



BILL NO. 30

Government Bill

*1st Session, 62nd General Assembly
Nova Scotia
63 Elizabeth II, 2014*

An Act to Ensure the Provision of Essential Home-support Services

CHAPTER 1
ACTS OF 2014

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MARCH 1, 2014**

The Honourable Kelly Regan
Minister of Labour and Advanced Education

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

This page is intentionally blank.

An Act to Ensure the Provision of Essential Home-support Services

WHEREAS the employers and the bargaining unit employees to which this Act applies are providing essential home-support services to Nova Scotians;

AND WHEREAS the employers and the employees' bargaining agents have been unable to reach a negotiated settlement;

AND WHEREAS there is a need to ensure that essential home-support services continue to be provided in the event of a work stoppage;

THEREFORE be it enacted by the Governor and Assembly as follows:

- 1 This Act may be cited as the *Essential Home-support Services (2014) Act*.
- 2 (1) In this Act,
 - (a) "bargaining agent" means a bargaining agent referred to in clause 3(1)(c);
 - (b) "bargaining unit" means a bargaining unit referred to in clause 3(1)(b);
 - (c) "Board" means the Labour Board established under the *Labour Board Act*;
 - (d) "Chair" means the Chair of the Board;
 - (e) "CUPE" means the Canadian Union of Public Employees;
 - (f) "date of expiry" means, with respect to an employer and the bargaining agent of the employer's employees in a bargaining unit, the day, on or after the day this Act comes into force, that a collective agreement is entered into between that employer and that bargaining agent;
 - (g) "district health authority" means a district health authority as defined in clause 2(h) of the *Health Authorities Act*;
 - (h) "employee" means an employee referred to in clause 3(1)(b);
 - (i) "employer" means an employer referred to in clause 3(1)(a);
 - (j) "essential home-support service" means a home-support service that an employer is authorized to provide under an agreement with a district health authority to assist persons with activities of daily living, which may include personal care, respite services, light housekeeping, meal preparation and laundry services, and that is necessary to enable the employer to prevent or limit
 - (i) loss of life,
 - (ii) serious harm or damage to or deterioration of the mental or physical health of one or more persons, or

(iii) serious harm or damage to or deterioration of property required for the performance of an essential home-support service in relation to subclause (i) or (ii);

(k) “essential home-support services agreement” means an essential home-support services agreement made pursuant to this Act;

(l) “essential home-support services employee” means an employee who, during a work stoppage, is required to work under an essential home-support services agreement;

(m) “NSGEU” means the Nova Scotia Government Employees Union;

(n) “Minister” means the Minister of Labour and Advanced Education;

(o) “vice-chair” means a vice-chair of the Board;

(p) “work stoppage” means a lockout or strike.

(2) Except as otherwise provided in this Act, words and expressions used in this Act have the same meaning as in Part I of the *Trade Union Act*.

(3) Where there is a conflict between this Act or the regulations and any other Act or regulation or any collective agreement, arbitral or other award or decision, obligation, right, claim, agreement or arrangement of any kind, this Act and the regulations prevail.

3 (1) This Act applies to

(a) the following employers:

- (i) Antigonish and Area Homemaker Service,
- (ii) County Homemakers Society,
- (iii) City Homemakers Service Society,
- (iv) Digby/Clare Home-Support Society/Société de soutien à domicile,
- (v) Guysborough County Home-Support Agency Society,
- (vi) Inverness County Home-Support Society,
- (vii) Lunenburg County Home-Support Services Society,
- (viii) Northside At Home Care Services Ltd.,
- (ix) Northwood Homecare Incorporated,
- (x) Victoria County Home-Support Services Society,
- (xi) Victorian Order of Nurses for Canada—Les Infirmières de l’Ordre de Victoria du Canada,
- (xii) Yarmouth Argyle Home-Support Services Society,

and their successors;

(b) the employees of employers referred to in clause (a) who are members of any of the following bargaining units:

- (i) CUPE Local 3936,

- (ii) CUPE Local 3953,
- (iii) CUPE Local 4354,
- (iv) NSGEU Local 29,
- (v) NSGEU Local 30,
- (vi) NSGEU Local 31,
- (vii) NSGEU Local 32,
- (viii) NSGEU Local 33,
- (ix) NSGEU Local 34,
- (x) NSGEU Local 35,
- (xi) NSGEU Local 36,
- (xii) NSGEU Local 37,
- (xiii) NSGEU Local 38,
- (xiv) NSGEU Local 39,
- (xv) NSGEU Local 40,
- (xvi) NSGEU Local 76,
- (xvii) NSGEU Local 83,
- (xviii) NSGEU Local 84,
- (xix) NSGEU Local 85,

and their successors; and

- (c) the bargaining agents of the employees referred to in clause (b).

