**LAW AMENDMENTS COMMITTEE**

**Red Room, Province House**

**Tuesday December 10, 2013**



**Bill #14 - Justices of the Peace Act (amended) and Provincial Court Act (amended)**
*Deferred from previous meeting*

**Bill #15 - February Holiday Act**
*Deferred from previous meeting*

**Bill #20 - House of Assembly Act (amended)**
*No representation*

**Bill #12 - Occupational Health and Safety Act (amended)**

2:30 p.m.

1. Ian Johnson, Servicing Co-ordinator/Policy Analyst
   Paul Cormier, Occupational Health & Safety Officer
   *NSGEU*

**Bill #19 - Trade Union Act (amended)**

2:30 p.m.

1. Kieren Thompkins, Executive Director
   Lori Smith, Employee Relations Officer
   Robin Levy, President NSGEU Laing House Local 57
   *NSGEU*

2. Michael Kydd, President
   Barry North, RCS Construction, Vice chair
   *Merit Nova Scotia*

3. Peter McLellan QC
   *Stewart McKelvey*

4. Kyle Buott, Executive Member
   Rick Clarke, Executive Member
   Larry Wark, Executive Member
   *Nova Scotia Federation of Labour*

5. Gary Vermeir
   *Local 849 of the IATSE*

NSGEU

Notes for a Submission

By

Keiren Tompkins
Executive Director
Nova Scotia Government and General Employees Union

Lori Smith
Organizing Officer/Employee Relations Officer
Nova Scotia Government and General Employees Union

Robin Levy
President, NSGEU Local 57, Laing House

To the
Law Amendments Committee
On
Bill 19
Amendments to the Trade Union Act

December 10, 2013

## Introduction

Thank you, Madam Chairperson and members of the Committee for this opportunity to speak to you about Bill 19 - Amendments to the *Trade Union Act*. We are here on behalf of our President Joan Jessome.

As you may know, the Nova Scotia Government and General Employees Union (or NSGEU) is the largest union in the province representing more than 30,000 workers across the public sector in the provincial government, corrections, health care, public schools, community colleges, universities, municipalities, and community organizations. We have approximately 100 locals and 90 Bargaining Units.

During the last 25 years, we have had close to 45 certifications, of which:

- 26 took over one year;
- 15 took more than 18 months;
- 9 took more than 2 years; and
- 2 even took close to 3 years.

It is very important in our view that employees, who have a right to unionize in Nova Scotia and a right to association under the Charter, have a reasonable expectation of achieving a fair collective agreement in a reasonable period of time. We think under normal circumstances that time period should be less than a year.

NSGEU supports the existing legislated provisions for First Contract Arbitration, inclusive of the time lines to go to the Labour Board for assistance.

Our recent two experiences which were referred to the Board showed us that the present process is working well, and as originally intended. In fact, the Labour Board was instrumental in assisting the parties achieve a negotiated first contract settlement without having one imposed.

However, we understand the present government wishes to change the provisions in a few areas, inclusive of removing the time lines.

We are also aware that the Labour Management Review Committee which is representative of unionized employers and employees, recommended a revision to the proposed amendments. In light of that change, NSGEU can support this Bill.

We are appreciative of the re-consideration by the Minister of the unanimous recommendations by the Labour Management Review Committee. We wish to take this opportunity to thank the Minister and the Department of Labour and Advanced Education for their willingness to make this stated change. It will continue to make it possible for employees to seek First Contract Arbitration as an alternative to a work stoppage if the stated conditions in the amendment are met.

We appreciate this opportunity to speak with you on Bill 19.

**Merit Nova Scotia Submission on Bill 19: An Act to Amend Chapter 475 of the Revised Statutes, 1989, the Trade Union Act**

Good afternoon, Honourable committee members:

Thank you for the opportunity to present Merit Nova Scotia's position on Bill 19: An Act to Amend Chapter 475 of the Revised Statutes, 1989, the Trade Union Act.

For 20 years, Merit Nova Scotia has served small and medium-sized open shop (or union free) contractors seeking fair opportunities to compete and do business in Nova Scotia. Merit's growing membership consists of 150 companies in Nova Scotia and approximately 3,500 companies across Canada. We represent 2,500 employees in Nova Scotia and approximately 60,000 nationally in many different segments of the construction industry.

