

Law Amendments

Hello,

My name is Shawn Hanifen and I live in Hammonds Plains, my MLA is Ben Jessome, and I am a teacher in HRSB and member of the NSTU. I am equally proud of both.

My background in the NSTU has been for over 18 years and I was a member of the Provincial Executive for Halifax City from 2012-2015. And for additional information I guess I can go on record as the first official "NO" to the bullying negotiation tactics of this Government on the first Tentative Agreement as a member at the provincial table.

I'm wearing my past PE pin proudly because at the end of the day everyone of us when I was on PE were there for the members, not ourselves.

I fully understand the weight that must be on all MLA shoulders because at that time I too had to make a choice. Stay on the PE and show cabinet solidarity on that TA, or refuse and resign.

I chose the "road less taken- as Robert Frost wrote", and resigned. I did so for the members I represented, not just in Halifax City, but province wide because I truly felt that it was democratically and morally wrong to give into fear. I resigned to inform them of why it was so wrong, especially as teachers and as professionals who deserved respect.

Was that easy?

No.

Some questioned my decision, even refuting that I was a quitter. Boy, were they wrong. Others thanked me and supported me, for simply doing the right thing. Doing what I was elected to do.

It was Listen and make a decision in their best interests.

Nothing heroic, just what they asked me to do. Just like you are being asked to do. I know this because I sat and heard constituents in Hammonds Plains speaking to Ben, attended the rally at Ben's office and here at the Legislature.

I had the opportunity to run for our NSTU presidency, travelling alongside Liette and four other wonderful individuals to listening to teachers, hearing their stories, and hearing their cries for support and respect for their profession.

This Bill 75 does the opposite of that it demoralizes the people that I so dearly respect. And please believe me when I warn you that if this Bill passes it will have a negative effect that will last longer than the dates that will be imposed.

I am asking, no begging you, to have a little courage similar to mine (at our annual council I was asked for weakness and quickly answered it was public speaking) and do what is right, not just constitutionally, but morally.

Listen to your constituents. Reflect on the consequences of your actions over the next few days because at stake is much more than party loyalty, re-election, or any individual gain. What's at stake is the teaching profession, education system and future of NS, our children.

That is more important than one Premier or party.

This government has all along been more focused on getting what it wants rather than getting things right. Mr McNeil has focused, through Bill 75, to punish teachers and the education system by cherry picking the items what he wants, instead fair collective bargaining. In fact, it doesn't even follow the progression of the three tentative agreements, it regresses back to the initial TA and Bill 148 for good measure.

All Mr. McNeil wants is his pound of flesh, to further send a message to other unions who may defy him. Why not follow the collective bargaining process and allow for arbitration? What he has done amounts to dictatorship through majority government, not democracy. Joe Howe should be turning over in his grave.

For that reason I am completely shocked, frustrated and angered with this government's decision to introduce Bill 75.

As far as the premise there was fair collective bargaining it has been a farce by the Liberal government. It has shown absolutely no evidence of bargaining in good faith with the teachers of Nova Scotia. I know this from my time on the Provincial executive from 2012-2015.

YOUR Government released an *Education Action Plan* before negotiations even started that had items that were part of the contract. That constituted bargaining in the public.

YOUR Government introduced the, *The Public Services Sustainability Mandate*, which appears to be in direct violation of *The Canadian Charter of Rights and Freedoms* in August of 2015, before fair collective bargaining could address these articles that were under contract.

YOUR Government, after a rejection by the members of the NSTU in the first tentative agreement, followed through with threats of legislation by tabling and passing *Bill 148*, *The Public Services Sustainability Act* in the House (yet not proclaiming it Law), another infringement of s.2(d) of the *Charter*.

YOUR Government again failed to achieve ratification of the NSTU membership on a second and third tentative deal.

YOUR Government refused a conciliation board, which would have at least supplied the public with an actual report on articles that could not be settled, without implementing unconstitutional "conditions".

YOUR Government, and in particular Minister of Labour and Advanced Education, denied mediation, after it was proposed by the NSTU.

YOUR Government, under the guise of returning to the negotiation table, broke the confidentiality of the negotiation process by releasing salary and working conditions that were brought to the table, in good faith, to be negotiated, not used for public display.

Again, when both parties agreed to return, why wasn't it under mediation and put in place by Minister Regan? The process for mediation has many beneficial aspects in its process. Facilitation of an agreement is only ONE aspect. Mediation also allows for conflict resolution, interpretation of asking packages (legally, structural constraints financially, similarity in currently awarded contracts, etc.); and in the result of impasse, a filing of a report that fairly and accurately makes recommendations on outstanding items.

