

i#600, 12220 Stony Plain Road  
Edmonton, AB T5N 3Y4

November 30, 2010

Members of the Law Amendments Committee

Dear Members:

**Re: Bill 100 – An Act to Establish a Unified Labour Board**

This is the submission on behalf of the Canadian Association of Counsel to Employers ("CACE").

CACE is an association of management-side labour and employment lawyers across Canada. CACE promotes excellence in the specialized field of labour and employment law and engages in legislation and law reform activities at the provincial and federal level. Created in 2004, CACE has over 350 members, including most of the leading labour and employment counsel in the country.

I am a former Director of CACE; my partner, Peter McLellan, Q.C., in the Halifax office of Stewart McKelvey is the immediate past President of CACE and Eric Durnford, Q.C. is the current Nova Scotia Director of CACE.

CACE members and their law firms provide labour and employment advice to the majority of employers in Canada.

CACE believes in consultation. As such, CACE has made representation to Law Amendment Committees and in other consultative contexts across the country.

CACE is troubled by the lack of consultation with respect to three aspects of Bill 100 and considers that none of those parts of Bill 100 should be part of Nova Scotia's labour and employment laws.

Bill 100 is "an Act to Establish a Unified Labour Board". CACE supports the establishment of the Unified Board believing that the Board and its fulltime Chair will be beneficial to Nova Scotians.

However, with the greatest respect, the consultation which lead to the rest of Bill 100 is sadly lacking. As you will recall, the Nova Scotia Government announced its plan to consolidate six Tribunals under a broadly mandated Board, prepared a Discussion Paper dated July 2010, made that Discussion Paper available to the public and invited submissions up to October 8, 2010. That Discussion Paper was entitled "Consolidation of Labour Relations Boards and Employment Tribunals in Nova Scotia – Labour Relations and Employment Board".

Three notable aspects of Bill 100 did not receive any mention, public discussion nor input. Nova Scotia CACE members were deprived of the opportunity to review, consider and advise their clients with respect to the following aspects of Bill 100 which are unrelated to establishing the Unified Labour Board:



## 1. Successorship

Section 134 of Bill 100 contemplates an amendment to the *Trade Union Act* making the "transfer of business and successor rights" section of the *Trade Union Act* apply to government. Media reports suggest that NSGEU's President believes that this change will mean that contracted out government services would oblige the contractor to hire former government employees under their existing collective agreements. A Labour Department spokesperson reportedly said that successor rights will extend to private contractors who take on work usually done by unionized employees.

The legal effect of the amendment is to build a bridge between government (operating under the *Civil Service Collective Bargaining Act*) and employers (under the *Trade Union Act*) so that union rights can travel between government and the private sector.

There is no need for this amendment. In the past when "ownership" of a government business has changed hands to the para-public or private sector, enabling legislation was created for those devolutions and successorship was specified in those statutes. Examples include legislation establishing the QEII (s. 20(1)), Nova Scotia Community Colleges (s. 89), District Health Authorities (s. 71), Nova Scotia Business Inc. (s. 37) and Property Valuation Services Corporation (s. 47). Therefore, ownership change has been addressed through devolution legislation. (Excerpts from applicable legislation are attached as Appendix "A".)

As well, the most recent Public Service Collective Agreement with NSGEU requires that the Province, in the event of a devolution of bargaining unit work to another employer, make "reasonable efforts to accomplish the devolution as if s. 31 of the *Trade Union Act* were applicable". Where compliance with s.31 is not accomplished, the government has to make reasonable efforts to obtain job offers with the new employer for employees whose work is devolved. (An excerpt from that Collective Agreement is attached as Appendix "B".)

Thus the government has dealt with this through legislation on a case by case basis and has committed through its collective agreement with NSGEU to deal with it in the future.

The problem is that employers who may enter into contracts for services with the government, could be faced with union applications saying that they are bound by the government's union obligations and required to hire government employees to do the work.

We know that a sale of business is different from a contract for services. However, NSGEU seems to believe that they are one and the same; it will be the new Labour Board that will be making that decision. Absent Bill 100, that argument was not available to unions.

