

**Consolidation of Labour Relations Boards and
Employment Tribunals in Nova Scotia
~Labour Relations and Employment Board~**

**Discussion Paper
July, 2010**

Overview

Currently, Nova Scotia has six Boards that deal with employment-related issues (including four separate labour relations type boards). Each of these boards establishes its own policies and procedures, and operates independently from the others. They use separate administrative resources, even where the administrative functions are essentially the same.

All Canadian jurisdictions, except Nova Scotia, British Columbia, and Prince Edward Island have a single labour and employment board that adjudicates employment issues that arise under different employment-related statutes.

The Department will be consolidating these six tribunals under a new broadly mandated Labour Relations and Employment Board (“LREB”). The consolidated board will have jurisdiction over most labour relations and employment matters in the province. The consolidation will be phased in using the following steps:

- consolidating the Province’s current four labour relations boards under the new LREB;
- giving the Labour Standards Tribunal and Occupational Health and Safety Appeal Panel discretion to have matters heard by a sole adjudicator; and
- consolidating Labour Standards Tribunal and Occupational Health and Safety Appeal matters under the LREB.

A full-time Chair will be appointed to lead the LREB. To date, the Chairs of the province’s employment tribunals have been part-time appointees. The increased responsibilities related to leading the LREB will require an impartial, independent, full-time Chair. As with existing boards, the LREB will operate at arm’s length from government.

The long-term objective is to streamline the structure of labour relations boards and employment adjudicative tribunals to:

- achieve consistency in decision-making and policies/procedures;
- reduce time frames for scheduling matters and receiving decisions; and
- enhance accessibility, accountability, transparency, service delivery, process efficiency, and capacity to innovate.

However, the initial priority is to establish the LREB and to instill confidence in its ability, neutrality and independence.

The purpose of this paper is to provide information regarding the establishment of the new LREB, and to seek feedback regarding specific features that are being proposed for this

new Board. These changes are relevant to the administrative efficiency of labour and employment adjudication in the province. They will have no impact upon the substantive rights of employers, employees, and unions who will appear before the LREB.

Background Information

Labour Relations Boards in Nova Scotia - the unionized sector

The Labour Relations Board/Construction Industry Panel (“LRB”) have jurisdiction over issues and disputes arising under the *Trade Union Act* which regulates Nova Scotia’s unionized workplaces. The LRB also has authority to determine labour relations issues under the *Teachers’ Collective Bargaining Act*. There are three other Boards responsible for labour relations in specific sectors of the unionized workforce:

- the Civil Service Employee Relations Board;
- the Highway Workers’ Employee Relations Board; and
- the Correctional Facilities Employee Relations Board.

Each of these sectoral Boards has statutory responsibilities under its enabling statute: *Civil Service Collective Bargaining Act*; *Highway Workers’ Collective Bargaining Act*; and Schedule A of the *Corrections Act*, respectively. Each deals with many of the same matters as the LRB. For each of these boards, government currently appoints a part-time Chair, and Vice-Chairs and pays them annual honoraria.

The LRB has existed for over fifty years. Its average yearly caseload is approximately 150 cases. It adjudicates a variety of labour relations matters including certifying unions to represent employees, jurisdictional disputes (construction and non-construction matters), and ruling on unfair labour practices. The Highway Workers’ Employee Relations Board was established in 2001. It has held three hearings over its history, and on average it appoints ten arbitrators per year to adjudicate grievance disputes. The Correctional Facilities Employee Relations Board was established in 1986. It has held two hearings over its history, and on average it appoints fifty arbitrators a year for grievance arbitration. The Civil Service Employee Relations Board has historically had a very low case volume.

The Department’s Conciliation and Labour Tribunals Division appoints arbitrators for grievance arbitration on behalf of the Minister under the *Trade Union Act* when the parties are unable to agree upon an arbitrator. Therefore, the Division is fully equipped to assume the function of appointing arbitrators when the sectoral Boards are consolidated under the LREB.