(2) This Act binds Her Majesty in right of the Province.

4 The Minister has the general supervision and management of this Act.

ESSENTIAL HOME-SUPPORT SERVICES AGREEMENTS

5 (1) Upon the coming into force of this Act, each employer and the bargaining agent for the employees of that employer shall enter into negotiations for an essential home-support services agreement.

(2) In order to enable an employer to continue to provide essential home-support services in the event of a work stoppage, an essential home-support services agreement must

- (a) identify the work functions that constitute essential home-support services;

- (b) identify the classifications of employees, and the number of employees in each classification, who are required at any one time to perform essential home-support services during a work stoppage;

(c) provide for a method by which employees competent to perform essential home-support services will be assigned to perform those services during a work stoppage;

(d) in order to allow the employer to respond to an unanticipated increase in the need for essential home-support services during a work stoppage, set out a procedure for identifying and assigning additional employees within the classifications referred to in clause (b) who are required to perform the work functions identified under clause (a), including the immediate assignment of the additional employees;

(e) where the employer uses the procedure in clause (d), require the employer to immediately serve notice on the bargaining agent setting out the additional number of employees in each classification who are required to perform the work functions as a result of the unanticipated increase;

(f) in order to allow the employer to respond to an emergency during a work stoppage, set out a procedure for

(i) identifying additional work functions as essential home-support services,

(ii) identifying additional classifications of employees, and the number of employees in each classification, who are required to perform additional work functions identified as essential home-support services, in an emergency, and

(iii) assigning these additional employees, including the immediate assignment of the additional employees; and

(g) where the employer uses the procedure in clause (f), require the employer to immediately serve notice on the bargaining agent setting out the additional work functions identified as essential home-support services, the additional classifications of employees and the number of employees in each classification who are required to perform those work functions in an emergency.

6 (1) Either the employer or the bargaining agent may, by written notice to the other, require the other to begin negotiations for an essential home-support services agreement and thereupon they shall begin negotiations without delay.

(2) Notwithstanding subsection (1), within 21 days after notice is given under subsection (1), or within such further time as the employer and bargaining agent agree upon, the employer and bargaining agent shall meet or cause authorized representatives to meet on their behalf and begin negotiations with one another.

(3) Upon giving or receiving notice under subsection (1), the employer shall, without delay, provide the bargaining agent with the employer's proposed plan for maintaining essential home-support services in the event of a work stoppage.

7 (1) Each employer and the bargaining agent for the employees of that employer shall endeavour to reach an essential home-support services agreement through negotiations.

(2) The employer or the bargaining agent may request the Minister to appoint, and the Minister, upon such request, may appoint, a conciliation officer or mediation officer to assist them with their negotiations.

(3) For greater certainty, the involvement of a conciliation officer or mediation officer appointed under subsection (2) does not replace any obligation on the employer or the bargaining agent under the *Trade Union Act* to confer with a conciliation officer for purposes of concluding and entering into a collective agreement in accordance with that Act.

8 (1) An employer or a bargaining agent may make a complaint in writing to the Board that the other has failed to comply with Section 6 or subsection 7(1), and the Board shall inquire into the complaint and may dismiss the complaint or make an order requiring either of them to do anything that, in the opinion of the Board, is necessary to secure compliance.

(2) A complaint made to the Board under subsection (1) must be resolved by the Board within three business days after the complaint is received by the Board.

9 (1) Where an employer and a bargaining agent are unable to conclude an essential home-support services agreement, the employer or the bargaining agent may apply in writing to the Board to settle the provisions of such an agreement and the Board shall, as soon as is practicable, serve notice on both of them of receipt of such application.

