Sections 15 to 17, the maximum amount within a compensation range, if any, that is applicable to a person immediately before the effective date, and any steps within the compensation range, may not be increased by a public-sector employer before the second anniversary of the effective date.

14 (1) Subject to Sections 15 to 17, the compensation rate applicable to a person immediately before the effective date may be increased by a public-sector employer by no more than one per cent on the second anniversary of the effective date and may be further increased by no more than one and one-half per cent on the third anniversary of the effective date and by no more than one half of one per cent on the day immediately before the fourth anniversary of the effective date, but may not otherwise be increased before the fourth anniversary of the effective date.

(2) Subject to Sections 15 to 17, the maximum amount within a compensation range, if any, applicable to a person immediately before the effective date, and any steps within the compensation range, may be increased by a public-sector employer by no more than one per cent on the second anniversary of the effective date and may be further increased by no more than one and one-half per cent on the third anniversary of the effective date and by no more than one half of one per cent on the day immediately before the fourth anniversary of the effective date, but may not otherwise be increased before the fourth anniversary of the effective date.

15 (1) Sections 13 and 14 do not apply to a compensation rate or compensation range provided for in a compensation plan established by a collective agreement if the collective agreement is prescribed by the regulations or if

(a) neither the compensation plan nor any part of it was the subject of an arbitration award issued by an arbitrator or arbitration board established under any Act of the Legislature or in accordance with a collective agreement; and

(b) the compensation plan is approved by Treasury and Policy Board before the collective agreement is concluded.

(2) Treasury and Policy Board may not approve a compensation plan under clause (1)(b) unless it is satisfied that the entering into of the collective agreement by a public-sector employer would not impose an obligation on the public-sector employer that is inconsistent with the duty of Her Majesty in right of the Province under subsection 5(1) of the *Finance Act* to pursue Her Majesty's policy objectives in accordance with the principles of responsible fiscal management.

16 (1) Where a compensation rate falls within a compensation range applicable to a person's position or office, the compensation rate for the person may be increased within that compensation range in recognition of the person's

(a) length of time in employment or in office;

(b) meritorious or satisfactory work performance;

(c) completion of a specified work experience; or

(d) successful completion of a program or course of professional or technical education,

if the increase is authorized under the compensation plan as it existed immediately before the effective date.

(2) Where the compensation rate applicable to a person falls below the minimum wage, the compensation rate is increased to match the minimum wage.

(3) Nothing in Sections 13 and 14 prevents an increase in compensation rates or compensation ranges in excess of that permitted by this Act if the increase occurs as a result of the *bona fide* promotion of a person to a different or more responsible position.

17 (1) A collective agreement entered into between a public-sector employer and a public-sector bargaining agent may contain provisions respecting the application of negotiated cost savings to compensation rates, compensation ranges or other employee benefits, which cost savings may include

(a) productivity improvements;

(b) expense reductions;

(c) cost avoidance; and

(d) any other innovation that may result in cost savings,

and may provide that a portion of any such savings realized, subject to the approval of the Treasury and Policy Board, fund increases in compensation rates, compensation ranges or other employee benefits established under the collective agreement.

(2) For greater certainty, an increase in compensation rates, compensation ranges or other employee benefits approved by Treasury and Policy Board under subsection (1) is not a contravention of Section 13 or 14.

18 (1) An arbitrator or arbitration board, appointed or established under any Act of the Legislature or in accordance with a collective agreement for the purpose of arbitrating a dispute arising between a public-sector employer and a public-sector bargaining agent as to the content of a collective agreement, shall not make an award resulting in a compensation plan that provides for an increase in a compensation rate or compensation range that contravenes Section 13 or 14.

(2) Where an arbitrator or arbitration board contravenes subsection (1), the arbitration award is of no force and effect to the extent that it provides for an increase in a compensation rate or compensation range that contravenes Section 13 or 14.

(3) Notwithstanding any Act of the Legislature, a public-sector employer is not bound to implement any award of an arbitrator or arbitration board to the extent that it provides for an increase in a compensation rate or compensation range that contravenes Section 13 or 14.

19 A compensation plan is of no force or effect to the extent that it provides for an increase in a compensation rate or compensation range that contravenes Section 13 or 14.

SERVICE AWARDS AND ACCRUED SICK-LEAVE PAYMENTS

20 (1) When calculating the amount of any service award to which a person is entitled under any enactment, collective agreement, arbitral or other award or decision, agreement or arrangement of any kind, the calculation must be made using the compensation rate of, and the amount of service accrued by, the person immediately before April 1, 2015.

(2) Subsection (1) does not apply to a service award to which a person is entitled under the *Public Service Award Regulations* made under the *Provincial Court Act*.

21 When calculating the amount of any payment in respect of a public-sector employee's accrued sick leave, other than a payment made in respect of absence by the public-sector employee from employment by reason of illness, injury or other absence authorized by any enactment, collective agreement, arbitral or other award or decision, agreement or arrangement of any kind, to which a person is entitled under the enactment, collective agreement, arbitral or other award or decision, agreement or arrangement of any kind, the calculation must be made using the compensation rate of, and the amount of service and sick leave accrued by, the person immediately before April 1, 2015.