Labour Standards Tribunal - the non-unionized sector

The *Labour Standards Code* sets out the minimum employment standards for workplaces which are non-unionized. The Tribunal is independent from the Labour Standards Division of the Department which makes initial determinations of matters under the *Code*. The *Code* deals with issues such as minimum wage, protection of pay, vacation pay, and termination of employment. The Labour Standards Tribunal hears appeals of complaints of failure to comply with the *Code*. The Tribunal has a part-time Chair and a part-time Vice-Chair. It was established in 1973 and its average yearly caseload is approximately fifty-eight cases.

Occupational Health and Safety Appeal Panel

The Occupational Health and Safety Appeal Panel, established in accordance with the *Occupational Health and Safety Panel Regulations*, adjudicates disputes relating to the technical aspects of health and safety in both unionized and non-unionized workplaces. The Appeal Panel is independent from the Occupational Health and Safety Division.

The Appeal Panel has two part-time Co-Chairs, and was created in 1996. Its average yearly caseload is approximately five cases. It is anticipated that the number of appeals will increase with the introduction of administrative penalties to the Panel's jurisdiction in January 2010.

The Labour Relations Board/Construction Industry Panel, the Labour Standards Tribunal and the Occupational Health and Safety Appeal Panel are each administratively supported by Departmental staff, who are responsible for all aspects of case management.

The Rationale for Change

The Department has examined the employment tribunal system in Nova Scotia and is proposing changes for a number of reasons.

Nova Scotia's tribunal system creates multiple access points to justice. Currently, stakeholders must access the tribunal that correctly fits their specific circumstances to attempt to address their problems. Unfortunately, there can be overlapping jurisdictional issues. For example, a casual employee in a unionized workplace with an issue related to their entitlement to a statutory holiday may be able to file a grievance under a collective agreement or alternatively, the *Labour Standards Code* could apply. The LREB will provide a single access point for parties and create a structure that eliminates confusion.

Our tribunal system also imposes multiple timelines and multiple administrative systems. This set of changes will create opportunities to unify and simplify board processes. Support

staff will no longer need to be trained for multiple processes depending on the nature of a particular matter. Having one common platform for service will speed up processes and reduce duplication of effort.

Most Canadian jurisdictions have a single labour and employment board that adjudicates employment issues that arise under different employment related statutes. These multiple jurisdiction boards are flexible in adapting their processes to suit the varying needs of their stakeholders (see Appendix **A** for jurisdictional information).

The change package will also create a new administrative body, positioned to innovate and improve service delivery over time. Having a single board will ease introduction of system-wide improvements such as online filing; and create flexibility to adapt processes to meet the changing needs of our stakeholders. Having a single board will also create opportunities to improve decision consistency and decision quality; and make the employment adjudication experience more accessible and transparent.

We have a real opportunity to create a state-of-the-art LREB which will be flexible and innovative and adapt to the changing needs and expectations of Nova Scotians.

Proposed Phases to Implementation

Government will draft a new piece of legislation called the *Labour Relations and Employment Board Act* which will set out the administration, governance and powers of the new LREB. The legislation will be accompanied by consequential amendments to the affected Acts (as noted below).

To ensure a seamless and efficient transition to the new combined board, these changes will be implemented over three phases:

Phase 1 Consolidate labour relations boards under the new Labour Relations and Employment Board (“LREB”)

The LRB, Civil Service Employee Relations Board, Highway Workers Employee Relations Board; and Correctional Facilities Employee Relations Board all share the same area of expertise - labour relations. This shared expertise was recognized when the LRB’s jurisdiction was recently extended to include adjudicating duty of fair representation complaints made by employees falling under the *Civil Service Collective Bargaining Act*; *Highway Workers’ Collective Bargaining Act*; and Schedule A of the *Corrections Act*. Actually consolidating the boards will give stakeholders in the unionized sector a single point to access employment adjudication.

