



**Education and Early Childhood Development
Office of the Minister**

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December 1, 2016

Liette Doucet, President
Nova Scotia Teachers Union
3106 Joseph Howe Drive
Halifax, NS B3L 4L7

Dear Ms. Doucet:

Re: Notice regarding Education Act Duties

I am writing to you as a result of the breakdown in conciliation that occurred on Friday, November 25, and the intention of the Nova Scotia Teachers Union (NSTU) to have members commence strike action on December 5, 2016 by limiting their work activities while they are at school and receiving pay.

We were and remain willing to discuss outstanding matters and to explore with you any steps which will achieve a resolution that respects the interests of all Nova Scotians, particularly students and parents. Since the issuance of the NSTU strike notice on Monday, the NSTU seems to be intent on disruptive work action which may put students at risk.

Having reviewed the NSTU's directives to members for so-called "work to rule" strike action, we now have serious concerns that you are counselling members to take action after 12:01 am on Monday, December 5, 2016 which will result in your members breaching their duties under the *Education Act*.

Process to Date

When we reached the last agreement through collective bargaining on September 2, 2016 the wage increase for your members over a seven year period would have been 10.5% (being 7.5% from 2012 to 2015 and 3% from 2015 to 2019). You and your bargaining committee are aware of the limited financial capacity we have to meet your wage demands.

When conciliation re-commenced last week NSTU negotiators articulated 16 new proposals. This was the first time in this entire process that your negotiators articulated a wage demand of a minimum of 8% wage growth over four years. At no time since the commencement of the process on June 18, 2015 had such a substantial wage demand been raised. Despite this, my committee responded to all of the proposals, including wages and service award proposals, and provided some information on costing for further discussion.

Several items were identified that we felt should be dealt with by the Partnership on Systemic Working Conditions. For example, we all share a desire to eliminate unnecessary documentation. Likewise, we share a desire to find cost-effective ways of reducing “clerical work” of teachers. The Partnership should, in a collaborative and constructive way, examine current practices with a view to quickly resolving any issues with unnecessary documentation and clerical work. My committee also posed several questions regarding the union proposals.

In asking for conciliation we did not think you would be under any illusion that we would be able to agree to increased wage demands. We assumed the NSTU members and your bargaining committee would be mindful of what NSTU’s chief negotiator said in his letter of November 24, 2015 when he cautioned all of your members, *“Why would anything change [on wages or public service award] as a result of conciliation when the provincial executive and negotiating committee already agreed on an earlier deal.”*

With respect to issues such as reducing “clerical work”, photocopying and a few other elements you raised in your list of 16 new items, we believe further engagement could be beneficial. This opportunity was lost when your committee curtailed the conciliation on Friday, November 25, 2016. The sticking point was really the employer’s position on wages and benefits. We simply do not have the fiscal capacity to meet the wage and benefit demands which have now been tabled by your union, and despite our process we do not foresee any scenario where Nova Scotians can afford an 8% compounding wage increase between now and June 2019.

Collectively, Nova Scotians face a provincial public debt level of over \$15.1 billion.

This debt accumulated over many decades. It costs Nova Scotians more than \$840 million per year just to pay the interest on this debt. To illustrate the magnitude of this cost to Nova Scotians, I point out the total program spending in education is approximately \$1.2 billion. If, in fact, our debt levels were lower, there would be more money available to invest in education or other public services.

One of the main factors that led to the accumulation of such a large level of debt for such a small province was an unwillingness of previous governments of all political stripes to have the resolve to spend only what they had the fiscal capacity to spend.

Premier McNeil has been resolute that he will not take Nova Scotians further into debt and make the delivery of public services for all Nova Scotians less sustainable in future.

The importance of this challenge was highlighted in the report of the Nova Scotia Commission on Building our New Economy (the “Ivany Report”) which was commissioned by the previous NDP Government and accepted by all parties. In February of 2014, the Commissioners stated:

“... Our economy today is barely able to support our current standards of living and public services, and will be much less going forward unless we can reverse current trends.”

“... Yes, there is a crisis and it does threaten the basic economic and demographic viability of our province, most dramatically in our rural regions.”

"... The evidence is convincing that Nova Scotia hovers on the brink of an extended period of decline."

"... If Government continuously grows its hiring, spending and capital investments faster than the overall economy and therefore has to keep raising tax rates and borrowing more to sustain such stimulus spending, it eventually runs out of room to maneuver fiscally and politically."

We are, indeed, near that point. Across the public sector a 1% wage increase cost taxpayers approximately \$52 million.

Between 2012 and 2015 members of the NSTU received a total wage increase of 7.5% over three years. During almost the same period, the economy of Nova Scotia only grew 6.3%. This is the context we all find ourselves in, though we will continue to work constructively to seek a resolution to the challenge all Nova Scotians face.

When we offered a 2% wage increase over five years at the commencement of negotiations, the NSTU counter offered with a proposal for a 3% wage increase over four years. We agreed.

When the NSTU counter offered our proposal on the Public Service Award by requesting that it be calculated based on wage levels at retirement rather than wages at the end of July, 2015, we agreed.

We were flexible and agreed because we could do so yet stay within the scope of the fiscal plan. Through the bargaining process, in good faith, we compromised to reach agreement. As your chief negotiator said in his letter to your members of November 2015, *"In this case, the end of bargaining came early because there were two willing parties."*

After the first agreement was rejected by a majority of your members, your negotiator requested Government return to the bargaining table. We agreed.