(2) Upon receiving the notice served under subsection (1), the employer and the bargaining agent shall each, without delay, give the Board a statement setting out the matters they have agreed upon, if any, and the matters upon which they cannot agree.

(3) The Board may hold an oral hearing before making a decision under this Section, but is not required to do so.

(4) The Board shall hear the matter as a panel consisting of the Chair or a vice-chair as a sole adjudicator.

(5) Within 60 days after receiving an application under subsection (1), or within such further time as the employer and bargaining agent agree upon, the Board shall make an award settling the provisions of an essential home-support services agreement between the employer and the bargaining agent.

(6) In settling the provisions of an essential home-support services agreement under this Section, the Board shall accept, without amendment, any provisions agreed upon by the employer and the bargaining agent.

(7) On application by the employer or the bargaining agent, the Board may modify any determination, decision, order or direction made by the Board under this Section as the Board considers appropriate in circumstances.

10 An essential home-support services agreement between an employer and a bargaining agent for the employer's employees is binding upon

(a) the employer;

- (b) every employee of the employer who is represented by the bargaining agent;
and
- (c) the bargaining agent,

whether the terms of the agreement were settled by agreement or by the Board.

11 (1) The parties to an essential home-support services agreement may amend the agreement.

(2) A party to an essential home-support services agreement may apply to the Board to amend the agreement.

(3) Upon receipt of an application under this Section, the Board may amend the essential home-support services agreement and may make any other decision it considers appropriate in the circumstances.

12 Notwithstanding any agreement to the contrary, an essential home-support services agreement continues in effect until its date of expiry.

13 An employer shall file with the Minister a copy of any essential home-support services agreement to which it is a party.

SETTLEMENT OF DISPUTES

14 (1) Either party to an essential home-support services agreement may notify the other in writing that it disputes

- (a) the manner in which the other party is interpreting, applying or implementing the agreement; or
- (b) any action taken by the other party under the terms of the agreement.

(2) Where the parties are unable to resolve a dispute referred to in subsection (1), either party may apply to the Board to resolve the dispute, by written notice to the other party and to the Board.

(3) Where a dispute is referred to the Board under subsection (2), the Board shall settle the dispute within three business days after the notice is received by the Board.

15 (1) Where a party to an essential home-support 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 the meaningful right to strike or depriving the employer of the 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.

(2) Where, upon considering the application of the employer or bargaining agent under subsection (1), the Board is satisfied that the level of activity that is required to be continued under an essential home-support services 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 Board may make a decision pursuant to subsection (4).

(3) In deciding the application, the Board shall only consider whether, because of the number of employees identified in the agreement whose services the employer has used to provide the essential home-support services, the employees in the bargaining unit are deprived of a meaningful right to strike or the employer is deprived of a meaningful right to lock out the employees.

- (4) In making a decision under this Section, the Board may
- (a) amend the essential home-support services agreement;
 - (b) direct the parties to continue negotiations for a collective agreement;
 - (c) direct the parties to confer with a mediation officer who shall endeavour to conclude a collective agreement;
 - (d) order that all matters remaining in dispute between the parties be referred to an arbitration board for final and binding interest arbitration; or
 - (e) give any other directions the Board considers appropriate.

(5) The Board shall not order arbitration under clause (4)(d) before the day on which it would be lawful for the employer to unilaterally increase or decrease rates of wages or alter any other term or condition of employment of the employees under clause 35(b) of the *Trade Union Act*.

(6) Where, while an application is pending under this Section, the parties agree on all matters that remain in dispute between them and make a collective agreement, the Board shall dismiss the application without deciding it.

16 (1) This Section applies if the Board makes an order with respect to a bargaining unit for final and binding interest arbitration under clause 15(4)(d).

(2) While such an order is in effect, none of the employees in the bargaining unit shall strike and the employer shall not lock out any of the employees in the bargaining unit.

(3) Where the Board makes the order while any employees in the bargaining unit are on strike, those employees shall cease the strike.

(4) Where the Board makes the order while the employer is locking out any employees in the bargaining unit, the employer shall cease locking out those employees.

