

Greater Halifax Partnership analysis of the Impact of Bill 102: An Act to Prevent Unnecessary Labour Disruptions and Protect the Economy

First Contract Legislation - Background

As an organization concerned with the economic growth of Halifax and the region, the Greater Halifax Partnership must address concerns with the impending First Contract Arbitration (FCA) legislation. We are uniquely situated as a public-private partnership to comment on the Bill's impact on our community from an economic perspective. While we represent the interests of public and business organizations, our primary concern is the future growth and sustainability of the Halifax and Nova Scotia economies.

Nova Scotia is one of four provinces in Canada, including Alberta, New Brunswick, and Prince Edward Island, that currently does not have a form of FCA legislation. Other provinces have some form of FCA legislation although the nature of this legislation varies substantially from jurisdiction to jurisdiction.

On November 17th, 2011 the provincial government forwarded Bill 102, "An Act to Prevent Unnecessary Labour Disruptions and Protect the Economy." This bill creates a regulatory framework under which either newly certified unions, or an employer who employs newly unionized staff, may opt to seek a public arbitrator. In short, an arbitrator is sent to establish a legally binding contract should no agreement be reached within 120 days of union certification.

Bill 102 is most similar to the Manitoba's approach to FCA legislation. The principle characteristic of the Manitoba approach relative to other provinces with current FCA legislation, is its "no fault" approach...meaning an arbitrator's ruling does not take "bad faith" bargaining into account in awarding a first contract.

Timeline of Events

September 23rd, 2011: The Labour Management Review Committee hosts a discussion group between 55 unionized and non-unionized groups to debate the concept of FCA legislation, both what is currently in Nova Scotia and other jurisdictions.

October 17th, 2011: Several large employer groups make known their concerns to the Minister of Labour and Advanced Education. A copy of their correspondence is available online.

October 20th, 2011: A discussion paper is released to stakeholders summarizing the findings from the discussion groups. The committee asks for input from these stakeholders on their thoughts of the findings.

November 4th, 2011: Stakeholder input deadline as established by the Labour Management Review Committee.

Post November 4th, 2011: No consensus is reached on the part of the Labour Management Review Committee. Parties have continued to express their support, protest, or desires through public channels in an attempt to continue the discussion on FCA legislation.

November 17th, 2011: First Contract Arbitration introduced into legislation.

Economic Background

Nova Scotia's business climate presents significant challenges for Nova Scotia's prospects for attracting investment and growing existing business. Personal, indirect and corporate taxes are among the highest in Canada. These realities reflect Nova Scotia's fiscal challenges. The good news is that business can at least factor higher tax into their business decisions because their impacts on bottom line and return on investment are predictable. The real challenge for business comes when decisions must be made in uncertain environments. Regulation and the interpretation and implementation of regulation can present more challenges to new investment than the highest personal income tax, more restriction to business expansion than the highest HST, drive more questions about the viability of a Nova Scotia location than directly taxing new investment.

The business community's expectations of government are realistic. Business understands that the *current fiscal environment hasn't materialized overnight and that it is a legacy of policy decisions going back decades*. Business understands the government's fiscal pressures and doesn't expect tax rates to fall anytime soon. What the business community and the economic development are hoping for however, is that government that will be careful to do no further harm to our business climate.

Bill 102 does not meet this test.

Potential Economic Outcomes

Understanding the specific economic impact of this legislation warrants significant research. Very little research has occurred. However, basic economic concepts can be used to identify the likely issues and impact. The first issue is understanding the need for this kind of legislation and the second aspect reflects the risk associated with implementation.

Unlike provinces where FCA has been introduced recently, Nova Scotia is seeing no breakdown in the current labour relations environment. Indeed, there have been very few recent instances where difficulties have arisen in first contract negotiations. *"With its good labour relations climate, Nova Scotia has no need for FCA. The current provisions in the Trade Union Act continue to be effective in resolving issues with both first contract negotiations and subsequent collective bargaining."* There is no current demand from employers or unions for FDA. There is no evidence that the current labour relations environment is dysfunctional. There is no evidence that the current government labour relations legislation or tools are inadequate.

