Bill 100 - Law Amendments Committee

Submissions of the Saint Mary's University Faculty Union

These are the comments of the Saint Mary's University Faculty Union (the Union) with respect to Bill 100.

Overall, the legislation is a continuation of this government's casual willingness to limit collective bargaining rights as a panacea for the public sector's perceived ills. It is a further demonization of organized labour in Nova. The Bill is yet another unfortunate example of government overreach in the limitation of bargaining rights in the public sector. These measures are simply not necessary to achieve the stated aims of the Bill; rather, they are heavy-handed and punitive actions that are not only irrelevant to the objectives of the Bill, but may, in fact, impede it.

Legislation that provides a process by which a struggling university can remain sustainable is both necessary and admirable. The Bill gets into trouble, however, with certain aspects of the process. Parts of the Bill are not only bad policy but are likely contrary to the Charter of Rights and Freedoms.

In the recent *Mounted Police Association of Ontario* case, the Supreme Court of Canada stated that the Charter protects a "meaningful process of collective bargaining". If the legislature seeks to restrict that process, "the ultimate question to be determined is whether the measures disrupt the balance between employees and employer that s. 2(*d*) seeks to achieve, so as to substantially interfere with meaningful collective bargaining". The Court said, "A process that substantially interferes with a meaningful process of collective bargaining by reducing employees' negotiating power is therefore inconsistent with the guarantee of freedom of association enshrined in s. 2(*d*)."

In the *Saskatchewan Federation of Labour* case, the Supreme Court of Canada said "The right to strike is protected by virtue of its unique role in the collective bargaining process".

Sections 6, 8, 12, and 13 of Bill 100 most likely violate the Charter. In particular:

(1) Under s. 6, the Employer unilaterally determines whether to submit the revitalization plan and unilaterally determines whether to remove the union's right to file grievances and go on strike. This is a significant and substantial interference with s. 2(d) of the Charter. The Bill provides no third-party oversight of this decision. This tips the balance of power in favour of the employer to the detriment of the union.

(2) Under s. 8, the Bill removes the right to strike. The Bill weakly allows collective bargaining to continue, but without the right to strike, it will be of little value. The removal of the right to strike is in clear violation of s. 2(d) of the Charter, and will not be saved under s. 1 . Here, there is simply no basis to justify the removal of the right to strike during a difficult financial period.

(3) Under s. 8, the Bill prohibits the filing or continuation of grievances. In other words, the collective agreement is suspended. The employer may breach the collective agreement without consequence. Again, this is clearly a breach of s. 2(d) of the Charter. It will not be saved by s. 1 because it is a disproportionate and unfair impairment of the employees' Charter rights. Many faculty collective agreements provide procedures for financial exigency. The parties have already a bargained process in place. Moreover, if the purpose of the suspension is to protect a financially vulnerable university, why does the Bill not prohibit third party creditors from bringing any claims against the University during the s. 8 period? Why should the cable company, for example, be allowed to bring an action to enforce its contract with the University, but its employees cannot grieve for their wages? Why does the Bill target only the employees? The Bill privileges all contracts but collective agreements.

The Minister of Labour wrongly drew an analogy with bankruptcy proceedings as justification for the suspension collective agreement rights. This is incorrect. Bankruptcy removes the right of all creditors to pursue their claims for debts owing up to the filing of the notice, not just employees. Moreover, bankruptcy permits employees to enforce their collective agreement rights after the filing of the notice of bankruptcy if the business continues to operate.

(4) Under s. 12, the Bill seeks to interfere with academic freedom, a right of individual faculty members. Faculty historically have enjoyed academic freedom in their collective agreements; indeed, academic freedom, along with tenure and sabbaticals, define academia. These rights frequently appear in collective agreements. Academic freedom permits faculty to choose their areas of research and teaching, and the freedom to criticize institutional and commercial interests in Nova Scotia and the world. This is in doubt under s. 12, which reads:

> 12 (1) A university's revitalization plan must include
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> (g) goals and objectives for contributing to social and economic development and growth in the Province, including ... *turning research into business opportunities, fostering a skilled, entrepreneurial and innovative workforce needed for economic growth in the Province ...;*
>
> (h) a plan for the *effective exchange of knowledge and innovation with the private sector, including excellent collaboration between the university and industry;*
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> [italics added]

This provision has two effects. First, it is inconsistent with a collective agreement right of academic freedom to write and speak about areas of interest to faculty, including criticism of industry. The inconsistency of s. 12 of the Bill with the academic freedom provisions of many faculty collective agreements is a substantial interference with collective bargaining.

The Bill is also bad policy for two reasons. First, it will cause unnecessary labour relations turmoil, resentment and upset on campus. It will be readily apparent to all that the Bill is unfair to employees. It singles out workers by suspending collective agreements. It eliminates any meaningful collective bargaining by removing the right to strike. At the same time, it permits third parties full right to contract with the financially strapped employer and seek full redress for breach of their contracts.

Second, s. 12 of the Bill interferes with university autonomy. The university, through its Senate and faculty, has the responsibility to determine its course and program offerings, free of governmental interference. Bill 100 will interfere with that ability to decide which programs are in its best interests to offer. For example, universities have long offered liberal arts programs even though they may not be – indeed, they should not be – subject to commercialization. S. 12 impinges on that right. It is unlikely that any revitalization plan would support liberal arts programs in any struggling university. Those programs will not be able to turn research into business opportunities.

Conclusions

The Employer's right to unilaterally (a) remove the right to strike and (b) suspend its collective agreements disrupts the balance between employees and employers that s. 2(d) of the Charter clearly requires. Moreover, s. 12 arguably seeks to override academic freedom rights in collective agreements, which would be a substantial interference with collective bargaining. As in the *Mounted Police* and the *Federation of Labour* cases above, sections 6, 8, 12, and 13 of the Bill impair s. 2(d) rights more than is necessary. They are unconstitutional.

The Bill is further proof of the Government's willingness once again to breach the constitutionally protected rights of employees in the province. The Bill demonstrates the government's contempt and lack of respect for the rights of working people in Nova Scotia while favouring the rights of third parties.