



Notes for a Submission

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To the
Law Amendments Committee
On

Bill 100 -
Universities Accountability and Sustainability Act

April 30, 2015

1. We thank the Committee for this opportunity to speak to you about Bill 100 – *Universities Accountability and Sustainability Act*. Our President (Joan Jessome) is unable to be here today to speak to this Bill. My name is Robin MacLean and I am Interim Executive Director of NSGEU, and with me is Raymond Larkin who is our Legal Counsel.

2. The Nova Scotia Government and General Employees Union (NSGEU) is the largest union in the province representing more than 30,000 workers across the public sector. We represent employees in the provincial government, corrections, health care, public schools, community colleges, universities, municipalities, and community organizations. In post-secondary education, we represent almost 2,600 women and men who work as support staff at seven universities and with the Nova Scotia Community College. Our members work in the universities and community colleges as library staff, as clerical and administrative support, in IT, in technical positions, in labs, in maintenance and trades, and also, includes instructors at Cape Breton University.

3. We are a member organization of the Nova Scotia Post-Secondary Education Coalition, along with the Association of Nova Scotia University Teachers (or ANSUT) and the Canadian Federation of Students – Nova Scotia (or CFS-NS), and in addition, more recently, the Dalhousie Faculty Association and the Dalhousie Students' Union.. Together as a Coalition since 2005, we have worked to raise the profile, and increase funding and accessibility for Post-Secondary Education. We've conducted public opinion polls, made submissions to legislative committees, met with elected members and candidates from all parties, and organized election forums.

4. Last October, the government announced that it was consulting on the future of the province's university system. In the backgrounder for this process, it was indicated that all university stakeholders would have the opportunity to "explore the opportunities and challenges facing Nova Scotia's universities, and

to help develop "...a strategic, long-term direction for Nova Scotia's universities". During this consultation process, our members were part of two focus group sessions: one on October 20 and another on October 30.

5. When the results were publicly reported on March 24 by the Minister, we did not see our members' main concerns and recommendations reflected in those results. In particular, we were hoping to see some confirmation that universities have a broader purpose, to serve the province and all Nova Scotians, and not just private sector, that there are limited support services for students such as those offered by our members, that the number of faculty and staff have not kept pace with the numbers of students who are enrolling at the universities, student retention is just as important as student recruitment, and must be addressed, the growth of the senior level of administrators at universities has to be taken seriously, and that universities are sustainable considering the significant contribution they made to the provincial and regional economy.

6. At the report back session on March 24, the Minister did confirm that "accountability" legislation was coming in this Spring Sitting to require more standard reporting and to give the government the authority to withhold grants in extreme circumstances. But there was no hint or indication of the details of what this legislation in the form of Bill 100 would contain. **I am now going to ask Mr. Larkin to outline why we have significant concerns with this Bill.**

7. Bill 100 rides roughshod over university collective agreements and the *Trade Union Act* rights of employees by permitting universities with an operating deficiency to initiate a restructuring process to produce a "revitalization plan" which must be approved by the Minister of Labour and Advanced Education for the university to qualify for funding from the Province.

8. The revitalization process in the Act is modeled on bankruptcy legislation. It will be overseen by a committee appointed by the Minister like the committee of creditors in a bankruptcy. It will be driven by a revitalization facilitator like the receiver appointed under the Bankruptcy Act or the Companies Creditors Arrangements Act. It is designed

to give the Minister the power to attach conditions to university grants that will override employee job security protections and to impose government's priorities for the delivery of education and research.

9. Universities are being offered a bargain with the devil. Government is telling them to restructure. To facilitate restructuring they will be free to ignore the commitments made in collective agreements that affect restructuring and any discussion about restructuring will take place by consultation instead of collective bargaining. Collective bargaining with the ultimate right to strike creates a level playing field for negotiating change; consultation where the ultimate power to dictate is held by the Minister is a recipe for wholesale erosion of employee rights .

10. University employers are given an option to apply Section 8 of the Act if they initiate a restructuring or if a university undergoing restructuring proposes to merge with another university. Section 8 has to be read in light of Section 2(3) which overrides the *Trade Union Act* and any collective agreements or employees' rights of any sort.

11. If a university employer wants to engage Section 8, it will be unlawful for employees to exercise their right under the *Trade Union Act* to strike and it will be unlawful to conclude a collective agreement until the restructuring process or merger process has been completed.

12. Section 8(1)(d) provides that "Neither the trade union nor any of the unionized employees shall commence or continue any grievance that relates in whole or in part to the development of the revitalization plan or the revitalization planning process". Essentially unions will not be able to enforce collective agreement provisions affected by the restructuring.

13. The revitalization plan process is extremely broad and covers the whole undertaking of the university. Section 12 provides that a university's revitalization plan must include "analysis of potential opportunities and cost savings that could be achieved through collaboration with the universities, including by elimination, consolidation and specialization of faculties, departments and program" and "proposals for partnerships, mergers, affiliations, federations or other arrangements".

14. Employees providing operational and administrative support to universities are covered by collective agreements which have elaborate job security protection for employees. Employees will be prohibited from grieving the employer's violations of these provisions if the university decides to eliminate programs or departments or even to merge with another university.

15. More broadly, a wide range of working conditions are covered by collective agreements and at the end of the revitalization process changes to those conditions will be a fait accompli because the funding of the University by government will depend on doing what the Minister wants.

16. There is little doubt that several Nova Scotia universities have been badly mismanaged. They have got themselves into financial trouble by embarking on ambitious but inadequately funded building programs and have piled up debt. Those universities are to be rescued by eliminating the jobs and employment rights of university employees without any fear of being held accountable under existing collective agreements.

17. The provincial government does not seem to realize that riding roughshod over people creates more problems than it solves. Treating people unfairly leads to turmoil and unrest. It lasts for years. Free collective bargaining requires the employer and the employees to confront issues and negotiate solutions that everyone can live with. The right to strike gives an incentive to both employees and employers to reach compromises.

18. Dictatorial actions like Bill 100 are aimed at preventing the resolution of workplace issues on a level playing field. They aim to free the university employers from negotiating changes in terms of employment by handing them unilateral powers to override employee rights and by denying access to the possibility of grievances or strike action to defend employee interests.

19. The recent decision of the Supreme Court of Canada striking down essential services legislation in Saskatchewan found that the right to strike is protected by the

constitutional guarantee of freedom of association in the Charter of Rights. The Court found that a scheme giving unilateral rights to employers and denying a collective bargaining level playing field could not justify infringing the right to strike. Bill 100 suffers from the same defect. In our opinion it is unconstitutional. If it goes forward it could only be saved if it is amended by deleting Section 8 and the related provisions.

20. Any university who accepts the deal with the devil by agreeing to the revitalization process will pay a very heavy price for using the Act to take away employee protections in collective agreements. That university will not only face employee unrest and labour relations turmoil. They will bear the stigma of having undergone the equivalent of bankruptcy and the consequences of that stigma for student recruitment. They will surrender their autonomy to decide their own priorities for teaching and scholarship and have to accept the dictates of the provincial government and they will bear the stigma of that when they try to hire and keep highly qualified faculty. The whole process is a recipe for the decline of a critical sector of the Nova Scotia economy.

21. This government seems to believe that it can dictate poorly considered policies affecting the public sector without harming public services and the Nova Scotia economy. They were wrong in health care. They were wrong in dealing with the film industry. They will do serious harm to higher education if this Bill is passed.

22. We call on the Committee and the government to amend the Bill by deleting Section 8 and the related sections that give university employers the option to use it.

We thank you for your time and attention, and we welcome any questions or comments from Committee members.