## 2. The Labour Management Review Committee (the "LMRC")

Having labour and management discuss matters of mutual interest is beneficial. Bill 100 proposes a broad mandate for the LMRC, namely to "review, report on and make recommendations ... on labour-relations issues on an on-going basis", and "where directed by the Minister, conduct a



review of the *Trade Union Act* and other labour relations statutes or any part of them”.

The Committee is composed of equal numbers of unionized labour and employers. More than 70% of Nova Scotia employees are not represented by a union. The percentage of non-union private sector employees is much higher. There is no place at the table for either non-unionized employers nor employees.

Recognizing the substantial interest that non-union employers and employees have in such matters (like acquisition of bargaining rights), that is a surprising omission. Nova Scotia employers would expect meaningful consultation on legislative changes affecting their workplaces; the LMRC does not do that.

### 3. The Preamble

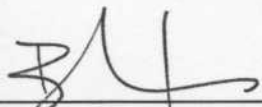
The modern *Trade Union Act* has been in place since 1972, nearly 40 years. It has never had a preamble.

Bill 100 contemplates that the *Trade Union Act* will be amended with words saying that the Government of Nova Scotia “is committed to the development and maintenance of labour legislation and policy designed for the promotion of common well being through the encouragement of free collective bargaining...” and that “Nova Scotia employees, labour organization and employers recognize and support freedom of association and free collective bargaining as the basis of effective labour relations...”

Those words will by statutory interpretation principles have an impact on how the Labour Board interprets the *Trade Union Act*. Preambles reveal legislative purpose; they are an important source of legislative values and this preamble will guide the Labour Board in its interpretation of the *Trade Union Act*.

For all these reasons, CACE considers that these three aspects of Bill 100 should not be included in Nova Scotia labour and employment laws.

All of which is respectfully submitted on behalf of the Canadian Association of Counsel to Employers.

  
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Brian G. Johnston, Q.C.





Appendix "A"



# Queen Elizabeth II Health Sciences Centre Act

## CHAPTER 15

### OF THE

### ACTS OF 1995-96

amended 2000, c. 6, s. 112

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**An Act to Amalgamate  
the Victoria General Hospital at Halifax,  
the Camp Hill Medical Centre,  
the Nova Scotia Rehabilitation Centre  
Corporation and the Cancer Treatment and  
Research Foundation of Nova Scotia to form  
the Queen Elizabeth II Health Sciences Centre**

#### Short title

1 This Act may be cited as the *Queen Elizabeth II Health Sciences Centre Act*. 1995-96, c. 15, s. 1.

#### Interpretation

2 In this Act,

- (a) "Board" means the Board of Directors of the Corporation;
- (b) "Corporation" means the Queen Elizabeth II Health Sciences Centre;
- (c) "director" means, except where the context otherwise requires, a member of the Board;

**Trade Union Act transferee**

20 (1) For greater certainty, the Corporation is a transferee for the purpose of Section 31 of the *Trade Union Act* and, without limiting the generality of the foregoing,

- (a) the Corporation is bound by successor rights as determined pursuant to the *Trade Union Act*; and
- (b) subject to the *Trade Union Act*, the Corporation and the employees of the Corporation, who are covered by collective agreements, are bound by the collective agreements as if the Corporation were a party to them.

**Application of compensation legislation**

(2) The *Public Sector Compensation (1994-97) Act* applies to the Corporation and members and employees of the Corporation except that, notwithstanding subsection 3(4) of that Act,

- (a) Section 23 of that Act does not apply;
- (b) the Labour Relations Board may exercise all of its powers under the *Trade Union Act* but the total effect of any changes to collective agreements shall not increase the total cost of all compensation in respect of all employees to whom the collective agreements changed apply and the pay rates, as defined by the *Public Sector Compensation (1994-97) Act*, are not more than permitted by that Act; and
- (c) no change shall be made in a collective agreement without the approval of the Labour Relations Board in accordance with clause (b).