Merit Nova Scotia proudly encourages open competition and a free-market approach that awards contracts based solely on merit, regardless of labour affiliation. In other words, we support collective bargaining and the rights of employers and unions to negotiate in good faith.

Much like trade unions who believe in collectively organizing, our members believe they have the freedom to be union free, which includes the choice to hire and invest in their employees; the choice to provide fair wages and benefits; and the choice to bid on projects and deliver quality craftsmanship to every job they perform.

On to the legislation.

Merit Nova Scotia supports this legislation. While we are officially on the record calling for full repeal, and still believe in principle this law should be repealed, we also respect the democratic process of an elected government's right to implement the changes it sees fit.

Merit's initial contention with this legislation is that it was a "solution in search of a problem." We heard from employers inside and outside of the construction industry say very clearly that FCA was simply a tool that allowed unions to wait out an employer. This is why we agree with government's decision to remove the 120-day "clock", which to quote from today's editorial in the Chronicle Herald, "created a perverse incentive to drag out talks and make the [Labour] board write the contract."

It doesn't take a labour relations expert to know that if the primary goal of collective bargaining is to reach a fair and equitable contract, then having a group arbitrarily impose a contract is not healthy for the business relationship. The last thing we need is board officials with no knowledge of the business making life altering decisions.

With this impediment now out of the way, the following is a summary of the potential issues from an employers' perspective and possible ways in which Bill 19 can be improved.

With government intent on modifying FCA, we believe the best scenario for employers would be that FCA would only be triggered if there was a contravention of s. 35(a) of the Trade Union Act (TUA), namely if one of the parties failed "to make every reasonable effort to conclude and sign a collective agreement."

Similar to the Ontario legislation, Bill 19 does not require that the Labour Board be satisfied that collective bargaining has failed as a result of the following criteria; rather it only has to **appear** to the Board that collective bargaining has failed as a result of:

(i) "the refusal of the employer to recognize the bargaining authority of the bargaining agent";

(ii) "the uncompromising nature of any bargaining position adopted by the other party without reasonable justification";

(iii) "the failure of the other party to make reasonable or expeditious efforts to conclude a collective agreement."

(iv) "any other reason the Board considers relevant."

We believe the word "appears" imposes a low evidentiary threshold. Accordingly, it would be preferable if the language in s.40A(5)(c) was changed from "it **appears** to the Board that the process of collective bargaining has been unsuccessful because of..." to "the Board is **satisfied** that the process of collective bargaining has been unsuccessful because of..."

With respect to the criteria for the triggering of FCA in s.40A(5)(c)(i),(ii),(iii), and (iv), we are of the opinion that the following changes would be helpful to employers:

Section 40A(5)(c)(ii) "the uncompromising nature of any bargaining position adopted by the other party without reasonable justification" should clearly stipulate that the Labour Board must consider what is a reasonable justification from a business perspective.

One possible solution to this problem is to insert the word "business" in "reasonable [business] justification." This may require some further changes given that 40A(5)(c)(ii) is not specifically directed at employers. This increases the likelihood of the Labour Board considering business interests when interpreting this subsection.

Section 40A(5)(c)(iv) which states "any other reason the Board considers relevant…" should be removed.

We believe the open ended criteria is problematic because it gives the Board broad discretion. We know that the Labour Board has not been afraid to engage in which what can fairly be described as "Labour Board activism." For example, the Board's decision in *Egg Films* is arguably an example of Labour Board activism where it ignored its past interpretation of the TUA because the application of such an interpretation would have resulted in a denial of unionization.

We recommend the deletion of this "catchall" subsection.

The criteria in (i) – (iii) are broad enough and do not require a catchall that could be used by a Labour Board that has a tendency to engage in "Labour Board activism."

