LAW AMENDMENTS COMMITTEE

Red Chamber, Province House

Friday, October 18, 2019

Bill #193 - Massage Therapist Titles Protection Act

1:00 p.m.	1.	Monica Miller
1:15 p.m.	2.	Amy-Lynne Graves, President *Massage Therapists' Association of Nova Scotia*

Bill #201 - Municipal Government Act (amended) and Halifax Regional Municipality Charter (amended)

1:30 p.m.	1.	John Traves, Counsel *Halifax Regional Municipality*

Bill #192 - Municipal Elections Act (amended)

	1.	Mayor Mike Savage John Traves, Counsel *Halifax Regional Municipality*

Bill #203 - Crown Attorneys' Labour Relations Act

1:45 p.m.	1.	Paul Cavalluzzo *Nova Scotia Crown Attorneys' Association*
2:00 p.m.	2.	Nan McFadgen *CUPE Nova Scotia*
2:15 p.m.	3.	Jason MacLean, President *NSGEU*
2:30 p.m.	4.	Martin Herschorn, Q.C. Director of Public Prosecutions *Public Prosecution Service*
2:45 p.m.	5.	Raymond Larkin, Q.C.
3:00 p.m.	6.	Paul Wozney, President *Nova Scotia Teachers' Union*

/2

Bill #189 - House of Assembly Act (amended)

No representation

Bill #197 - Companies Act (amended), Co-operative Associations Act (amended) and Corporations Registration Act (amended)

No representation

#5
MacLean
presentation

NSGEU

Notes for a Submission

By

Jason MacLean
President
Nova Scotia Government & General Employees Union

To the Law Amendments Committee:

Crown Attorneys' Labour Relations Act

Good afternoon.

Madame/Mr. Chairperson and Committee members – I am here today to speak to an unfortunate piece of legislation, the Crown Attorneys' Labour Relations Act.

My name is Jason MacLean and I am President of NSGEU.

The NSGEU is the largest union in the province representing approximately 31,000 hardworking women and men across the public sector in the provincial government, corrections, public schools, community colleges, universities, municipalities, community organizations and health care.

I have to say I am disappointed to be at law amendments to, once again, speak against another piece of Liberal legislation aimed at stripping public servants of their rights to free and open collective bargaining.

This legislation unfairly tilts the balance of power towards the McNeil Liberals and away from hard working public servants.

We know how this kind of strong-arm political maneuver played out throughout the public service.

It pushed an already vulnerable health care system into chaos.
The result is a health care crisis that people now must accept as the new normal.

The province can't recruit the number of health care professionals the system needs.

How many times do I need to repeat this?

Surgeries are cancelled last minute; emergency departments are closed; families are forced to go without a doctor; seniors can't get into long term care beds; and vulnerable people are left at home without the kind of home care they need.

Such political interference into the collective bargaining process puts up unnecessary barriers to recruiting people to come and work in Nova Scotia.

Our health care workers continue to be among the lowest paid in Canada and this government has shown they are more interested in meddling in lives of working people than treating them fairly and allow the bargaining process to unfold without interference.

I am disappointed to be here today because lately, there has been a lot of good work happening between the labour movement and government.

As a Union leader who represents over 30-thousand working Nova Scotians it's clear that the Liberal government doesn't believe our collective agreements are worth the paper they are printed on.

In November of 2015 then Finance Minister Randy Delory told organized labour in a meeting and in public statement that he wants to 'repair public-sector labour relations that have been broken far too long.'

Let me be clear: It wasn't broken. Stephen McNeil and the Liberal MLAs sitting around this table broke it.

Time and time again this government has bullied working people, without any thought to the consequences.

When every problem looks like a nail, the only tool this government will use is a hammer.

Don't forget, health care is in crisis and vulnerable people continue to suffer at the hands of this government.

And now it's Crown Attorneys'.

In 2015 this government agreed to extending the right of arbitration. Now as government once again fails to get a deal they resort, as all bullies do, to intimidation and manipulation.

Stephen McNeil has now changed the rules, broken his own agreement, and has surrendered any credibility he might have had left with working people.

With the fallout of the Jordan decision, the court system is on the brink of crisis and as it did with health care, the actions of this Premier will push it over the edge.

The Premier claims he is showing leadership and making tough decisions.

Real leadership would be to negotiate in good faith and find a compromise - not act like a child who doesn't get his own way and takes his ball and goes home.

Real leadership would be to honour the conditions of the existing contract and work in collaboration to find solutions, not legislate away the failures of his government.

No one said this would be easy. The fact the two sides are far apart is part of the process. In the past that was only a sign that each side needed to work harder.

The 'McNeil' process is to ram through legislation to get what he wants.

Health care is in crisis – too bad.

We can't recruit health care workers – too bad.

People are leaving the system – too bad.

And now, victims won't get the justice they deserve – too bad.

How can any public servant feel confident that what they bargained for, what this government agreed to, will be honoured if things get difficult?

If the government can break the terms of the contracts, are they sending us a message that we can too?