**Deemed seniority**

(3) Where the Labour Relations Board, in applying subsection (1) or (2), determines that those employees, of the Corporation, who were not previously included in a bargaining unit of a predecessor hospital or a civil service bargaining unit that included employees at the Victoria General as defined by clause 17(1)(b) are to be included in a bargaining unit of the Corporation, those employees are deemed to have seniority credits with the Corporation equal to the employment service they had or were credited with as employees at the predecessor hospital or as employees at the Victoria General as defined by clause 17(1)(b).

**Rights unaffected**

(4) The right of an employee of a predecessor hospital or of an employee at the Victoria General as defined by clause 17(1)(b) to employment with the Corporation in a bargaining unit position is not affected by whether that employee was previously employed pursuant to a collective agreement and the employee is deemed to have seniority credits with the Corporation equal to the service that the employee was credited with as an employee at the predecessor hospital or as an employee at the Victoria General as defined by clause 17(1)(b).

**"employee" defined**

(5) In subsections (3) and (4), "employee" means an employee as defined in Section 2 of the *Trade Union Act* but, for greater certainty, does not include those described in subsection 2(2) of that Act.



# Community Colleges Act

CHAPTER 4

OF THE

ACTS OF 1995-96

amended 2002 c. 31, s. 13

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## An Act Respecting Collège de l'Acadie and the Nova Scotia Community College

### Short title

1 This Act may be cited as the *Community Colleges Act*. 1995-96, c. 4, s. 1.

*PART I (Sections 2 to 49) repealed 2002, c. 31, s. 13.*

### PART II

#### NOVA SCOTIA COMMUNITY COLLEGE

### Interpretation of Part

50 In this Part,

- (a) "auditor of the College" means an auditor appointed pursuant to Section 73;
- (b) "Board" means the Board of Governors of the College;
- (c) "College" means the Nova Scotia Community College established pursuant to this Part;

been employed by the College for the same period of employment that the teacher was credited with as an employee of the Minister.

### **Certain rights preserved**

(5) For greater certainty,

(a) nothing in this Section means or shall be construed to mean that there has been a termination of employment of a teacher at the predecessor College; and

(b) benefits accumulated by a teacher while employed by the Minister at the predecessor College are vested in the teacher and the teacher is entitled to receive those benefits from the College. 1995-96, c. 4, s. 88.

### **Trade Union Act transferee**

89 (1) For greater certainty, the College is a transferee for the purpose of Section 31 of the Trade Union Act and, without limiting the generality of the foregoing,

(a) the College is bound by successor rights as determined pursuant to the Trade Union Act; and

(b) subject to the *Trade Union Act*, the College and persons previously employed at the predecessor College under collective agreements, are bound by the collective agreements as if the College were a party to those agreements.

### **Application of compensation legislation**

(2) The *Public Sector Compensation (1994-97) Act* applies to the College and members and employees of the College except that, notwithstanding subsection 3(4) of that Act,

(a) Section 23 of that Act does not apply;

(b) the Labour Relations Board may exercise all of its powers under the *Trade Union Act* but the total effect of any changes to collective agreements shall not increase the total cost of all compensation in respect of all employees to whom the collective agreements changed apply and the pay rates, as defined by the *Public Sector Compensation (1994-97) Act*, are not more than permitted by that Act; and

(c) no change shall be made in a collective agreement without the approval of the Labour Relations Board in accordance with clause (b).

### **Deemed seniority**

(3) Where the Labour Relations Board, in applying subsection (1) or (2), determines that those employees, of the College, who were not previously included in a bargaining unit that includes employees at the predecessor College are to be included in a bargaining unit of the College, those employees are deemed to have seniority credits with the College equal to the employment service they had with the predecessor College or that they were credited with as employees at the predecessor College.