It would be preferable if Bill 19 made explicit that the parties be given the opportunity to make submissions and present evidence in a hearing as to whether the criteria in s.40A(5)(c)(i)-(iv) is satisfied. Language similar to that which is in Section 40A(9) would be helpful:

> *The Board shall give the parties an opportunity to present evidence and make representations.*

The Board would likely provide the parties with some opportunity to make submissions to comply with the principles of natural justice (a legal principle that is also commonly referred to as "procedural fairness" or "due process"), but given the tight timeline (i.e. 30 days from the date of the application) and the low evidentiary threshold (i.e. appears), one could foresee the Labour Board limiting the hearing process.

Holding a hearing and making a decision as to whether the FCA triggering criteria is satisfied within 30 days is a short time frame and therefore, if possible, should be lengthened to 60 days.

These are our submissions. Again, we agree with the legislation but also feel these changes would be beneficial to balancing the process.

As Leader of the Official Opposition in 2011, Premier McNeil said, and I quote: "I think one of the things that's missing in this entire debate is that employees have the right to certify, and we, as Nova Scotians, should respect that. But by the same token, employers have the right to define how they're going to run their operation and their business."

We couldn't agree more. That's what we are asking for today.

Honourable committee members, I thank you for listening to my presentation. I am happy to answer any questions you may have.

Peter McLellan

# NOVA SCOTIA EMPLOYERS' ROUNDTABLE

## MEMBER LIST
## December 2013

| | Company |
|---|---|
| 1. | Acadian Seaplants Limited |
| 2. | Clearwater Fine Foods |
| 3. | Crossley/Tandus |
| 4. | ECP LP |
| 5. | IMP |
| 6. | J.D. Irving, Limited |
| 7. | Kohler Windows |
| 8. | Medavie Blue Cross |
| 9. | Michelin North America (Canada) Inc. |
| 10. | Mount Saint Vincent University (MSVU) |
| 11. | Municipal Enterprises/Dexters |
| 12. | Oxford Frozen Foods |
| 13. | PCL |
| 14. | Polycello |
| 15. | Scotia Investments |
| 16. | Scotsburn Dairy |
| 17. | Shannex |
| 18. | Sobeys |
| 19. | Staples Inc. |
| 20. | Wal-Mart Canada Corp. |

Kyle Burt

CCPA
CANADIAN CENTRE
for POLICY ALTERNATIVES
Nova Scotia Office

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November 28, 2011

**CCPA-NS submission to Law Amendments Committee on Bill 102: An Act to Prevent Unnecessary Labour Disruptions and Protect the Economy (Amending Chapter 475 of the Revised Statutes, 1989, the Trade Union Act)**

**Author:** Jason Edwards

**Presenters:** Jane MacMillan and Leanne MacMillan, CCPA-NS

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## Introduction

We present this submission on behalf of the Canadian Centre for Policy Alternatives-Nova Scotia (or CCPA-NS). CCPA-NS is an independent, non-partisan research institute concerned with issues of social, economic and environmental justice. The NS branch has existed since 1999 and has 50 plus research associates with varying fields of expertise.

After a review of Bill 102's proposed amendments to the *Trade Union Act* and comparable legislation in other provinces, we want to highlight several key points about the proposed changes that would enable First Contract Arbitration (FCA) in Nova Scotia:

- First, these amendments to the *Trade Union Act* will bring Nova Scotia closer **to the national standard** of labour legislation.
- Second, FCA **contributes to economic productivity** by providing an avenue to resolve labour disputes involving newly-unionized employees and employers, who are unable to do so on their own, thus promoting harmonious labour relations.

- Third, as in other provinces, the provision of FCA will be **good for all Nova Scotians**, whether they be employers or employees, unionized or not.

Our overarching position on these amendments is that **ample evidence exists to support the introduction of FCA.** Indeed, it is our contention that its introduction in Nova Scotia is long past due. We commend the Provincial Government for moving forward with this initiative, because in those jurisdictions that recognize the critical role of unions as a tool to achieve greater social and economic justice, their citizens enjoy greater equality and are healthier overall.

