



October 8, 2010

Nova Scotia  
Federation of Labour, CLC

Nova Scotia Department of Labour and Workforce Development  
Policy, Planning and Professional Services Branch  
5151 Terminal Road, 6th Floor PO Box 697  
Halifax, NS B3J 2T8

Greetings:

We wish to thank you for the opportunity and time extension, enabling us to discuss the proposed Consolidation of Labour Relations Boards and Employment Tribunals in Nova Scotia to the new Labour Relations and Employment Board (LREB) with representatives of our affiliates to better prepare our response which we are now pleased to submit for your consideration.

In general, we support the concept to combine the four labour relations boards under the new LREB for the reasons outlined in the Discussion paper. We also, understand that many other provinces have moved to change their labour boards to have a much broader mandate than our present Labour Relations Board; while others may well be considering a similar move.

It also makes sense to add the Labour Standards Tribunal as well. They all deal with similar matters and the same knowledge and skill sets would be required of all Board members to adjudicate the issues.

Before going further into views or comments on the paper and proposed direction; we wish to make it clear that we hope there will be no reductions in the number of staff associated with the proposed consolidation into the one new board.

Although we clearly think the proposed direction of the paper indeed has merit; we also believe there are some serious flaws or pitfalls that would be seen as regressive rather than progressive moves.

In the sense of brevity; we will focus our comments on that which we believe to have the potential of having a negative impact and/or outcome; thus undermining that which we sense the proposal hopes to achieve, particularly in the areas of transparency and fairness.

- We have very strong reservations with the proposal to add the Occupational Health and Safety Appeals Panel to the LREB. Occupational Health and Safety has become and is a very specialized field; which requires fairly extensive training and experience to get to the level to be considered for the Appeals Panel.
- It is not by mistake that of all the various pieces of legislation that impact on workplaces and workers; the Occupational Health and Safety Act stands out in detail of process, rights, roles and responsibility to help the system work in the interest of workplace stakeholders; including a legislatively mandated stakeholder Advisory Committee to the Minister; on workplace occupational health and safety matters and ongoing trends.
- This is such a specialized workplace issue and field of concern; the Occupational Health and Safety legislation mandates various roles and responsibilities for workplace stakeholders; rules and procedures for establishing Joint Occupational Health and Safety Committees or Representatives and how they function including their respective responsibilities. Also most large unions and employers have specialized departments and/or representatives to deal with health and safety matters.
- It has been our experience that very few individuals, coming from either a union or employer background have extensive knowledge and/or experience in both Occupational Health and Safety and Labour Relations matters and it is our fear by combining such unlikely partnered matters it will surely undermine or diminish the understanding of the importance of Occupational Health and Safety – we have come too far to chance slipping backwards **again**.
- As stated we have very strong reservations with the proposal to add the Occupational Health and Safety Appeals Panel to the LREB; and we are strenuously opposed to the concept, possibility or direction that would see a sole adjudicator hearing Occupational Health and Safety Appeals. This move would fly in the face of the intent and spirit of the Occupational Health and Safety Act and process which clearly values and understands

the importance of stakeholder involvement and participation at all levels – a point not lost in the Westray Inquiry.

- These experienced and dedicated members of the Appeals Panel make valuable contributions to the process and we believe safeguards need to be put in place to insure the independence of the Appeal Panel.
- We also have very strong reservations with the proposal –“*The Department is recommending that the LREB Chair be provided with discretion to appoint a sole adjudicator as an alternative to a tri-partite panel. The introduction of sole adjudication is an effective option for resolving various types of disputes. Sole adjudication permits hearings to be scheduled more quickly, decisions to be rendered more quickly in the absence of the requirement to achieve consensus, and expenses to be reduced (i.e. travel and per diems)*”.
- While this approach may seem or appear appropriate in some circumstances, it should only be considered at the request of or with the agreement of the parties; which appears to be the preferred option elsewhere.
- However in their recommendation, it appears the Department would see this structure become the norm and a panel to become the exception. In the middle of the second paragraph on page 9 of the Discussion Paper, it reiterates the plan with the following words “As stated above, the Chair would be provided with the discretion to appoint a sole adjudicator, recognizing that in **some** instances the specialized expertise of a panel will be required”. (emphases added)
- It would appear that in addition to the objective to reduce time frames for scheduling matters and receiving decisions; cost reduction is a major consideration or motivator and we should always remember doing things at the lowest possible cost is not always or necessarily the best way to approach revisions or renewal.
- We are not aware of delays in scheduling panels being attributed to the Union or employer representatives; rather the feed back we have received clearly indicates they are least problematic part of scheduling panels. This comes as no surprise given a criterion for screening and appointing Labour and Employer panelists is their availability. In addition many of the panelists’ are retired and are available on short notice.

- Our feedback clearly indicates delays are more attributed to others involved in the process. The Vice-Chairs or Chair tend to be busy people whose schedules are less flexible than the wingers; coupled with the delays in finding hearing dates with legal counsel; a long time lamented concern. Perhaps a bit of focus in these areas may well streamline the process without undermining the trusted and representative process in place now.
- If reducing needless cost is a true and sincere concern of this review then perhaps should look at what is adding the needless cost to the process. An example of this is that being experienced under the *Highway Workers' Collective Bargaining Act*; where the Union points out a real costly concern and process experienced under section (24) of the Highway Workers Collective Bargaining Act. There have been many discussions between the parties and with government on the possibility of removing this costly and unnecessary process from the legislation as most if not all have already been resolved through the legal process (at more cost).
- The idea of a single Board is a good idea; keeping in mind, our concerns and views regarding Occupational Health and Safety; and the idea of a full time chair is a good idea provided the selection process has a high level of legitimacy.
- Pragmatically, the new Board will have a new full time chair and a new chair will need the advice and support of labour and management representatives to be successful.
- Therefore, the tripartite nature of the Board should be continued; as other members (including union and employer members) have made valuable contributions to fair administration of our tribunals and we believe the legislation should enshrine appointment of representatives of unions and employers to the new LREB.
- Before concluding there is one other point we would like to address; one not specified in the paper, which in itself raises concern and that is the absence of a commitment to appointing representatives of labour recommended by the labour movement as employee representatives. From time to time we hear from Labour Department representatives, raising the question of representation of non union employees as a barrier to nomination by the Federation. They openly question the legitimacy of

labour representatives serving on Boards that deal with the rights of non-union employees.

- We strongly disagree with this notion. The labour movement is not an interest group for unions; we try to advance the interests of all workers and are, to our knowledge, the only body that actively promotes better working conditions and wages for unorganized workers. The nominees of the Federation have mostly been leaders or retired leaders of unions who are interested in just treatment of employees, unionized or not.
- We look forward to hearing feedback on all the responses.

Yours truly,

A handwritten signature in cursive script that reads "Rick Clarke".

**RICK CLARKE**  
President  
RC/jw  
CAW Local 4005