### **Rights unaffected**





# Health Authorities Act

CHAPTER 6

OF THE

ACTS OF 2000

amended 2001, c. 49, ss. 6-8; 2004, c. 4, s. 114; 2005, c. 20; 2007, c. 10, s. 4

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## **An Act to Provide for Community Health Boards and District Health Authorities and Respecting Provincial Health-care Centres**

### **Short title**

1 This Act may be cited as the Health Authorities Act. *2000, c. 6, s. 1.*

### **Interpretation**

2 In this Act,

- (a) "board of directors" means the board of directors of a district health authority;
- (b) "Capital District Health Authority" means the district health authority for the Capital Health District;
- (c) "Capital Health District" means the health district referred to in subsection 4(2);
- (d) "community" means the area for which a community health board has been established or continued pursuant to this Act;
- (e) "community health board" means a community health board established or continued pursuant to this

### Consequences when boundaries coincide

71 Where the boundaries of a health district are the same as the boundaries of a health region established pursuant to the Regional Health Boards Act that is repealed by this Act,

- (a) all assets and liabilities of the regional health board established for that health region, including all employee benefits and entitlements, become the assets and liabilities of the district health authority for the health district;
- (b) all employees of the regional health board become employees of the district health authority;
- (c) the continuity of employment of the employees of the regional health board is not broken by the effect of clause (b);
- (d) the district health authority is substituted for the regional health board with respect to any agreement to which the board was a party;
- (e) every employee of the district health authority who was an employee of a regional health board immediately before the coming into force of this Act is employed by the district health authority on the same terms and conditions as to salary and benefits as those under which the employee was an employee at the regional health board and until changed by collective agreement or contract of employment;
- (f) every employee of the district health authority who was an employee of a regional health board is deemed to have been employed by the district health authority for the same period of employment that the employee was credited with as an employee of the regional health board;
- (g) benefits accumulated by an employee at the regional health board while employed at the regional health board are vested in the employee and the employee is entitled to receive those benefits from the district health authority;
- (h) the district health authority is a transferee for the purpose of Section 31 of the Trade Union Act and, without limiting the generality of the foregoing,
  - (i) the district health authority is bound by successor rights as determined pursuant to the Trade Union Act, and
  - (ii) subject to the Trade Union Act, the district health authority and the employees of the district health authority, who are covered by collective agreements, are bound by the collective agreements as if the district health authority were a party to them; and
- (i) the district health authority is a successor employer for the purpose of the Pension Benefits Act, 2000, c. 6, s. 71.

### Consequences of inclusion of health region

72 Where the boundaries of a health district encompass a part of a health region established pursuant to the Regional Health Boards Act that is repealed by this Act,

- (a) all assets and liabilities of the regional health board established for that health region that relate to that part of the health region, including all employee benefits and entitlements, become the assets and



# Nova Scotia Business Incorporated Act

CHAPTER 30

OF THE

ACTS OF 2000

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## An Act to Establish Nova Scotia Business Incorporated

### Short title

1 This Act may be cited as the Nova Scotia Business Incorporated Act. *2000, c. 30, s. 1.*

### Interpretation

2 In this Act,

- (a) "Board" means the Board of Directors of the Corporation;
- (b) "Corporation" means Nova Scotia Business Incorporated;
- (c) "Department" means the Department of Economic Development;
- (d) "financial assistance" includes assistance by way of loan, loan guarantee, payroll rebate, the purchase or guarantee of bonds, debentures, notes or other debt obligations and the purchase or acquisition of any common or preferred shares or other equity securities including, but not limited to, venture capital investments;
- (e) "Minister" means the Minister of Economic Development;

- (m) respecting any matter authorized by this Act to be done by regulation;
  - (n) defining any word or expression used but not defined in this Act;
  - (o) deemed 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 regulations within the meaning of the Regulations Act. *2000, c. 30, s. 34.*

### **Order for disposition of certain assets**

35 The Governor in Council may make an order providing for the disposition of the assets and obligations of the Nova Scotia Business Development Corporation. *2000, c. 30, s. 35.*

### **Effect of reference**

36 A reference in any enactment, resolution or order in council or in any document or instrument of any kind to the Nova Scotia Business Development Corporation shall be read and construed as a reference to the Corporation. *2000, c. 30, s. 36.*