The legislation will present at least two significant risks to the Nova Scotian economy; first, by *modifying the incentive structures at play in the unionization process and modifying the existing collective bargaining structure* and secondly, by affecting our competitive advantage for investment attraction and investment renewal.

The incentive structures at play in the unionization of a company and the collective bargaining process are complex. It is difficult to quantify specific risks this legislation will introduce or mitigate. However some issues are clear. First and foremost, this legislation reduces the risk associated with unionization, as it prevents a lockout ensuing from a breakdown in labour relations and guarantees a "no fault"

arbitrators settlement. This will likely cause unionization rates to rise and associated economic impacts. Bill 102 will also alter the incentives of both parties to bargain in good faith. If either party suspects that an arbitrator will give them more market power than they currently possess, they have less incentive to bargain, seeking instead to hold out until an arbitrator is assigned. This may lead to fewer work stoppages, but a worsening of labour relations and protracted periods of inefficiency/uncertainty as one party holds out for a 'better deal.' Bill 102 has created significant polarity in opinion in Nova Scotia during consultation and law amendment phases. This kind of polarity can be expected to continue when the bill begins to impact workers and employers directly. Labour relations in Nova Scotia could very well worsen. In addition, the legislation does not compel an arbitrator to take market realities into account when reaching a first contract settlement. All of these factors increase the risk for investment or reinvestment in Nova Scotia.

Currently Nova Scotia is hamstrung by some of the lowest productivity rates in Canada. Productivity is directly affected by the willingness of business to invest in new technology, new machinery and equipment and other capital. Since 2007 Nova Scotia's net capital investment has been negative...meaning that depreciation of existing investment is higher than the level of new investment. In other words, Nova Scotia is not renewing its capital stock. Without the productivity gains driven by new and renewing investment, we can't improve the standard of living of Nova Scotians. The most compelling challenge facing the Nova Scotia economy today is renewing and attracting investment in our province.

The effect that FCA legislation would have on foreign and existing business investment has not been fully understood. However, it is certain that Bill 102 will alter the competitive landscape. Our labour relations environment will be significantly different from our nearest competitors and indeed all provinces except Manitoba. This introduces more risk.

International investors are notoriously cautious when it comes to risk. Indeed in the current economic climate investors are looking to reduce risk and are investing in "safe havens". Introducing more risk into the Nova Scotia value proposition will cause previously interested investors to look elsewhere. A best case scenario would see those investors still considering Nova Scotia seeking additional incentives to offset risk. The fragility of the Nova Scotia economy, particularly the rural economy is well documented. Declining net capital investment means Nova Scotia Companies are currently disinvesting. Particularly in rural Nova Scotia. Indeed, even the potential of local major projects like the National Shipbuilding Procurement Strategy will be muted if business don't or can't make the investments needed to participate in major projects.

Main Observations

Most business and most legal opinion see no need for the legislation

The impact of potential FCA has not been investigated and is not fully understood.

FCA could worsen a relatively stable labour relations environment in Nova Scotia

The Proposed Bill 102 is similar to legislation in Manitoba but has significant differences from legislation in other Canadian provinces. It makes Nova Scotia less competitive

The proposed legislation could threaten future and existing investment in Nova Scotia at a time when it is most needed. In this respect reputational damage has already been done and more could be done

Bill 102 could hamper the benefit flow to Nova Scotia of major projects like the \$25 billion combat ships projects

Recomendations

More research is clearly warranted on Bill 102. Not enough is understood about the impact on the current labour relations climate and how it may affect business investment.

Consider mounting public relations and risk mitigation efforts related to the current and potential impact of Bill 102 on business confidence and perception of risk

Adjust aspects of the Bill to bring it into line with some competing provinces. Remove the “no fault” aspect. Ensure arbitrators take business and economic realities into account when arbitrating a first contract.

Given our hopeful yet fragile economic environment, this is not the right time to implement measures that have an uncertain or negative impact on our business climate and confidence.

ⁱ Stewart McKelvey Client Briefing