Proposed Amendment to the *Trade Union Act*
Health Care and Community Services Collective Bargaining

Introduction

The Government of Nova Scotia is proposing changes to the *Trade Union Act*. If these changes are approved by the House of Assembly, employees and employers in the health-care and community services sectors will have a new model for resolving collective bargaining disputes. This model will replace the existing rights of employees to strike and of employers to lock out their employees.

Rationale for the Proposed Legislation

The purpose of the proposed legislation is to ensure that collective agreements are renegotiated and settled fairly without

- putting the public at risk
- putting either party in the position where they must choose between their bargaining position and their obligations to patient and/or client care

The proposed legislation seeks to achieve two objectives: one is to protect public health and safety, while the other is to ensure fairness, equality, and impartiality in the resolution of collective bargaining disputes. For more information on these guiding principles, see pages 10-11 of the Discussion Paper.

Department of Environment and Labour Consultation

On May 15 the Premier asked the Minister of Environment and Labour to lead the process to explore dispute resolution in health-care and community services collective bargaining. The following is a summary of the consultation process since that time:

- Fact sheet posted on DEL web page – June 4
- Discussion paper released to stakeholders (including unions and employers) – June 12
- Discussion paper released to the public – June 19
- Invitation issued for written submissions to the department between June 19 and July 20
- Summary of written submissions posted on DEL web page – August 15
- Minister extended invitation to meet with stakeholders to discuss draft legislation – October 10
- Union leadership declined invitation, employers met with Minister – October 15
- Draft legislation released the week of October 15.

Fairness and Flexibility

In designing this new dispute resolution model, the principles of fairness, equality, and impartiality were uppermost. Government's emphasis has been on providing a model and processes that are as balanced and fair as possible by giving both sides the maximum flexibility and control over the process.

This is reflected in the proposed legislative amendments as shown below.

- **Structure and selection of an interest arbitration board**

  - The parties may opt for a single arbitrator or choose a three-person board.
  - In the case of a single arbitrator, the parties mutually decide who is chosen. With a three-person board, the union selects a representative, the employer selects a representative, and those representatives choose a neutral chair.

- If the parties are unable to agree on these matters, the Chair of the Labour Relations Board, who is independent from government, will assist them with process decisions.
- Both the appointment process and the arbitration hearing are completely independent of government

- **Requirement for timeliness**

- Time lines for each of the appointment decisions by the union and employer will be set out in the *Trade Union Act*. This will ensure that the interest arbitration process moves forward without undue delay.
- If an appointment is not made within the time line, either the union or the employer may ask the Chair of the Labour Relations Board to make the appointment.
- The Chair of the Labour Relation Board is a recognized expert in labour issues and is independent from government.
- The legislation also requires that an interest arbitration board make its decision as soon as possible after the hearing.

- **Dispute resolution options**

- The union and the employer will have the option of designing their own binding dispute resolution process, and if they do so, it will operate outside the process described in the proposed legislation.
- Once an interest arbitration board is established, the parties can opt to choose binding mediation in place of binding arbitration, or the union can on its own opt for this form of mediation. If the binding mediation is chosen, then the interest arbitration board will conduct mediation to determine if the parties can resolve their differences through a settlement. If a settlement is not achieved, the board resolves the outstanding issues by rendering a decision.
- The details of the binding mediation process will be left for the parties and the interest arbitration board to determine as was done in the recent IWK Health Centre dispute.
- If binding mediation is not chosen, the arbitration process will begin. The proposed legislation empowers the interest arbitration board to choose the arbitration process it determines to be appropriate to the circumstances. The options available to the interest arbitration board include, but are not limited to, mediation-arbitration or final offer selection arbitration.

- **Issues that can be mediated/arbitrated**

Binding mediation or interest arbitration or may apply to all outstanding collective bargaining issues, and there is no limit on the items that may be brought forward for consideration.

- **Powers of the interest arbitration board**

An interest arbitration board will have a great many powers, privileges, and immunities to enable them to fully investigate the matters before them to make a decision. This will include the ability to summon witnesses, order the protection of documents, receive evidence through various forms, and ultimately, determine whether that evidence would be acceptable in a court of law. The overall objective of interest arbitration is to replicate what the parties would have decided for the terms of their collective agreement if they had been able to conclude the negotiations on their own. The goal of these legislative amendments is consistent with this objective.

The Risk of Illegal Strikes

There has been much discussion about the risk of illegal strikes if the legal right to strike is replaced with interest arbitration. In particular, reference has been made to the number of illegal strikes in the health-care sector in Alberta despite their mandatory interest arbitration legislation. It is important to note that any illegal activity in the Alberta health-care sector (hospitals) took place before 2000.
The Labour Relations Code also permits the government to declare an emergency in those facilities that have a right to strike (i.e some nursing homes, privately owned ambulance services) when the health and safety of the public is at risk. In such instances, the government may intervene to end a work stoppage and determine the appropriate mechanism to settle the dispute i.e. binding arbitration. For further details, see sections 96–104 of the Alberta Labour Relations Code.
It should be noted that the legislation proposed for Nova Scotia is designed to be fair and to balance the interests of all parties, including the union, by ensuring that they have as much control as possible over the interest arbitration process when and if the collective bargaining process breaks down.

Interest Arbitration in Nova Scotia

Interest arbitration is currently required under the *Trade Union Act* for firefighters and police officers. It is also mandatory under the four statutes that regulate collective bargaining for highway workers, correctional workers, civil servants, and teachers (local bargaining).
In addition, when there is an impasse in contract negotiations between doctors and the Department of Health, the matter is settled by binding arbitration.
The current provisions of the *Trade Union Act* do not prohibit unions and employers from voluntarily agreeing to resolve their collective agreement disputes through interest arbitration. In the past, it has been used successfully by several groups including health care (hospitals) and ambulance services.

Interest Arbitration in Other Jurisdictions

Three provinces (Ontario, Alberta, and Prince Edward Island), as well as the federal government, have a system of interest arbitration for the resolution of contract disputes in all or part of the health-care sector.
In Ontario, interest arbitration replaces the right to strike in hospitals and homes for the aged.
In Alberta, hospitals and employees under the regional health authorities have mandatory interest arbitration. For nursing homes, it depends upon whether the long-term care facility is on the approved hospital list. If the home is on the list, there is no right to strike, and interest arbitration is mandatory. Alberta also has legislation that allows the government to declare that a strike is a public emergency when the health and safety of the public are at risk. In that case, the parties may be forced to binding arbitration to resolve the dispute. This has been used in the past when nursing homes not on the approved list have exercised their legal right to strike.
In Prince Edward Island, interest arbitration legislation applies more broadly to hospital and nursing home employees.
The other Canadian provinces with the exception of Nova Scotia and Saskatchewan restrict the right to strike by requiring the provision of "essential services" as set out in legislation. For further information on essential services, including a detailed jurisdictional review, see pages 11-16 of the Discussion Paper.
For those working in federal health services, federal legislation gives a choice of dispute resolution at the outset. The parties can choose interest arbitration or essential services. If they opt for essential services, the government and union must conclude an agreement on the number of workers required to provide essential services. After the agreement has been concluded and 30 days have passed, the parties can engage in a legal work stoppage.

For further information on interest arbitration in other jurisdictions, see Appendix E of the Discussion Paper.