### **Designated persons**

37 (1) In this Section,

- (a) "designated person" means an employee at the Department who is determined by the Minister to become an employee of the Corporation;
  - (b) "employee at the Department" means a person employed in the Department immediately before this Act comes into force, and who was appointed in accordance with the Civil Service Act.
- (2) On the coming into force of this Act, the Minister may determine who is a designated person.
- (3) Every designated person becomes an employee of the Corporation and ceases to be a person appointed in accordance with the Civil Service Act.
- (4) The continuity of employment of a designated person is not broken by the effect of this Section.
- (5) The Civil Service Act and the regulations made pursuant to that Act and the Civil Service Collective Bargaining Act do not apply to a designated person.
- (6) Every designated person is employed by the Corporation on the same or equal terms and conditions of employment as those under which the employee was employed as an employee by the Department until changed by collective agreement or contract of employment.
- (7) Every designated person is deemed to have been employed with the Corporation for the same period of employment that the employee was credited with as an employee at the Department.
- (8) Benefits accumulated by a designated person while employed at the Department are vested in the designated person, and the designated person is entitled to receive those benefits from the Corporation.

(9) The Corporation is bound by a collective agreement concluded pursuant to the Civil Service Collective Bargaining Act in relation to the designated person as if it were a party to the collective agreement as the employer and as if the collective agreement were concluded pursuant to the Trade Union Act by a bargaining agent certified pursuant to the Trade Union Act.

(10) For greater certainty, the Corporation is a transferee for the purpose of Section 31 of the Trade Union Act and, without limiting the generality of the foregoing, the Corporation is bound by successor rights as determined pursuant to the Trade Union Act.

(11) Each designated person who was an employee within the meaning of the Public Service Superannuation Act before this Act came into force and each designated person at the department in a bargaining unit whose collective agreement provided for participation in the Public Service Superannuation Plan before the coming into force of this Act is deemed to continue to be a person employed in the public service of the Province for all purposes of the Public Service Superannuation Act and service in the employment of the Corporation is deemed to be service in the public service of the Province.

(12) Subject to any applicable collective agreement or contract of employment, each designated person who was covered by the Nova Scotia Public Service Long Term Disability Plan before this Act came into force or was included in a bargaining unit whose collective agreement provided for long term disability benefits under the Nova Scotia Public Service Long Term Disability Plan is deemed to continue to be a person to whom the Nova Scotia Public Service Long Term Disability Plan applies.

(13) The obligations and liabilities of the Department in respect of designated persons are the obligations and liabilities of the Corporation, including all employee benefits and entitlements.

(14) Notwithstanding anything contained in this Section, Section 71 of the Labour Standards Code does not apply to a period of employment that an employee was credited with as an employee at the Department or as an employee appointed in accordance with the Civil Service Act. 2000, c. 30, s. 37.

#### **Public Service Act amended**

38 amendment of the Public Service Act. 2000, c. 30, s. 38.

#### **Repeal**

39 Chapter 49 of the Revised Statutes, 1989, the Business Development Corporation Act, is repealed. 2000, c. 30, s. 39.

#### **Repeal**

40 Chapter 5 of the Acts of 1994, the Economic Renewal Act, is repealed. 2000, c. 30, s. 40.

#### **Proclamation**

41 Sections 14 and 15, clauses 16(1)(a) to (c) and (e) to (g), subsections 16(2) to (6), Section 17 and Sections 19 to 32 and 36 to 40 come into force on such day as the Governor in Council orders and declares by proclamation. 2000, c. 30, s. 41.

Proclaimed (ss. 14, 15,

## Property Valuation Services Corporation Act, S.N.S. 2006, c. 19

This version is not the latest.