22 (1) Notwithstanding any enactment, collective agreement, arbitral or other award or decision, agreement or arrangement of any kind but subject to subsection (2), no person is entitled to receive a service award or payment in respect of a public-sector employee's accrued sick leave, other than a payment made in respect of absence by the public-sector employee from employment by reason of illness, injury or other absence authorized by the enactment, collective agreement, arbitral or other award or decision, agreement or arrangement of any kind, in connection with employment by a public-sector employer commencing on or after April 1, 2015.

(2) Subsection (1) does not apply to a person who is entitled to receive a service award under the *Public Service Award Regulations* made under the *Provincial Court Act*.

23 Sections 20 and 21 do not apply to the calculation of a service award, or of a payment in respect of a person's accrued sick leave, other than a payment made in respect of absence by the public-sector employee from employment by reason of illness, injury or other absence authorized by any enactment, collective agreement, arbitral or other award or decision, agreement or arrangement of any kind, to which a person prescribed by the regulations is entitled.

SUSPENSION OF ARBITRATIONS RESPECTING FEES AND PAYMENTS FOR INSURED MEDICAL SERVICES

24 The operation of subsection 13(3) of the *Health Services and Insurance Act* and subsection 17(1) of the *Insured Health Services Act* is suspended and those provisions are of no force or effect from April 1, 2015, to March 31, 2019, inclusive.

25 Article 5 of the Physician Services Master Agreement entered into between Her Majesty in right of the Province and The Medical Society of Nova Scotia (now Doctors Nova Scotia) on October 29, 2008, is suspended and is of no force and effect from April 1, 2015, to March 31, 2019, inclusive.

26 Where a plan or agreement prescribing a system of payment for insured medical services includes a provision that authorizes a dispute respecting the plan or agreement to be submitted to arbitration, the regulations may suspend the operation of the provision for such period, not exceeding four years, as the regulations may specify.

GENERAL

27 No action lies against Her Majesty in right of the Province or any public-sector employer in respect of

- (a) the continuation under Section 11 of the compensation plan applicable to a person;
- (b) the alteration under Section 18 or 19 of the compensation rate or compensation range applicable to a person;
- (c) the calculation under Section 20 of a person's entitlement to a service award;
- (d) the calculation under Section 21 of a person's entitlement to receive a payment in respect of the person's accrued sick leave;
- (e) the entitlement under Section 22 of a person to receive a service award or a payment in respect of the person's accrued sick leave;
- (f) the suspension under Section 24 of the operation of subsection 13(3) of the *Health Services and Insurance Act* and subsection 17(1) of the *Insured Health Services Act*;
- (g) the suspension under Section 25 of the effect of Article 5 of the Physician Services Master Agreement entered into between Her Majesty in right of the Province and The Medical Society of Nova Scotia (now Doctors Nova Scotia) on October 29, 2008; or

(h) the suspension under the regulations of a provision of a plan or agreement prescribing a system of payment for insured medical services that authorizes a dispute respecting the plan or agreement to be submitted to arbitration.

28 No arbitrator or arbitration board established under any Act of the Legislature or in accordance with a collective agreement or an agreement respecting a system of payment for insured medical services and no board or tribunal, including the Labour Board established under the *Labour Board Act*, has jurisdiction to

(a) determine the constitutional validity or constitutional applicability of this Act or the regulations; or

(b) determine whether a right conferred, recognized, affirmed or otherwise guaranteed by the Constitution of Canada has been infringed by this Act or the regulations.

29 (1) The Governor in Council may make regulations

(a) designating a person as a public-sector employee;

(b) prescribing a person as not being a public-sector employee;

(c) respecting the appointment of persons to the Board;

(d) conferring powers and imposing duties upon the Board and respecting the exercise of such powers and the performance of such duties;

(e) respecting the management and administration of the Board;

(f) conferring powers, privileges and immunities on the Board;

(g) respecting procedures of the Board, including procedures for giving notices, making demands and issuing instructions and directions;

(h) providing for the filing of orders of the Board with the Supreme Court of Nova Scotia and making an order so filed enforceable in the same manner as a judgment of that Court;

(i) prescribing matters in relation to which the Board is required to, upon application, answer any question that arises;

(j) respecting the reconsideration by the Board of decisions and orders of the Board;

(k) prescribing, for the purpose of subsection 15(1), collective agreements that establish a compensation plan in respect of which Sections 13 and 14 do not apply to any compensation rate or a compensation range provided for under the compensation plan;

(l) prescribing a person in respect of whom Sections 20 and 21 do not apply to the calculation of a service award, or of a payment in respect of the person's accrued sick leave, to which the person is entitled;

(m) suspending the operation of a provision of a plan or agreement prescribing a system of payment for insured medical services that authorizes a dispute respecting the plan or agreement to be submitted to arbitration and specifying the

period, not exceeding four years, during which the operation of the provision is suspended;

(n) respecting any matter that could be but is not the subject of an agreement made under Section 13A of the *Health Services and Insurance Act* or subsection 15(1) or 16(1) of the *Insured Health Services Act*;

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

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

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

(2) A regulation made under subsection (1) may, if it so provides, be made retroactive in its operation to the date specified in the regulation.

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

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