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Larkin
presentation

Bill No. 203

Crown Attorneys' Labour Relations Act

Law Amendments Committee

Submissions of Raymond F. Larkin, QC

Bill No. 203 requires significant amendments to create a workable statutory framework for labour relations between the Province and the Crown Attorneys who serve in the Public Prosecutions Service

The objective of Bill No. 203 is to eliminate the possibility that 100 Crown Attorneys will set an unaffordable salary pattern for the settlements in the coming year or two for 75,000 unionized public employees.

A pattern of economic increases to wages or salaries can be established when the Province concludes a settlement of annual increases in pay with a large group. For example a settlement by the NSTU covering 10,000 teachers or by NSGEU covering 8,000 civil servants can be accepted as normative by both the Province and public sector unions who bargain for health workers or school board employees after that. A pattern can also be set by an arbitration award with a significant group; for example the Civil Service Arbitration award in December, 2017 set a pattern of economic increases which has been generally accepted.

A pattern cannot be set by bargaining with 100 Crown Attorneys. This is both because no one will accept that 100 Crown Attorneys can establish the wages of 75000 public sector employees and because the salaries of Crown Attorneys are mostly set to reflect the salaries of Crown Attorneys in comparable provinces across Canada. No other group can convincingly argue that those comparisons apply to them. A similar example is the major settlement by arbitration in 2012 covering Nurses. Based on comparability the nurses were awarded a third year with a large increase in pay. No other group was able to achieve that increase because they could not justify the same comparison.

I have sat as the Association nominee in three of the four arbitrations between the Province and Crown Attorneys. Crown Attorney interest arbitrations have never set a pattern for later public sector bargaining and indeed none followed the pattern settlement established by larger groups. In 2015, the Crown Attorneys agreed to increases of 0%, 0%, 1%, 1.5/.5% over four years. No other group voluntarily followed that pattern; they were compelled by Bill 148 to do so. Cynically the Province tried to use that settlement as a pattern settlement by promising to continue binding arbitration for Crown Attorneys for 30 years.

If a salary pattern does emerge in the upcoming round of public sector bargaining, it will likely be set by negotiation with teachers who are presently in bargaining or by the Health Councils who

bargain in 2020. . A settlement affecting 10,000 teachers or by 30,000 health workers can create a pattern. A settlement either voluntarily reached or imposed by arbitration covering 100 employees cannot.

The absurd premise of Bill No. 203 is the foundation of the fundamental contradiction at the heart of the scheme created by Bill No. 203.

The provisions in Bill No. 203 contradict one another. On the one hand, Schedule 'B' amends the agreement between the Nova Scotia Crown Attorneys' Association and the Province to permit a strike by Crown Attorneys. On the other hand, Section 12 prohibits a strike by Crown Attorneys, except in accordance and agreement to provide essential services during a strike.

The essential services required by Bill No. 203 are captured by the definition on Section 3(b) of the *Act*, where it provides:

> (b) "essential service" means a service, facility or activity of the Government that is or will be, at any time, necessary for
>
> (i) the safety or security of the public or a segment of the pubic,
>
> (ii) the protection of the rights under the Canadian Charter of Rights and Freedoms of persons charged with an offence, or
>
> (iii) the administration of justice, including the provision of pre-sentencing and post-sentencing reports and other advice.

An activity of the government that is, or with be, at any time necessary for the administration of justice captures anything that all Crown Attorneys do. An activity that is necessary for the safety and security of the public or a segment of the public captures most, if not all, of what each Crown Attorney does. An activity that is necessary for the protection of rights under the Canadian Charter of Rights and Freedoms of person charged with offences, captures the everyday work of all Crown Attorneys. If everything Crown Attorneys do is captured by the definition of essential services how can there be a right to strike?

On any given day, there will be Crown Attorneys who are not scheduled to be in court prosecuting crimes. When they are not in court, Crown Attorneys are meeting witnesses and preparing for court. These are activities that are necessary for the administration of justice.

I suggest that the Committee ask the Director of Public Prosecutions whether there is any fat in the administration of justice in Nova Scotia or any activities that could be cut for more than a day or two to meet the requirement of the essential services required by Bill 203.

Even if a handful of Crown Attorneys were able to go on strike if the Province shut down some courthouses or hired outside lawyers, no one can honestly say that any right to strike would be meaningful. By recognizing a right to strike with one hand and taking it back with the other hand

the Province achieves it true object—the ability to dictate salary increases instead of negotiating salary increases.

The contradiction in Bill No. 203 is illustrated by the contrast with the *Essential Health and Community Services Act.* The *Act* requires an agreement on an essential services agreement before any legal strike or lockout, but recognizes that in some circumstances the requirement to provide essential services has the effect of depriving the employees involved of a meaningful right to strike. Section 15(1) of the *Essential Health and Community Services Act* provides as follows:

> Application to the Board
>
> 15(1) Where a party to an essential health or community services agreement with respect to a bargaining unit considers that the level of activity that is required to be continued under the agreement has the effect of depriving the employees in the bargaining unit of a meaningful right to strike or depriving the employer of a meaningful right to lock out the employees, the party may apply to the Board, by written notice to the other party and to the Board, to request that the Board direct the parties to a binding method of resolving the issues in dispute between the parties.

There is no such similar provision in Bill No. 20. It deprives the Crown Attorneys of any meaningful right to strike, but the Labour Board has no power to direct the parties to a binding method of resolving the issues in dispute.

The flawed premise that an arbitration decision affecting 100 Crown Attorneys could set a salary pattern for the whole public sector is the justification for riding roughshod over 100 Crown Attorneys by falsely recognizing their right to strike but denying them any possibility of a meaningful right to strike.

In my opinion Bill 203 is an abuse of legislative power which is not justified for legitimate labour relations considerations. It needs extensive amendments to establish a viable framework for labour relations between the Province and the Nova Scotia Crown Attorneys' Association.

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