(5) Unless the employer and the bargaining agent agree otherwise, upon the making of the order, the rates of wages and all other terms and conditions of employment that were in effect immediately before it became lawful for the employer to unilaterally alter those rates, terms and conditions of employment under clause 35(b) of the *Trade Union Act* apply with respect to all employees in the bargaining unit until a collective agreement is in force.

17 (1) Where the Board makes an order with respect to a bargaining unit for final and binding interest arbitration under clause 15(4)(d), the arbitration shall proceed by way of an

interest-arbitration board composed of three persons, unless the parties to the arbitration agree to submit to an interest-arbitration board composed of one person.

(2) The Minister shall select the method of arbitration and shall advise the interest-arbitration board of the method.

(3) The method of arbitration must be mediation-arbitration unless the Minister is of the opinion that another method, including arbitration or final offer selection, is more appropriate.

18 (1) Subject to Section 19, the employer and the bargaining agent shall each, within seven days after the Board makes an order under clause 15(4)(d), give to the other party the name of a person to act as its appointed member on the interest-arbitration board and the two members so selected shall, within seven days after the day on which the second of them is appointed, appoint a third person to be a member and the chair of the board.

(2) Where a party to the arbitration fails to appoint a member to the interest-arbitration board, the Minister, upon receiving the application of the other party, shall, within seven days, appoint a person to act on the board as the appointed member of the party who has failed to appoint a member.

(3) Where the two members appointed to the interest-arbitration board fail or neglect to make the appointment of the third member and chair as required by subsection (1), either party may apply to the Minister for the appointment of a person to act as the third member and chair of the board.

(4) Upon receiving an application under subsection (3), the Minister shall, within seven days, appoint a person as the third member and chair of the interest arbitration-board.

(5) The decision of a majority of the interest-arbitration board is the decision of the board.

(6) The employer shall pay the fees and expenses of the member appointed to the interest-arbitration board by or on behalf of the employer, the bargaining agent shall pay the fees and expenses of the member appointed to the board by or on behalf of the bargaining unit and the employer and the bargaining agent shall each pay one half of the fees and expenses of the chair of the board.

19 (1) Where an employer and a bargaining agent agree that an interest-arbitration board is to be composed of one person, they shall, within 10 days after the Board makes an order under clause 15(4)(d), attempt to agree on a person satisfactory to both to be the board and, where agreement is reached, that person is appointed as the board.

(2) Where the employer and the bargaining agent are unable to agree on a person to be the interest-arbitration board, subsections 18(3) and (4) apply *mutatis mutandis*.

(3) The employer and the bargaining agent shall each pay one half of the fees and expenses of an interest-arbitration board appointed pursuant to this Section.

20 (1) An interest-arbitration board shall inquire into and decide on the matters that are in dispute and any other matters that appear to the board to be necessary to be decided in order to conclude a collective agreement between the parties, but in so doing the board shall not decide any matters that come within the jurisdiction of the Board.

(2) In making a decision, the interest-arbitration board shall consider

(a) the terms and conditions of employment negotiated through collective bargaining for employees performing the same or similar functions in the same or similar circumstances as the employees in the bargaining unit; and

(b) such other matters as the board considers fair and reasonable in the circumstances.

(3) Nothing in subsection (2) limits the powers of the interest-arbitration board.

(4) The interest-arbitration board remains seized of and may deal with all matters in dispute between the parties until a collective agreement is in effect between them.

(5) The interest-arbitration board shall determine the procedure for the interest arbitration but shall permit the parties to present evidence and make submissions.

(6) The interest-arbitration board shall begin the arbitration proceedings within 30 days after being appointed.

(7) The interest-arbitration board shall make a decision

(a) within 90 days after being appointed; or

(b) where the parties agree to an extended time before or after those 90 days have passed, within that time.

(8) Section 43B and 43C of the *Trade Union Act* apply *mutatis mutandis* to an interest-arbitration board and the proceedings and decisions of the board under this Act.

(9) The *Arbitration Act* does not apply to arbitration proceedings under this Act.

21 (1) Where, during a proceeding before an interest-arbitration board, the parties agree on all matters that were in dispute and they put that agreement in writing and execute it,

(a) that executed agreement constitutes a collective agreement; and

(b) the arbitration proceeding is terminated.

