

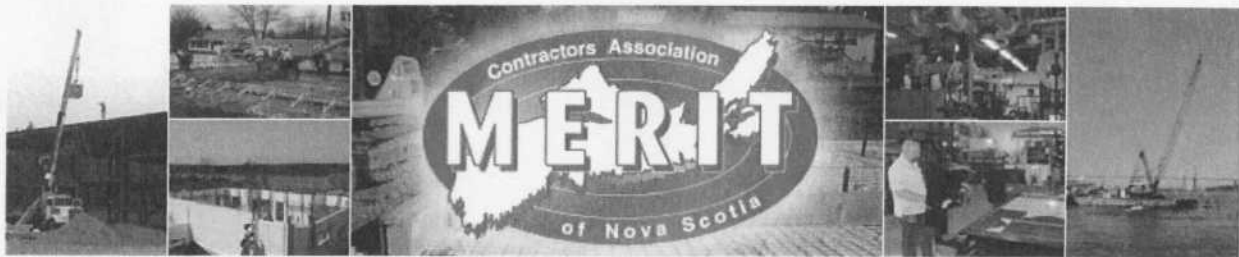
Merit Contractors

**Submission to Law Amendments Committee
on Bill 100: Labour Board Act**

November 30, 2010

Presented by:

**Heather Cruickshanks, President
Bill McLellan, Executive Director**



Good afternoon to members of the Committee and thank you for the opportunity to make submissions here today on such short notice.

My name is Heather Cruickshanks and I am the President of the Merit Contractors Association. I am here today with Merit's Executive Director, Bill McLellan.

What Merit Is and Does

Merit Contractors Association of Nova Scotia was established in 1994. The Association is a non-profit association of open shop contractors dedicated to serving the needs of employees in the construction industry. We promote safety, apprenticeship, training, efficiency and productivity.

Specific objectives of the Association are to develop and provide human resource services while advocating on behalf of open shop employees and employers for equitable working conditions and freedom of choice.

Merit Nova Scotia has membership of 135 companies. We represent 1,500 employees in Nova Scotia. Merit Canada's membership includes approximately 3,500 companies across Canada and approximately 45,000 employees in many different segments of the construction industry. Companies vary in size, type and scope of projects that they pursue.

Some of the work that Merit does is providing a group benefit program for employees, a retiree benefit plan, apprenticeship tuition reimbursement and training programs for supervisors, foreman and project managers.

Merit Concerns

Our members have a number of concerns about Bill 100.

1. Lack of Consultation

The first is the way in which these proposed amendments have come about.

In July the Department released a Discussion Paper entitled, "Consolidation of Labour Relations Boards and Employment Tribunals in Nova Scotia: Labour Relations and Employment Board." It said that it was providing information regarding changes to legislation and to seek feedback.

It specifically stated that the changes would, "have no impact upon the substantive rights of employers".

When the Bill was introduced in the House on November 19, after a close review of the Bill we were very surprised to learn that there were various additional amendments unrelated to the issue of the consolidation of the boards. Some of these changes definitely do impact on the rights of employers. There has been absolutely no consultation with employers on these changes.

We were also shocked to see that the Government appears to be pushing this Bill through so quickly, and that it received second reading on November 23 and there was very little debate or discussion on the bill.

First let me say that Merit is not opposed to the consolidation of the various boards, providing that the Board's mandate is clear and that it will be dealing with issues involving both unionized and open shop employers and employees.

But the lack of consultation on these extra provisions of Bill 100 are especially troubling when one considers that the Department of Labour and Workforce Development made a number of regulatory changes in late September 2010.

These changes were made without consultation or public announcement. And they are changes to make it easier for unions to organize.

They are as follows:

First: eliminating the requirement of unions to charge a nominal fee of \$2.00 when they are collecting potential members during a union drive;

Second: changing the definition of member in good standing from being a union member in the last 90 days to being a union member at any time in the past.

Third: expanding the certification rights in the construction industry, providing the building trades the ability to certify anyone in the jurisdiction of the collective agreement.

I hope Committee members will therefore understand how important consultation is to our association and our members.

Since the government didn't consult on these regulatory changes and they didn't consult on the extra parts of Bill 100, this leads us to our next concern with Bill 100.