And finally,

YOUR GOVERNMENT wishes to pass its unconstitutional Bill 75 in direct contravention of *The Canadian Charter of Rights and Freedoms*. A Federal Right given to all Canadians. Mr. McNeil you now think you are above the Supreme Law of the land by implementing a "short term" fix (5 years unless it is re-invoked) using the notwithstanding clause (Section 33) of the *Charter*. This is a deplorable action to try to circumvent the *Charter*.

One that will assuredly be challenged in court due to the fact teachers never left their jobs and they were in classes teaching their students until Bill 75 was presented. In fact, it wasn't until Bill 75 was announced that the NSTU decided to walk of the job. Teachers were in classrooms, doing what teachers are supposed to do. TEACH. There was no public emergency in this situation. To the contrary, teachers expressed that for the first time in a long time, their sole focus was on the education of our students, in the classroom, where we belonged. The only effect Bill 75 will have is to ensure that that learning environment will be severely disrupted for years to come. Your Bill cannot legislate "morale" and this Bill will have devastating effects on both the teachers you impose it on and the system they are entrusted with.

Many questions arise from this reprehensible action by the Premier to legislate a contract.

Why do you feel you are above everyone else involved in the collective bargaining process and feel you may unethically manipulate that process for public, and political, gain?

The only evidence of three failed tentative agreements is that the democratic process works. It is up to the collective to decide what is fair, not one man or party. I do not use

those words lightly because listening is one of my few attributes, I don't have many, and over the past 15 months Mr. Premier you have continuously used "I" in your dialogue. As a member of the NSTU our dialogue starts with "We". The NSTU represents the way democracy should work with the collective making decisions on their path forward. We too have a leader in our President, our spokesperson, but each and everyone of US as a collective 10, 000 strong are the "Voice". At one time, surely you remember this, sadly it seems it has been forgotten.

Why do you feel you can hold everyone else accountable for this impasse, yet you bear no responsibility in this dispute what so ever? Do you really think the public of Nova Scotia is that naive?

For the record, we teachers are civil servants like many other hard working Nova Scotians; an we provide the citizens of this province with our very best. Also, we support our province as tax payers, but we are being treated like we do not support it. In fact, you have used us as a scapegoat to your poor decisions on millions of our taxpayers' money to companies outside of Nova Scotia that are making record profits. Where is your government accountability?

And as a teacher... as a unionist, I can tell you there is no group that promotes fairness- and subsequently combats bullies more than teachers.

On collective bargaining you have trampled over *The Canadian Charter of Rights and Freedoms*, with legislation of the long service award and salary offer.

Freedom of Association is guaranteed under section 2(d) in *The Canadian Charter of Rights and Freedoms* because it is a "fundamental freedom". These freedoms, in essence, allow for fair collective bargaining by unions with the government during labour disputes and negotiations. Governments are bound to the collective bargaining process with unions and cannot "excessively interfere" in that process.

The current labour dispute and negotiations with the NSTU, the government of Nova Scotia has fundamentally failed to provide a "fair playing field" (sorry I'm a PE teacher) for the collective bargaining process with legislation that restricts the associative nature that Section 2(d) provides Canadians, and their unions, during contract negotiations.

The government of Nova Scotia went into negotiations with the NSTU and delivered an ultimatum in November of 2015 to accept the terms of the tentative agreement that was made "under distress" by the negotiations team and provincial executive. Then in its tabling and readings of Bill 148, and subsequently Bill 75, created legislation, and proof, that the government "substantially interfered" with the process of collective bargaining, which is a s.2(d) infringement. The question that needs to be reflected upon is whether the Bill itself has to be enacted to violate the process of collective bargaining.

There are three landmark decisions...

Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia
(2007)

<http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2366/index.do>

<http://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=30554>

In this decision the court decision was that there was "substantial interference" that was twofold:

- (1) The importance of the matter affected to the process of collective bargaining, and more specifically, the capacity of union members to come together and pursue collective goals in concert; and
- (2) The manner in which the measure impacts on the collective right to good faith negotiation and consultation.

The latter being the recent Supreme Court decision from this past November. The B.C. Teachers' Federation won a landmark decision on negotiating class size and composition in the Supreme Court of Canada:

British Columbia Teachers Federation v. British Columbia

<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/16241/index.do>

<http://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=36500>

<http://www.scc-csc.ca/case-dossier/info/sum-som-eng.aspx?cas=36500>

While the negotiated items differ in the type of articles- working conditions in compared to remuneration (Long Service Award/Salary) in Nova Scotia, both share in that they were previously negotiated articles in past agreements, which is the basis for the decision, not the article itself.

In so, the articles were not removed through mutual agreement by both parties during negotiations, but through legislation that "interferes" with the negotiations process, and thus, precludes the collective bargaining process altogether.

Additionally, the salary that is mandated in Bill 148, which is identical in Bill 75, also demonstrates how this government has intervened and interfered with the collective

bargaining process by failing to acquire mutual agreement for compensation, or following the collective bargaining process to uphold the ability for arbitration on salary when impasses arise.