**Modernize Labour Relations in Nova Scotia**

To the first point: FCA is standard legislation in Canada. Once Nova Scotia passes and proclaims this amendment to the *Trade Union Act*, only two provinces will not have some version of FCA: Alberta and New Brunswick. More than 85% of the Canadian labour force is covered by similar legislation.[1] Indeed, a full comparison of labour standards in Canada, let alone other international jurisdictions, would reveal just how much more progress Nova Scotia needs to make. This is a relatively minor step forward for workers. One of the most comprehensive studies on FCA concluded that there was: "broad satisfaction on behalf of employers and unions, as well as mediators and arbitrators..."[2] Enacting FCA will modernize labour relations in Nova Scotia.

**Improve the Nova Scotia Economy**

To our second point: FCA contributes to economic growth promoting harmonious labour relations and increasing productivity. If we value collective bargaining, FCA is **prudent public policy and makes good common sense.** It is a preventative measure aimed at helping newly-certified unions and their employers when they run into problems negotiating their first collective contract. It is the case that both sides may be unfamiliar with the bargaining process, they may each have unrealistic expectations, or the employer may stall the talks in hopes that the union members will lose patience and de-certify. After employees have exercised their statutory right to join a union, FCA guarantees both parties that their negotiations will result in a signed contract. This means a smoother, faster, and fairer bargaining process, which can only be good for productivity.

There is ample **concrete evidence** to support our contention that FCA will be good for employees, employers and the Nova Scotian economy as a whole. Empirical evidence conclusively shows that FCA improves a jurisdiction's labour relations. British Columbia has had FCA since 1973, and its economy has performed markedly well since that time, relative to other provinces.[3] FCA in British Columbia has had measurable positive impacts. It has, for example, resulted in less time spent negotiating and more time focused on productivity. In addition, more first contracts are signed without parties resorting to work-stoppages or lock-outs. Last, lest there be concern that this will result in excessive arbitration, the evidence from British Columbia shows that between 1993 and 2009, only 10% of first contract negotiations went to arbitration, with more than one-third of applications to the province's arbitration system made by employers, not unions.[4]

It is time that we based public-policy decisions on concrete evidence. How many people know that employers and unions successfully negotiate collective agreements 97% of the time without work stoppages?[5] Indeed, as CCPA-NS has previously shown, making strikes illegal, or otherwise taking away critical tools from unions, can actually result in increased work stoppages and discordant labour relations.[6]

The **bottom line** is that there is no evidence to support the claim that FCA will limit Nova Scotia's competitiveness or weaken the economy.[7] Rather, researchers who have undertaken a vigorous analysis of the Canadian experience with FCA legislation conclude that it: "streamlines the collective bargaining process so that employers and employees can focus on work without wasting time and money on a work stoppage or sitting endlessly at the negotiating table."[8]

**Good for all Nova Scotians**

To our third point: there is ample research analyzing the role of unions in Canada. The employer/employee relationship is one characterized by an imbalance of power that needs to be at the forefront in this discussion. Unions help balance this relationship and their benefits have been clearly shown: they are the primary vehicle for popular prosperity;[9] they ensure safer working conditions;[10] they have promoted a culture of social progress;[11] they provide a voice to their members;[12] and they have even been linked to greater rates of innovation.[13]

In short, research from around the world demonstrates the positive effect unionization has on rates of pay and quality of living for employees. Indeed, no society has ever been able to achieve widespread prosperity without strong unions. Societies that have stronger unions, and thus are more equal, demonstrate better quality of life for women, higher life expectancies, lower infant mortality rates, higher math and literacy scores, more social mobility, and generally higher standards of living.[14]

Empirical findings from around the world demonstrate the stultifying effects of **inequality** and a widening income gap between the rich and the rest of us. A recently published book, titled ***The Spirit Level***, undertakes a comprehensive analysis of the state of inequality in advanced democracies. The authors conclude that a key contributor to the widening gap is a decline in trade union membership.[15] They demonstrate that there are marked correlations between inequality and such negative social indicators as mental illness, drug use, obesity, teenage pregnancy, high school dropout rates, violent crime, youth crime, and imprisonment rates. Unions work to bargain better rates of pay for employees, thus reducing inequality in our society. Unionization is good for all Nova Scotians. In the words of Wilkinson and Picket, the authors of ***The Spirit Level***: "Achieving greater equality is the gateway to a society capable of improving the quality of life for all of us and is an essential step in the development of a sustainable economic system."