Past version: in force between Apr 1, 2008 and Jul 31, 2010

Link to this version: <http://www.canlii.org/en/ns/laws/stat/sns-2006-c-19/52472/>

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# Property Valuation Services Corporation Act

CHAPTER 19

OF THE

ACTS OF 2006

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## An Act to Establish the Property Valuation Services Corporation

### Short title

1 This Act may be cited as the Property Valuation Services Corporation Act. 2006, c. 19, s. 1.

### Interpretation

2 In this Act,

- (a) "Assessment Services" means the Assessment Services Division of Service Nova Scotia and Municipal Relations;
- (b) "Board" means the Board of Directors of the Corporation, unless the context requires otherwise;
- (c) "Corporation" means the Property Valuation Services Corporation;
- (d) "Crown" means Her Majesty in right of the Province;
- (e) "director" means a member of the Board, unless the context requires otherwise;
- (f) "independent member" means a member of the Board or Transitional Board who is not a member of a municipal council, an employee of a municipal council, the Executive Director of the Union of Nova Scotia Municipalities or the Deputy Minister of Service Nova Scotia and Municipal Relations;
- (g) "minister" means a member of the Executive Council;

of the Province,

(a) the Province shall pay to the person, upon retirement, an amount equivalent to the amount of the public service award that it would have paid to the person for the person's years of employment with the Province; and

(b) the Corporation shall pay an amount equivalent to the amount of public service award that would have been paid by the Province if the person had remained as an employee of the Province, less than the amount paid pursuant to clause (a). 2006, c. 19, s. 46.

### **Collective agreements bind Corporation**

47 (1) The Corporation is bound by a collective agreement concluded pursuant to the Civil Service Collective Bargaining Act in relation to the designated person as if it were a party to the collective agreement as the employer and as if the collective agreement were concluded pursuant to the Trade Union Act by a bargaining agent certified pursuant to the Trade Union Act.

(2) For greater certainty, the Corporation is a transferee for the purpose of Section 31 of the Trade Union Act and, without limiting the generality of the foregoing, the Corporation is bound by successor rights as determined pursuant to the Trade Union Act. 2006, c. 19, s. 47.

### **Public Service Superannuation Plan**

48 Each designated person who was an employee within the meaning of the Public Service Superannuation Act before this Act came into force and each designated person in a bargaining unit whose collective agreement provided for participation in the Public Service Superannuation Plan before the coming into force of this Act is deemed to continue to be a person employed in the civil service of the Province for all purposes of the Public Service Superannuation Act and service in the employment of the Corporation is deemed to be service in the public service of the Province. 2006, c. 19, s. 48.

### **Long Term Disability Plan**

49 Subject to any applicable collective agreement or contract of employment, each designated person who was covered by the Nova Scotia Public Service Long Term Disability Plan before this Act came into force or was included in a bargaining unit whose collective agreement provided for long term disability benefits under the Nova Scotia Public Service Long Term Disability Plan is deemed to continue to be a person to whom the Nova Scotia Public Service Long Term Disability Plan applies, unless the person elects, in writing, to become a member of a plan established by the Corporation. 2006, c. 19, s. 49.

### **Employee benefits and entitlements**

50 (1) The obligations and liabilities of the Province in respect of designated persons are the obligations and liabilities of the Corporation, including all employee benefits and entitlements and, for greater certainty, all designated persons continue to be covered under the Province of Nova Scotia Group Life Assurance Plan, Policy Nos. 71298 and 71309, the Consolidated Health and Dental Plan, the Employee Assistance Plan (EAP) and Short Term Illness (STI) plan, and the appropriate employee deductions and employer contributions shall be made by the Corporation, unless the person elects, in writing, to become a member of a similar plan established by the Corporation.

(2) The Corporation shall, prior to the date on which the designated persons become employees of the Corporation, establish group life, medical, dental, pension, employee assistance, short term illness and long term disability plans to provide to employees who are not designated persons. 2006, c. 19, s. 50.

### **Corporation is successor employer**

51 The Corporation is a successor employer for purposes of the Pension Benefits Act. 2006, c. 19, s. 51.

### **Regulations**

52 (1) The Minister may, upon consultation with the Corporation, make regulations

(a) respecting any matter authorized by this Act to be done by regulation;

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





**CIVIL SERVICE  
MASTER AGREEMENT**

**Between**

**Her Majesty the Queen  
in Right of the  
Province of Nova Scotia**

**represented by the  
Public Service Commission**

**and the**

**Nova Scotia  
Government & General  
Employees Union**

**April 1, 2010 – March 31, 2012**

### **\*37.20 Severance Pay**

- (a) At the end of the twenty-four (24) month period referred to in 37.19, or at any earlier time as an employee in receipt of notice of layoff wishes to terminate employment and waive recall rights, the employee shall, on and after October 21, 2010, be granted severance pay equal to four (4) weeks for every year of service to a maximum of fifty-two (52) weeks pay and for a minimum of four (4) weeks pay. Where there is a partial year of service, the severance payment will be pro-rated on the basis of number of months of service.
- (b) The entitlement of an employee to severance pay shall be based on an employee's total service as defined in Article 1.02.