If contracts don't mean anything anymore, then I think we might need to reconsider how we do things, as well.

This is a challenge of integrity. A challenge of trust. A challenge of respect.

So far, it's a challenge that government has failed.

I ask the government members of this committee to tell the working people of this province, how can they trust this government to protect the benefits and rights they have worked for and depend on?

In 2015, Minister Delorey told us he wanted to fix labour relations. If this is government's vision of a fixed system, it's no wonder they can't see the crisis in health care or the potential crisis in the justice system.

Today, I offer no amendments to the bill, as the bill is a slap in the face to every working person who has a collective agreement in Nova Scotia.

The only honourable thing to do is to withdraw the bill and get back to finding solutions. Just as we used to do before the Liberals tried to "fix" labour relations, which weren't actually broken at all.

#6
Hershorn presentation

Submission of the Director Public Prosecutions to the Law Amendments Committee

October 18, 2019

Good afternoon. Today, I am here as the Director of Public Prosecutions to voice my grave concerns about Bill 203 which would eliminate the right to binding arbitration for this province's Crown Attorneys.

If passed, the bill would be a <u>disaster</u> for the Public Prosecution Service and Nova Scotia's criminal justice system. Let me tell you why.

Our province's Public Prosecution Service was established in 1990 as this country's <u>first independent public prosecution service</u>. Labour

relations during those first few years were tense; Crown Attorney morale was low. At the core of the problem was the unresolved issue of an independent mechanism to set salaries for Crown Attorneys. Our Crown Attorneys chose to strike. They hit the picket line in 1998. It was a dark time for the prosecution service and for criminal justice in Nova Scotia.

In 2000, under the leadership of then Attorney General, the late Michael Baker, an independent salary setting mechanism was finally established. Since then, we've had a very positive and sustained period of labour relations.

The Nova Scotia Crown Attorneys Association bargained in good faith with the government and the government bargained in good faith with the Crown Attorneys. When an agreement couldn't be reached,

the matter went to binding arbitration which settled on what was fair and proper for both parties.

The last negotiated agreement was reached in 2016. The Crown Attorneys accepted the government's pattern wage offer in return for a 30-year framework agreement.

That agreement is now being violated. As a lawyer, I believe in the principle that agreements must be honored. I support bargaining in good faith. I support that Charter rights must be respected. I trust legal processes—like arbitration.

Binding arbitration is particularly well-suited to an independent organization like the public prosecution service.

As Director of Public Prosecutions, I first heard of this Bill on the day it was introduced. I had no opportunity to voice my opinion, one that would have been based on 48 years of experience in the operation of a prosecution service. This is disrespectful of my office.

I support our Crown Attorneys and the important work that they do. I understand their anger with this Bill. I'm angry, too. I have told them so. As head of the independent Public Prosecution Service, I stand with them in their opposition to this Bill.

This Bill will designate Crown Attorneys an essential service and will give them the right to strike. The Bill is right about one thing. Crowns are an essential service. They are what stands between the people of this province and murderers . . . child molesters . . . and thieves. But saying Crown Attorneys have the right to strike is meaningless.

A strike would bring mayhem to the courts. Public safety would be jeopardized. There's not one Crown Attorney that wouldn't be considered essential.

Every day, as it is, we struggle to cover the Courts across the province with the 100 Crown Attorneys we have. Crown Attorneys put in countless hours of unpaid overtime. To say this Bill confers a right to strike is misleading and disingenuous. What Crown Attorneys would be able to strike? What murders . . . sexual assaults . . . or child pornography cases would be left unprosecuted?

If Crowns were to strike, government would be forced to contract with the private sector as was done in 1998. In the private sector only criminal defence lawyers are experts in criminal law. And they would be in conflict.

All that private civil lawyers were able to do in 1998 was adjourn cases. We could get away with that then. Today, in the world of Jordan . . . cases would be tossed.

This Service has statutory independence as it relates to prosecutorial decision-making, but it relies on government to decide its funding. There is a line where the decision to fund or not to fund . . . to approve a request or not . . . affects independence operationally. The potential for a strike by Crown Attorneys is very much an operational effect; and it is one that greatly concerns me.

I am also concerned with the risk to recruitment and retention if salaries do not remain competitive. Nova Scotia currently has a team of first-rate Crown Attorneys who want to be compensated fairly and treated with respect. Only an independent salary-setting mechanism can ensure this remains the case.

Our Crown Attorneys are skilled professionals. On Wednesday, I witnessed them receiving the devastating news of this Bill as they were settling into a session of continuing legal education. They left to demonstrate their opposition to this Bill. And then, being the true professionals they are, they came back to continue honing their skills as Crown Attorneys in the face of this blow to their morale.

I thank them for their dedication and professionalism.

In 2000, in announcing the initial framework agreement between the government and the Crown Attorneys Association, Attorney General Michael Baker said: . . . ***"This is a banner day for the province's Public Prosecution Service. It means a more positive, constructive relationship between the Crown Attorneys and government and provides a solution to the longstanding issue of how wages are set for this independent service.***

He went on: ***It's time these individuals and their contributions to the public service be recognized and appreciated."***

Wise words which I commend to you today.