**Concluding Remarks**

By adopting FCA legislation, Nova Scotia will be sending the message to all of its employers and employees that fair collective bargaining is a right that is to be respected as set out in the Preamble to the *Trade Union Act*. The reason we support these changes to the *Trade Union Act* is that they are **straightforward and sensible**: Bargaining must be done in good faith and will be assisted when it is not effective in a first contract situation.

To reiterate our three key points, CCPA-NS supports this legislative measure to amend the *Trade Union Act* to include first-contract arbitration because: (1) it will bring Nova Scotia closer **to the national standard** of labour legislation; (2) **contribute to economic productivity** by promoting harmonious labour relations, and (3) it is **one small step forward** toward narrowing the income

gap and helping to ensure that all Nova Scotians work together to share in the province's prosperity.

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**NOTES**

[1] Labour Management and Review Committee, *Discussion Paper - First Contract Settlement*, Department of Labour and Advanced Education, 2011. http://www.gov.ns.ca/lae/policy/docs/FirstContractSettlement.pdf

[2] Patrick Egan-Van Meter and Ross Eisenbrey, *First-Contract Arbitration Facts: The Canadian Experience*, Washington, DC: Economic Policy Institute, 2009. http://www.epi.org/publication/ib256/

[3] Melanie Vipond, *First Contract Arbitration: Evidence From British Columbia, Canada of the Significance of Mediator's Non-Binding Recommendations,* 2010. http://works.bepress.com/melanie_vipond/1

[4] Vipond, *Ibid*

[5] Association of Canadian Financial Officers, *Assets or Liabilities: A Business Case for Canadian Unions in the 21st Century*, 2011. http://www.acfo-acaf.com/sites/default/files/assets_or_liabilities_final.pdf

[6] Judith Haiven and Larry Haiven, *The Right to Strike and the Provision of Emergency Services in Canadian Health Care*, 2002.
http://www.policyalternatives.ca/sites/default/files/uploads/publications/Nova_Scotia_Pubs/NSright_to_strik.pdf

[7] Egan-Van Meter and Eisenbrey, *Ibid.*

[8] Egan-Van Meter and Eisenbrey, *Ibid*

[9] Bruce Western and Jake Rosenfeld, *Unions, Norms, and the Rise of American Inequality*, 2011.
http://www.wjh.harvard.edu/soc/faculty/western/pdfs/Unions_Norms_and_Wage_Inequality.pdf

[10] Bruce Campbell and Armine Yalnizyan, *Why Unions Matter*, 2011.
http://www.policyalternatives.ca/publications/commentary/why-unions-matter

[11] Campbell and Yalnizyan, *Ibid.*

[12] Association of Canadian Financial Officers, *Ibid*

[13] Association of Canadian Financial Officers, *Ibid.*

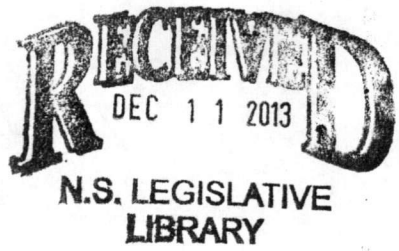
[14] Marc Lee, *Reflections on the Spirit Level*, 2010. http://www.progressive-economics.ca/2010/07/26/reflections-on-the-spirit-level/

[15] Richard Wilkinson and Kate Pickett, *The Spirit Level: Why More Equal Societies Almost Always Do Better*, London: Allen Lane, 2009

**LAW AMENDMENTS COMMITTEE**

**Red Room, Province House**

**Wednesday December 11, 2013**




**Bill #19 - Trade Union Act (amended)**

*Deferred from previous meeting*

Bill #19

CARRIED 5

**Bill #19**
**Trade Union Act (amended)**

CHANGE RECOMMENDED TO THE LAW AMENDMENTS COMMITTEE
BY THE MINISTER OF LABOUR AND ADVANCED EDUCATION

**PAGE 1, subclause 2(2), proposed subclause 40A(5)(c), line 1 -** add "regardless of whether Section 35 has been contravened," before "it".

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