Bargaining resumed on January 17, 2016 and negotiations continued in good faith. In June of 2016, I requested a conciliator be appointed to assist the parties to reach agreement and a conciliation officer was appointed on June 7, 2016. Following conciliation, a second agreement was reached on September 2, 2016 and again this new agreement was accepted by your provincial executive and recommended to members. However, your members again did not agree with the recommendation of your executive.

We requested the conciliator bring the parties back together on November 17, 2016. Two days of talks were held but, in our view, were ended prematurely by the NSTU.

I am attaching a chronology which outlines the steps which have been undertaken in our consultations and collective bargaining processes. We have pursued our discussions in good faith and with an intention to reach agreement. Your chief negotiator has described the process to your members and noted the earlier agreement was reached because there were two willing parties who followed a process to get to an agreement.

As the chronology shows, we have met frequently and have been committed to the bargaining process on each occasion we went to the bargaining table, even when your own negotiator cautioned government would be justified in choosing not to do so. In the most recent conciliated process we carefully read, reviewed and costed your 16 new proposals. We responded to your proposals and asked for clarification. We have engaged in meaningful dialogue and fully explained our positions.

Last Friday your bargaining committee walked away from the process and on Monday morning you gave notice of your intention to take strike action. We now turn to our serious concerns with your intended actions.

Notice of Duties under Education Act/Safety Concerns

As noted above we have very serious concerns based on the NSTU's *Directives for Work to Rule: Job Action for Teachers* that you are counselling your members—both Teachers and Principals—to take strike action. This is inconsistent with the duties imposed on Teachers by the *Education Act*, including actions that give rise to unacceptable safety risks. If followed, these would put teachers in breach of several statutory duties they have under the *Education Act*.

Principals have overall responsibility for their schools and an overriding obligation to ensure that reasonable steps are taken to create and maintain a safe, orderly, positive and effective learning environment (s.38 (2) (e)). Teachers have statutory duties to take all reasonable steps to create and maintain an orderly and safe learning environment and to, at all times, attend to the health and safety of the students. (s.26 (k) and (n)). These are statutory duties which apply notwithstanding anything in the *Teachers' Collective Bargaining Act* which may be inconsistent with these duties. (s.76). They apply when schools are in session and Principals and Teachers are on the job and collecting pay.

These duties are not discretionary. Nowhere does it say that these obligations can be fulfilled by merely arriving at the school 20 minutes before instructional time begins and leaving 20 minutes after instructional time ends. The potential consequences of such irresponsible behaviour is foreseeable. Likewise, you have expressly counselled your members not to supervise students during lunch time, again giving rise to foreseeable risks. If your instructions are followed by Principals and Teachers it will put them in direct breach of the duties imposed by the *Education Act* and accountable for any consequences.

We also wish to draw to your attention to section 34(5) of the *Teachers' Collective Bargaining Act* regarding the statutory obligations of certain members regarding the safety of students when there is strike action. This section does not contemplate that your members can both be on the job and collecting pay while taking strike action. As members of the bargaining unit neither Teachers nor Principals are relieved of any of their statutory duties.

Our primary concern is for the safety of students while at school at any time. Several other elements of your direction to your members regarding your so-called "work to rule campaign" are directly inconsistent with the rights of parents and students recognized by the *Act* and are in breach of Teachers' and Principals' statutory duties. These are enumerated in section 26 and 38 of the *Education Act* and include, without limitation, communication, assessment, supervision, meeting attendance, data entry and responsibilities to act as "teacher in charge".

We wish to emphasize our expectation that the provisions of the *Education Act* should be fully met by your members. We enclosed a Notice to this effect which lists the duties and we ask that you share this document with Principals and Teachers so they are made aware of their obligations, and, in particular, their duties regarding safety of students. The Notice sets out in full detail overriding statutory obligations of Principals and Teachers from which your members cannot select as they see fit to advance their wage demands. They must meet them all, fully and at all times when students are present in the schools. The preamble to the *Act* is clear, **students have a right to an orderly and safe learning environment**. Principals and Teachers have statutory duties to maintain an orderly and safe learning environment when they are on the job and collecting pay. While it seems your members wish to maintain their full pay and benefits while taking strike action, they cannot do so if doing so breaches the *Act* and, in particular, if doing so puts students' safety at risk.

Closing

We have made every effort to again arrive at an agreement acceptable to the NSTU and government. In recently asking that you resume conciliation instead of initiating work action it was not our intention to raise false hopes before you responded with a demand for an 8% wage increase over four years, when you had previously proposed 3%, which resulted in the employer moving off its initial position to accept your proposal. You are now directing your members to act in breach of the duties imposed by the *Education Act* to back up that wage demand, among other things.

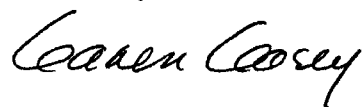
As far as improving classroom conditions and educational outcomes, I need not go into detail because I believe we both want the same thing; **better education in our province to improve our collective future**. We have created a forum for resolution of these matters through the Partnership on Systemic Working Conditions we have mutually agreed to.

It is our expectation that the NSTU will **cease and desist** from counselling your members to breach the *Education Act* and we take this last opportunity to explore whether there are options that will allow us to address outstanding issues yet stay within the scope of the existing fiscal capacity of Nova Scotians.

We will be sharing a copy of this letter and Notice with School Boards, Superintendents and any others we consider appropriate to safeguard the interests and wellbeing of students.

I would be grateful for a timely response and would welcome the opportunity to begin a more constructive approach.

Yours truly,



Karen Casey
Minister of Education and Early Childhood Development

Attachment