Phase 2 Provide the Labour Standards Tribunal and Occupational Health and Safety Appeal Panel with discretion to use sole adjudication.

Many administrative tribunals have discretion to have a full panel or a sole adjudicator hear a particular matter. This option will provide flexibility that is appropriate to a quasi-judicial board. This Phase would see amendments to the *Labour Standards Code* and *Occupational Health and Safety Act* that would include relevant factors to be considered in exercising that discretion.

Phase 3 Consolidate Labour Standards Tribunal and Occupational Health and Safety Appeal Panel under Labour Relations and Employment Board (“LREB”)

Consolidating the Labour Standards Tribunal and Occupational Health and Safety Appeal Panel with the LREB will further simplify stakeholders’ access to employment justice by creating a single access point for all employment matters. The LREB will have the expertise to adjudicate a wide variety of matters including labour standards and occupational health and safety issues. This will be accomplished through the membership appointment process for the LREB.

We anticipate that the first of these legislative amendments will be made in the fall of 2010 and that the phases will be completed by the end of 2011.

Features of the LREB

LREB Structure and Operations

The LREB’s structure will be essentially the same as the boards that exist today. It will have a full-time Chair, and part-time Vice Chairs and other members. Board members will possess backgrounds that are relevant to the various matters under the LREB’s jurisdiction. Their background and experience will add specialized expertise that the LREB will be able to draw upon, especially in the adjudicative setting.

The six current employment-related tribunals operate independently with separate administration. This includes maintaining their own established policies and procedures. They also schedule matters independently of each other even though some share the same physical facilities. With the LREB there will be one system that will unify and simplify board processes resulting in one platform for service. This will improve the use of resources dedicated to employment adjudication by eliminating duplication and extending best practices to all sectors.

A single platform will also enhance our ability to be innovative. Currently, innovations can only be implemented on a board-by-board basis with each independent board deciding if, and how, it will make innovation available to its stakeholders. For example, e-filing of applications/relevant documents for LREB matters could be easily implemented under one system as opposed to changing six separate tribunal processes. Having one board offers the capability of one comprehensive structure to adapt to stakeholders' changing future needs.

Full-Time Chair

The Chair will perform an important leadership function and will be chosen as someone who is well respected in the labour/management community. The Chair will be required to possess the legal and administrative law skills necessary to set the process and determine the procedures to be applied in hearings. The Chair will also be required to be familiar with the specific issues under each of the statutes being brought under the LREB.

The appointment of a full-time Chair will ensure that the LREB:

- develops and applies consistent dispute resolution processes to all stakeholders regardless of sector;
- ensures decision consistency across all employment sectors;
- responds quickly and comprehensively to technological innovation, changing stakeholder demands, and a changing economy;
- takes a proactive approach to employment relations in Nova Scotia; and
- has full-time access to substantive expertise.

Vice Chairs and board members will continue to be needed, and will continue to be appointed as they are today.

The hiring and selection process for the Chair, Vice Chairs and other members will be in accordance with existing government guidelines, ensuring a fair and transparent process. This will be a term position appointed by Executive Council.

Different Modes of Adjudication

The Department also wants to provide Nova Scotians with adjudicative flexibility and the ability to use different modes of hearings. Therefore, the Department is considering whether the LREB should have the discretion to deal with matters by way of a paper review or video conferencing where appropriate. Allowing paper reviews or video conferencing would enhance the Board's ability to deal with matters expeditiously. For example, there may be cases where the essential facts are not in dispute as between the parties and

therefore, the only issue to be determined may be a question of law. In those particular situations, the LREB would be able to render its decision solely on the basis of written submissions from the parties.

The LREB's enabling legislation may include certain criteria which could be used to determine whether the matter would proceed by way of an oral hearing or written submission. The criteria could include but not be limited to the following:

- whether there are significant factual issues to be resolved,
- circumstances that may favor or hinder a participant's opportunity to present their case,
- the request of one or more of the parties,
- whether there are issues of credibility to be considered, whether the case involves complex issues of law or fact, and
- the quantity and nature of the documentary evidence on file.