Thank you.

News release

Crowns Accept Salary-Setting Proposal

Public Prosecution Service (../search?dept=40)
February 1, 2000 - 2:00 PM

Nova Scotia's Crown attorneys and the provincial government have reached an agreement on a salary-setting mechanism for the province's prosecutors.

"This is a banner day for the province's Public Prosecution Service," said Attorney General Michael Baker. "It means a more positive, constructive relationship between Crown attorneys and government and provides a solution to the long-standing issue of how wages are set for this independent service."

The long-standing salary issue was addressed in an independent review of the service conducted last year by retired judge Fred Kaufman. Mr. Kaufman urged that Crown attorneys and government come up with an agreement on their own. He said this option was preferable to the alternative of amending the Civil Service Collective Bargaining Act to establish a bargaining unit of staff lawyers.

"This government has always been firmly committed to resolving this issue," said Mr. Baker. "And, I am delighted we were able to reach this agreement on our own, as Mr. Kaufman urged, without having to resort to legislation."

The agreement outlines a procedure for discussion, negotiation and arbitration aimed at determining salaries for all non- managerial Crown attorneys within the Public Prosecution Service. It also provides a mechanism for dispute resolution and formally recognizes the Nova Scotia Crown Attorneys Association as the representative body for the 65 non-managerial Crown attorneys in 16 offices across the province.

"Crown attorneys perform an important service for Nova Scotia and Nova Scotians," said Mr. Baker. "Prosecuting those accused of crimes such as murder, sexual assault, robbery and the like is vital to the public safety and compensation for doing so should be fair and just."

The agreement was hammered out by a working group established by government in December, comprising representatives of the Crown Attorneys' Association, the Department of Human Resources and management of the Public Prosecution Service. Now that the working group has the go-ahead, it will begin the groundwork for actual salary negotiations.

Mr. Baker made the announcement today with Anne Calder of the Nova Scotia Crown Attorneys Association.

Last year, Nova Scotia Crown attorneys prosecuted some 42,000 cases including 56 murders, 313 robberies, 465 sexual assaults, 2,200 break and enters and 4,600 thefts.

"It's time these individuals and their contributions to the public service be recognized and appreciated," said Mr. Baker.

FOR BROADCAST USE:

The province and its Crown attorneys have hammered out an agreement.

The deal provides a new way to settle disputes and negotiate wages for the province's Crown prosecutors.

It also fulfills another recommendation put forward in the report on the Public Prosecution Service by retired judge Fred Kaufman.

Attorney General Minister Michael Baker says his government made a commitment

to settle the issue and succeeded.

-30-

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kjd February 1, 2000 2:00 p.m.

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Law Amendments Committee

Bill 203 – Crown Attorneys' Labour Relations Act

Janet Hazelton, President, Nova Scotia Nurses' Union

October 18th, 2019

The Nova Scotia Nurses' Union is a professional union representing 7,400 Licensed Practical Nurses, Registered Nurses and Nurse Practitioners in Nova Scotia's hospitals, long term care facilities, adult residential centers, VON branches and Canadian Blood Services Centres. On behalf of the NSNU, thank-you for the opportunity to speak to this legislation.

It is unfortunate to speak against yet another piece of legislation that undercuts fair labour relations in this province. We are reaching a point where ad hoc legislation is becoming a normalized part of the collective bargaining process, undermining the true spirit of collective bargaining enshrined in our labour relations legislation. Employees and employers are supposed to meet as equals in collective bargaining as they attempt to achieve workable solutions.

Legislation already in place allows for an arbitration process to determine solutions when an impasse has been reached. This was known by both parties, and is the context in which bargaining has taken place to date. Both sides are forced to appreciate that if they make unreasonable demands, a skilled and impartial arbitrator could decide against them.

The newly proposed regime would in theory grant crown attorneys the opportunity to withdraw their services in order to encourage a solution to the impasse. However, with the requirement of an essential service agreement, a strike would likely have little to no influence on employers. Attorneys are already struggling to keep up with current caseloads and so any essential service agreement is unlikely to allow for a significant reduction in services. An ineffective strike is a strike with no purpose. Clearly, this does not respect their Section 2(d) Charter Rights. Employees will be robbed of the rights that allow them to encourage progress on a negotiated deal. All of the cards will have been given to the employer, and the notion of 'collective' bargaining is replaced with one-sided negotiations. This is unacceptable.

On behalf of the Nurses' Union, I encourage our elected officials to stop interrupting Nova Scotia's collective bargaining regime which has served us well for many years. We have processes in place to ensure fairness for all involved, and these processes should be respected.

Kind regards,

Janet Hazelton, BScN, RN, MPA
President, Nova Scotia Nurses' Union

#7
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.

Raymond F. Larkin, QC
Pink Larkin
[redacted]
Halifax, Nova Scotia