2. Establishment of Labour Management Committee Without Representation from Open Shop Employers

Section 135 of the Bill establishes a Labour Management Review Committee appointed by the Minister of Labour and Workforce Development. This Committee would consist of 10 members from the unionized sector. There is no representation on this committee for open shop or non-union employers in the construction industry or industry as a whole.

It is important to note that open-shop or non-union employers make up a majority of employers in the private sector. Recent Statistics Canada data for 2010 shows that over 70% of the workforce in Nova Scotia, including those who work in the public sector, are non-union. Through the establishment of this Committee, this Bill shuts out the majority of employers in the province.

The composition of the Committee is important because the Minister of Labour and Workforce Development indicated that the Committee would be set up in the coming months to conduct a "timely review" of the *Trade Union Act*. If changes to the *Act* include changes to certification process or employer free speech, this could significantly affect the rights of open shop employers in the construction and other industries. It seems very unusual to exclude the very employers such a legislative review will most affect.

3. Name of Board Ignores Jurisdiction Over Open Shop Employers

In the discussion paper, and in fact it is in the title of the discussion paper, the Government stated that the name of the new Board would be the Labour Relations and Employment Board. Somehow from the consultation process and the bill the name was changed to be the "Labour Board." Merit feels that the name of the Board does not recognize its jurisdiction over open shop workplaces. This new Board will be dealing with issues of employment standards complaints and occupational health and safety matters for open shop workplaces. The term "Labour Board" is misleading and forgets that the majority of employers in the province are open shop.

When New Brunswick consolidated its boards, the name of the new board reflected that its mandate included dealing with both unionized and non-union workplaces, into the Labour and Employment Board. Nova Scotia should do the same.

The name of the Board should be reflective of its mandate and the jurisdiction over both unionized and non-union employers, and should be named the Labour and Employment Board as originally suggested by Government in its own July 2010 discussion paper.

4. Successorship Provisions

An additional concern of Merit is the provisions in the Bill for successorship when there has been a transfer of work from the public sector to private sector. This is another change we were not consulted on.

Our concern is that this provision could enable the certification of private sector employers that successfully bids and accesses government outsourced work that was previously done by government employees or any unionized workers. It also removes the ability of the employees to have a free choice as to whether they wish to be part of a union in doing the work with this new employer. This is a form of top down certification and could spread to all sectors. This should be removed from the Bill as industry was not consulted.

We believe that this provision will put a chill on private sector employers bidding on government work, therefore increasing costs for all of us as taxpayers.

5. Fees

Merit has a number of concerns relating to proposed fees that would result from Bill 100.

Bill 100 would require employers to make a security deposit if they wished to appeal a decision of the Labour Board. It does not extend that same requirement to those appealing the decision. This represents an unfair and uneven application of cost recovery. If government wishes to recover some of the administrative costs associated with Bill 100, it should do equally between employers and employees, particularly when many employers are small and medium sized businesses of less than 20 employees.

We are also concerned with the authority being provided to the Department of Labour and Workforce Development to impose additional fees. During the Minister's comments, she indicated that the Director in her department would be given: "authority by regulation to recover the cost of services under the code."

While we recognize that government has the right to recover costs, we wonder whether this contradicts the province's own jobs strategy.

To quote from page 12 of the JobsHere strategy released last week:

"The province has made great strides with its Better Regulation Initiative to reduce the red tape that can tie up businesses dealing with government. This initiative will be accelerated and expanded."

What is the point of promising to reduce red tape on the one hand, while increasing fees on businesses on the other?

Merit Recommendations:

It is Merit's request that the portions of Bill 100 that relate to anything other than the consolidation of labour and employment boards be removed until there can be consultation on these provisions and how it will impact on private sector employers.

As open shop employers represent a majority of employers in the province, Merit strongly recommends that any advisory committee to the Minister should reflect this reality.

We further recommend that cost recovery provisions are applied equally between employers and employees, or dropped altogether from Bill 100.

We also reiterate our recommendation to change the name of the new Labour Board to Labour and Employment Board. This would be a more accurate reflection of the scope of duties assigned to the board. The Department of Labour and Workforce Development stated as much in its July 2010 discussion paper.

Thank you. If you have any questions, we can be reached at Tel: 902-453-6248 or email: billmclmeritns@eastlink.ca.