### **37.21 No New Employees**

No new employee shall be hired unless all employees on the recall list who are able to perform the work required have had an opportunity to be recalled, subject to consideration of ability, experience, qualifications, or where the Employer establishes that special skills or qualifications are required, as determined by the Employer, according to objective tests and standards reflecting the functions of the job concerned.

### **37.22 Geographic Location**

For the purposes of this Article, "geographic location" means that area within a radius of thirty-two (32) kilometers (20 miles) of the actual building or other regular place of employment of the employee; except that, within the Halifax-Dartmouth Metro area, "geographic location" is that area within a radius of sixteen (16) kilometers (10 miles) of the actual building or other regular place of employment of the employee.

### **37.23 Contracting Out**

- (a) The Employer will make reasonable efforts, where work is contracted out, to obtain jobs with the contractor for employees whose work is to be contracted out.

The Employer will have made reasonable efforts where the Employer has:

- (1) consulted with the Union at least three (3) months before the proposed date of implementation of the contracting out to discuss placement options within the civil service for employees whose work is to be contracted out;
- (2) included the plans and capacity of bidders for the hiring of employees whose work is to be contracted out, and the intended salary and benefits levels, as criteria in the tendering process to be applied in the evaluation of bids;
- (3) consulted with the Union to give the Union an opportunity to put forward its views on how the Employer can try to obtain job opportunities for employees with the contractor;
- (4) met with the successful bidder and sought to make it a term of the contract that the contractor must:

- (i) interview employees for available job opportunities with the contractor to perform the contracted out work;
  - (ii) where hiring to perform the contracted out work is subject to appropriate skills testing, offer to test employees;
  - (iii) extend job offers to employees who are qualified for available job opportunities with the contractor to perform the contracted out work; and
  - (iv) where there are more qualified employees than the contractor has opportunities due to the contracted out work, extend job offers on the basis of seniority.
- (b) If, despite the good faith efforts of the Employer, the Employer has been unable to reach agreement on the above with the contractor, the Employer can still proceed with the contracting out with the contractor.
- (c) Employees who accept job offers with the contractor will be deemed to have resigned their employment with the Employer. Such employees who subsequently are terminated or who resign employment with the contractor, within twelve (12) months of the commencement of their employment with the contractor shall, on application to the Employer and subject to verification of their employment status with the contractor, be placed on the recall list for a twelve (12) month period. Employees placed on the recall list pursuant to this Article shall have seniority re-instated and be otherwise treated as though there has been no employment break. For greater clarity such employees shall be eligible for a severance payment if they resign or if they are not recalled to employment during the twelve (12) month recall period. Employees whose work is contracted out and do not receive a job offer from the contractor or who turn down a job offer will be treated in accordance with the Collective Agreement.
- (d) In the event of a devolution of bargaining unit work to an employer in the broader public sector of the Province that would be considered a sale, lease, transfer, annexation or amalgamation under the *Trade Union Act*, the Employer will make reasonable efforts to accomplish the devolution as if Section 31 of the *Trade Union Act* were applicable. Where compliance with Section 31 is not accomplished, the Employer will make reasonable efforts to obtain job offers with the new employer for employees whose work is devolved, in accordance with subsection 37.23(a)(1), (3), and (4).

## ARTICLE 38 – PAY PROVISIONS

### 38.01 Rates of Pay

The rates of pay as set out in the Appendices containing the pay plans for each of the bargaining units shall form part of this Agreement and include the following economic adjustments as agreed to by the parties:

April 1, 2010 1%

April 1, 2011 1%