In addition, we are looking at other alternatives such as video-conferencing which would provide persons living outside the Halifax and Sydney areas with more options for participating in hearings, and ensuring that they have access to justice.

Sole Adjudication

The Department is recommending that the LREB Chair be provided with discretion to appoint a sole adjudicator as an alternative to a tri-partite panel. The introduction of sole adjudication is an effective option for resolving various types of disputes. Sole adjudication permits hearings to be scheduled more quickly, decisions to be rendered more quickly in the absence of the requirement to achieve consensus, and expenses to be reduced (i.e. travel and per diems). Recent regulatory amendments require that occupational health and safety administrative penalty appeals be heard by sole adjudication to take advantage of the positive attributes of this dispute resolution model.

The current model of separate tribunals requires that tri-partite panels hear matters regardless of the complexity or significance of the issues at stake. For example, Labour Standards Tribunal panels normally cost upwards of \$1,000 per day even if the dispute is a minor one with a modest potential remedy. With the discretion to use sole adjudication, the new LREB will have flexibility to match its adjudicative structure to the circumstances of each individual case.

The Department acknowledges the specialized expertise that panels can bring to adjudication and therefore, the Chair would be required to consider certain factors in exercising this discretion. Factors could include the nature of the duties and functions

required or being performed by the Board, the circumstances of the particular matter to be determined, the parties' requests, and such other factors as the Chair considers relevant.

Historically, sole adjudication has not been used to adjudicate labour relations matters in Nova Scotia. However, the Department recognizes that there are benefits and efficiencies associated with this option. Therefore, the Department is considering making this option available for labour relations matters. As stated above, the Chair would be provided with the discretion to appoint a sole adjudicator, recognizing that in some instances the specialized expertise of a panel will be required. It is important to note that in New Brunswick, where panels are an option for labour relations matters, most parties choose sole adjudication to resolve their dispute.

Next steps....

If you are interested in responding to this paper, we would invite your comments, ideas and suggestions. In particular, we would appreciate your specific input related to the following areas:

- Discretion to appoint a sole adjudicator in labour relations matters and, in particular, for labour standards and occupational health and safety issues;
- Factors to be considered in exercising the discretion to appoint a sole adjudicator;
- Discretion to conduct paper reviews where appropriate; and/or
- Factors to be considered in determining whether cases will be conducted by way of a paper review.

We look forward to receiving comments/submissions which will be carefully considered and reviewed. Your input will help us address issues related to labour and employment adjudication in a balanced, fair and responsible way.

How to Respond to this Discussion Paper

Please contact the Policy and Planning Branch of the Department of Labour and Workforce Development by phone 1-800-567-7544 or (902)-424-2366 or email ldwpolicy@gov.ns.ca. Or write to us at:

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The Discussion Paper is also available on our website at <http://www.gov.ns.ca/lwd/>.

Please be advised that any personal information or opinions are being collected solely for the purposes of this consultation. Information collected is subject to the Nova Scotia *Freedom of Information and Protection of Privacy Act* and will only be used and disclosed in keeping with the provisions of that Act. Personal information provided is subject to the privacy legislation in Nova Scotia. If you have any questions regarding the collection, use, or disclosure of the information provided, please contact the departmental Information Access & Privacy Manager by phone (902) 424-8472 or email LWDaccess@gov.ns.ca.

In order for us to fully consider your comments, please contact us by September 24, 2010.

Thank you for taking the time to participate.

APPENDIX A

Cross-Jurisdictional Comparison of Canadian Labour Board Adjudication Models

	Federal Board	BC	Alta.	Sask.	Man.	Ont.	NB	PEI	Nfld.	NS
Labour Boards that administer more than 1 statute	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Labour Boards that use sole adjudication	Yes	Yes	No*	No*	Yes	Yes	Yes	No	No*	No*

*Primarily use panels but can use sole adjudication for specific matters.