

NOVA SCOTIA LAW AMENDMENTS COMMITTEE

**IN THE MATTER OF: Bill 100, "An Act to Establish a
Unified Labour Board"**

**SUBMISSIONS ON BEHALF OF THE
NOVA SCOTIA ROAD BUILDERS ASSOCIATION**



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INTRODUCTION

PRIMARY PURPOSE OF THE BILL

As the title of this Bill indicates, its primary purpose is to establish a single Board to administer employment and labour legislation now administered by six (6) Boards, first the Nova Scotia Labour Relations Board, the Civil Service Employee Relations Board, the Highway Workers Employee Relations Board and the Correctional Facilities Employee Relations Board, (early 2011), followed by the Labour Standards Tribunal and the Occupational Health and Safety Appeal Panel.

SECOND MAIN PURPOSE OF THE BILL

The second major initiative in the Bill is the establishment of a Labour-Management Review Committee whose function will include conducting a review of existing labour-relations statutes with equal representation from unionized labour and unionized employers. It has been suggested that such a Committee will do a comprehensive review of the *Trade Union Act* which has not been done for many years.

OTHER PROVISIONS

The Bill is 32 pages long with 155 sections. Most of the provisions are designed to establish the new "Super Board."

However, the Bill contains more than amendments to the *Labour Standards Code*, the *Civil Service Collective Bargaining Act*, the *Corrections Act*, the *Highway Workers Collective Bargaining Act*, the *Occupational Health and Safety Act*, the *Teachers' Collective Bargaining Act* and the *Trade Union Act* designed to effect the establishment of the new Board; there are substantive proposed amendments to some of those existing statutes.

THE APPROPRIATE LEGISLATIVE APPROACH

Labour and employee relations are critical to establishing a climate that is good for employers and their employees, unionized and non-unionized, and also to create a positive business climate in Nova Scotia. In the past, this critical climate has been disturbed by piece-meal amendments to various employment and labour relations statutes.

Establishing a single, coherent Labour and Employment Board (as the Super Board is called in New Brunswick) and approaching amendments to legislation affecting labour relations and employment by a process of careful consultation by a representative Committee is very important.

THE ROAD BUILDERS ASSOCIATION'S MAJOR SUBMISSIONS

1. The Bill should only deal with those provisions needed to establish the new Board and the Labour Management Relations Review Committee ("LMRC").
2. The remaining provisions making substantive amendments to existing legislation should not be included in the Bill, but should first receive extensive public consultation and consideration by the LMRC.

ALTERNATIVE SUBMISSIONS

3. If the Government does not want to have consultation on those proposed amendments to existing legislation, the Association's specific submissions on those items are:

Unnecessary Preamble

- (a) There is no current preamble in the *Trade Union Act* and no apparent good or necessary reason to add the one proposed in s. 132.

Name of the Board

- (b) Since the new Board will be dealing with both labour relations **and** employment standards and other matters affecting both unionized and non-union employers and their employees, like similar Boards in other Provinces, it should be named the "Labour and Employment Board". A similar name for the Board was proposed in the Government's discussion paper of July, 2010.

***Proper Consultation –
Non-Union Employer Representation on the LMRC***

- (c) Because non-union employers (currently estimated at between 70 and 80 percent of employers in Nova Scotia) have a vital interest in labour relations legislation, they should be included in the Labour-Management Review Committee.

Successor Rights

- (d) The proposed addition in s. 134 of successor rights for employees of the Province is too general and, if otherwise appropriate (the LMR Committee should consider that first), it should be limited to successorships only in the public sector, as was the case when the Health Care Sector was rationalized and it was necessary to expressly legislate successorship provisions when unionized government employees at specific hospitals were "transferred" to the District Health Authorities. There

appears to be a lot of concern by private sector employers that the general reference in s. 134 may mean that even a legitimate, good faith contracting out of public services to private employers will mean that those private employers will have to employ any displaced public sector employees and be bound by their collective agreement which would undermine the value of contracting out. Resolving this serious concern should be one of the important first jobs of proposed additional consultation or consideration by the LMR Committee.

Recording Oral Testimony

- (e) The removal by s. 95 of recording of the proceedings formerly done by the Labour Standards Tribunal is a bad idea. The *Labour Standards Code* continues to provide that appeals may be made to the Nova Scotia Court of Appeal on errors of law and jurisdiction. Elimination of a record of key testimony will impair the Court's ability to do its job. Having those proceedings recorded has not been a problem for any party. **Given the importance of the new Board, all oral evidence of all its proceedings should be required to be recorded.**

Change from Discretionary to Mandatory

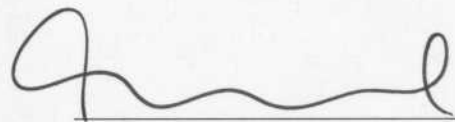
- (f) Section 106(1) would now make it *mandatory* in the *Labour Standards Code* for an employer who appeals to deposit the amount ordered to be paid by the Director or furnish a bond to cover that liability, should not be

included. The current provision which gives the Labour Standards Tribunal (to be replaced by the new Board) the *discretion* to order the posting of a bond as security for the potential liability has not been a problem. *"If it aint broke, don't fix it."*

Arbitral Items Lists

- (g) Several sections of the Bill would remove the specified arbitral lists for interest arbitrations. Such lists are not uncommon in legislation of this type and help focus the parties' attention to resolve their issues in direct bargaining with arbitration only a last resort failing such resolution. At the point of arbitration, it is very useful to have some limits on the issues that can be arbitrated. While there have been some disputes about the current lists, these have not been particularly substantial and there is no good reason to remove the current lists.

Respectfully submitted on behalf of the Nova Scotia Road Builders Association, this 30th day of November, 2010.


Eric Durnford, Q.C.