(2) Where, during a proceeding before an interest-arbitration board, the parties agree on some but not all of the matters in dispute, they shall notify the board of the items agreed upon and the board shall decide only upon the remaining matters and any other matters that appear to the board to be necessary to conclude a collective agreement.

(3) The date of the interest-arbitration board's decision under subsection (2) is deemed to be the day the collective agreement is entered into.

PROHIBITIONS, OFFENCES AND PENALTIES

22 While there is no essential home-support services agreement in effect between an employer and the bargaining agent for the employees of that employer,

- (a) the employer shall not authorize, declare or cause a work stoppage of any of the employees represented by the bargaining agent;
- (b) the bargaining agent shall not authorize, declare or cause a work stoppage by any of the employees represented by the bargaining agent against the employer; and
- (c) no employee represented by the bargaining agent shall participate in a work stoppage against the employer.

23 While an essential home-support services agreement is in effect,

- (a) the employer shall not authorize, declare or cause a work stoppage of any employee who is an essential home-support services employee under the agreement;
- (b) the bargaining agent shall not authorize, declare or cause a work stoppage of any employee who is an essential home-support services employee under the agreement; and
- (c) no employee who is an essential home services employee under the agreement shall participate in a work stoppage against the employer.

24 No person or organization shall

- (a) do anything to prevent or impede an employee's compliance with Section 22 or 23 or aid or abet an employee to not comply with Section 22 or 23; or
- (b) fail to do anything for the purpose of preventing or impeding an employee's compliance with Section 22 or 23 or for the purpose of aiding or abetting an employee to not comply with Section 22 or 23.

25 (1) Any work stoppage between an employer and a bargaining agent that is taking place at the time this Act comes into force must cease until such time as the employer and bargaining agent have established an essential home-support services agreement.

(2) Where, on the coming into force of this Act, a conciliation officer has filed a report pursuant to subsection 38(1) of the *Trade Union Act* and the 14-day period provided for in subsection 47(1) of the *Trade Union Act* has begun, no further time of that period elapses until such time as the parties have entered into an essential home-support services agreement.

26 For greater certainty, Section 47 of the *Trade Union Act* applies to the notice required for an employer or a bargaining agent to cause a work stoppage.

27 A person who contravenes this Act is guilty of an offence and is liable on summary conviction,

- (a) in the case of an offence committed by an employer or a bargaining agent, or by a person acting on behalf of an employer or a bargaining agent, to a fine of not

more than \$50,000 and, in the case of a continuing offence, to a further fine of \$10,000 for each day on which the offence continues; and

(b) in the case of an offence committed by any person other than one described in clause (a), to a fine of not more than \$1,000 and, in the case of a continuing offence, to a further fine of \$200 for each day on which the offence continues.

GENERAL

28 The provisions of the *Labour Board Act* and the *Trade Union Act* respecting the composition, powers, duties and decisions of the Board apply *mutatis mutandis* to the resolution of a complaint made under subsection 8(1), the settlement of the provisions of an essential home-support services agreement under Section 9, the decision of the Board under subsection 11(3) and the settlement of a dispute under Section 14 or 15.

29 (1) Any person or organization affected by any decision or order of the Board made under this Act may file a copy of that decision or order, certified by the Board, excluding the reasons, in the Supreme Court of Nova Scotia.

(2) On the filing of a certified copy of a decision or order of the Board in the Supreme Court of Nova Scotia under subsection (1), the decision or order must be registered in the Court and, upon registration, has the same force and effect, and all proceedings may be taken thereon, as if the decision or order were a judgment obtained in the Court.

30 (1) The Governor in Council may make regulations

(a) respecting the establishment and operation of an interest-arbitration board referred to in this Act;

(b) defining any word or expression used but not defined in this Act;

(c) further defining any word or expression defined in this Act;

(d) respecting any matter the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the *Regulations Act*.

31 (1) On and after the date of expiry that applies with respect to an employer and the bargaining agent for the employees of that employer, this Act ceases to have force and effect with respect to

(a) the employer;

(b) every employee of the employer who is represented by the bargaining agent; and

(c) the bargaining agent with respect to those employees.

(2) Nothing in subsection (1) affects the prosecution of an offence under this Act.