In essence, the government while it does not have to take an active role in supporting the collective bargaining process, it cannot create legislation that excessively interferes with collective bargaining, especially when that legislation removes previously agreed upon articles unilaterally, as these two legislative actions by the government have evidently done.

The last landmark decision is Bill 115 in Ontario.

In Ontario that province's Superior Court of Justice judge ruled that Bill 115, also known as the Putting Students First Act, violated the Charter rights of education workers across that province. The law was struck down in 2015.

Bill 115 imposed conditions on education workers and instituted timelines for reaching collective agreements if a deadline was reached without an agreement, one could be imposed on the workers. The conditions workers were no longer able to bargain for included sick leave and other monetary benefits. Again this is eerily similar to Bill 75.

It was on the basis of these impositions, or excessive demands, that the court ruled in favour of the unions, and found that the provincial government had violated their Charter-granted freedom of association, which for unions includes the ability to bargain collectively.

In simplest terms governments may not interfere with unions' collective bargaining rights, as is also now the case with Bill 75 here in NS.

In that case the judge gave the ultimatum of the union and the provincial government to reach an acceptable remedy, or have the judge once again become involved. That would be similar in scope to neutral third party arbitration.

As someone who has held leadership roles in my union (NSTU) I have always prided myself in listening to what members want and then making rational decisions based on that. Always trying to base those decisions on what I felt was best for those who put their faith in me.

In my three plus years on the Provincial Executive of the NSTU I have experienced the exact opposite of concern and caring in education from the Minister Casey.

During that time this Minister and her Department has changed the reporting process for report cards a multitude of times because instead of actually listening to teachers on this, her Department simply downloaded these constant changes less than weeks, sometimes days, before the reporting was to be completed. I can assure you teachers did not ask for this, so I do not know exactly who she was “listening” to. Let the teacher decide what is written in their student’s report cards.

The constant download of initiatives was also a concern during my time on the PE. There were letters written to the Minister and the Department on behalf of teachers with no assistance to these items. Powerschool, TIENET, PLC’s and the list could go on and on, just like the constant data.

Also during my time, Minister Casey, made another unilateral decision to teacher certification without any input from the NSTU and definitely without any input to the teachers who invested in the program, or had completed. She wasn’t listening or upholding her end of a contract then either. Each of those teachers had an approved, signed contract by her Department, had spent countless hours of their own time to professionally develop on two programs of value to the health and well being of students in both physical activity levels and in the diversity of learning.

Teachers are able to teach because of the trust that we build with our students. These contract negotiations have failed for the simple reason that teachers do not trust their Premier, or their Minister of Education. Allowing the imposition of a contract on teachers by the same people they do not trust will undoubtedly fracture the relationship beyond repair. Please consider this when making your decision.

Teachers want a neutral third party to decide on their previously negotiated benefit, their worth as professionals and immediate assistance in improving the education system.

Not stripping of benefits, imposed wages and committees that will spend tax payers money and create little educational change.

Even now, after three failed tentative agreements this government refuses to listen to the teachers of this province, the public, or the courts and have chosen the easy way out. They have shown that they would rather spend money on infrastructure announcements, instead of investing in education because investments like that are only seen many years after the government of the day changes.

Class sizes in junior and senior high, no matter how you form your ratios, have grown too large. The “needs” of students have increased in all grade levels and are in need of real supports, not band-aid solutions. Failure to invest in these areas now will have negative results a decade from now.

As solely a PE teacher now, I do not dare to call myself an expert, but what has been going on the past decade in education can be comparable to running until you collapse.

Trust in what the teachers are saying because the education system is collapsing in on itself and this legislation will significantly add to the demise.

Sadly, I have failed because as much as I have tried to speak up for teachers through my NSTU experience, it has fallen on deaf ears. And for that I apologize because for those years, that failure enabled this path to continue developing. Everyone responsible, on both sides, should reflect on their part in this, take responsibility for the failure, and work together to resolve these issues, not be "ordered" to by legislation.

It is what we ask our students to do every day, learn from their mistakes, and do better. Why should we, as adults, do any less?

Those with influence and power should realize they only have it because they were entrusted to make education better. Failure to do so is not an option.

When we need the best in our leaders, why too often do they fail; and this act is the largest failure yet.

This failure will have a negative impact on some of the best aspects of the education system. Those aspects that do not come with a price tag attached. This draconian legislation will end that "normal", creating a "new normal". The implications of this will be far-reaching and wide in scope.

I am imploring the Law Amendments to do your due diligence with everything that you are being told at these hearings. You are the sober second thought that ensures Nova Scotians that bills that are undemocratic, unconstitutional and unfair from becoming law.

Sincerely,

Shawn Hanifen