



report

**Legal Strategies
Component
Coordinating
Committee
Videoconference**

July 10, 2020

The National Union of Public and General Employees (NUPGE) is a family of 11 Component and 3 affiliate unions. Taken together, we are one of the largest unions in Canada. Most of our 390,000 members work to deliver public services of every kind to the citizens of their home provinces. We also have a large and growing number of members who work for private businesses.

Larry Brown, President

Bert Blundon, Secretary-Treasurer

**Legal Strategies Component Coordinating Committee
Videoconference
July 10, 2020, at 1:00 pm EDT**

Participants

	In-house	External
BCGEU	Jitesh Mistry Thom Jachnin	
HSABC/NUPGE	Jeanne Meyers Bruce Wilkins Tonie Beharrell Stephen Hutchison	
HSA/NUPGE	Mike Parker	Dan Scott (of Seveny Scott)
SGEU/NUPGE		Rick Engel (of Gerrand Rath Johnson)
MGEU/NUPGE	Helen Krahn Paul Mcdonald	
OPSEU/NUPGE	Adrienne Liang Filomena Lofranco	
NBU/NUPGE	Leigh Sprague	
NSGEU/NUPGE	Jason MacLean Robin MacLean	Gail Gatchalian (of Pink Larkin)
NAPE/NUPGE	Paula Schumph	

NUPGE

Larry Brown, President Andrew Astritis (of RavenLaw)
Bert Blundon, Secretary-Treasurer
Len Bush, Managing Director
Sandra Megeney, Administrative Representative
Nadia Ibrahim, National Representative

1. Introduction—Larry Brown, NUPGE President

The Chair, Larry Brown, thanked participants for joining this important videoconference to discuss the recently introduced [Bill 32, Restoring Balance in Alberta's Workplaces Act](#).

Brown said that the proposed legislation represents an attack on the Wagner model and the Rand formula. It is an expression of anti-unionism. As we know, there won't be similar restrictions placed on the political activities of corporations. The fact that the Kenney government introduced this bill during a pandemic is particularly problematic.

The Alberta Federation of Labour, in which HSAA/NUPGE is a key actor, is expected to take the lead on fighting this legislation. The aims of today's meeting were to provide an initial overview of the bill and to have a preliminary discussion about our collective response.

Although this is an Alberta-based fight for now, it is a concern for the entire labour movement. If the legislation goes through in Alberta, other Conservative governments are expected to use it as a template in their provinces.

2. Overview of Legislation—Dan Scott, of Severyn Scott, for HSAA/NUPGE

Dan Scott provided an overview of Bill 32's proposed changes to the *Labour Relations Code*, though he noted that it also contains some fairly insidious changes to the *Employment Standards Code*, such as overtime provisions, that will have implications for bargaining.

The UCP government ran on a platform that outlined many changes to the *Labour Relations Code*. They aimed to undo the NDP amendments in 2017 that brought Alberta closer in line to the rest of Canada. Bill 32 is a culmination of that agenda.

The legislation would require unions to provide financial statements to all people in the bargaining unit and contain an itemized list based on what the government says must be included. What exactly needs to be itemized is not yet clear, as it is the regulations that will outline those details.

Section 26.1 outlines a dues opt-in provision for political activities and causes. It is not yet clear what will be defined as a political activity or cause, as that will be outlined in the regulations as well. Under the proposed legislation, unions would be required to give all members a breakdown of the portion of dues going to core servicing and that which goes to anything else. For the latter, members would have to opt in to paying that portion of dues.

Scott noted that it is effectively an attempt to take advantage of the small portion of people in a bargaining unit that do not support the union’s activities and allow them to use the financial statements for mischief. It will undermine solidarity of the bargaining unit, and also be logistically confusing and onerous for unions.

Scott suggested that the legislation signals a move to a US-style approach to labour relations, which shifted from an agency-fees model (1977–2018), to the opt-out (right-to-work) model with the *Janus v AFSCME* decision. He referenced the Supreme Court of Canada’s *Lavigne v OPSEU* decision, which provides a useful look at why an opt-out model is a bad idea.

The provisions around picketing would make it illegal to obstruct or impede a person from crossing a picket line. This would significantly restrict the picket’s activities, such as delaying traffic and replacement workers (scabs). It would also bring repercussions for the union, such as suspension of dues, if it is found to be behind the activity.

Other concerning elements of the bill include permitting early closing of open periods, overturning the former NDP government’s provision that allowed arbitrators to extend the grievance timeline, and eliminating reverse onus provisions. The bill also undoes the NDP’s 25-day window between the application for certification and a labour board decision, which had proved effective for organizing. Bill 32 sets out a 6-month window, with an option to extend it for another 6 months if needed, and a 6-month waiting period to reapply, compared to the former 90-day period.

Scott argued that if this legislation goes unchallenged, it will provide a template to be used elsewhere.

Mike Parker, President of HSAA, thanked participants for joining the videoconference. He expressed his appreciation for their support during this very serious attack on unions in Alberta. He also commented on the political context in Alberta, where the Kenney government is attempting to portray itself as “for the workers” and is spinning the legislation accordingly.

3. Initial Thoughts on Response—Andrew Astritis, of RavenLaw

Andrew Astritis shared his first impressions of Bill 32 and the prospects of a legal challenge. He reiterated that many of the details are not yet known, as they will be defined in the regulations. Still, what’s at the core of the legislation is alarming and mean-spirited.

He highlighted a few main areas of concern. First, he spoke about the move to an agency-fees model, pointing to the US context, as Scott did. When it comes to defining political activity, Astritis argued that it will be difficult to distinguish between collective bargaining and political activity. For example, campaigns against privatization, austerity,

and wage restraint legislation could be defined as outside the core servicing of workers, when really these issues are fundamental to fighting for workers.

Second, he commented on the provisions related to picketing. While there are more details to be determined, he said it is concerning if union members will not be able to engage in any interaction on the picket line. Furthermore, the restrictions on secondary picketing are worrisome, particularly the requirement that unions go to the labour board for approval before engaging in secondary picketing.

Finally, he noted the host of other changes contained in the bill. In terms of approaching a legal challenge, Astritis noted that it must be considered whether any of these issues could be challenged individually, or if the legislation needs to be considered as a whole. It will also be important to consider how to strategically decide which aspects are to be challenged and which aren't.

4. Discussion

Dan Scott provided some background on the political and legal landscape in Alberta. He noted the political diversity that does exist, and how that might inform where to bring a challenge. He also explained how the Court of Appeal in Alberta is divided on the extent to which they defer to the government's judgement. In fact, the court is putting the question before a panel to determine a standard for how much deference is given to the government.

There was some discussion surrounding the use of the notwithstanding clause.

The discussion emphasized that we are still in the early days of this fight, as we await more details about the legislation. The logistics of the dues opt-in are particularly unclear.

A key strategic question will be whether to address the legislation globally or on its individual components.

HSAA and NUPGE will keep participants informed as new information comes to light.



NATIONAL UNION OF PUBLIC AND GENERAL EMPLOYEES

- B. C. Government and Service Employees' Union (BCGEU)
- Health Sciences Association of British Columbia (HSABC)
- Health Sciences Association of Alberta (HSAA)
- Saskatchewan Government and General Employees' Union (SGEU)
- Manitoba Government and General Employees' Union (MGEU)
- Ontario Public Service Employees Union (OPSEU)
- Canadian Union of Brewery and General Workers (CUBGW)
- New Brunswick Union of Public and Private Employees (NBU)
- Nova Scotia Government and General Employees Union (NSGEU)
- PEI Union of Public Sector Employees (PEI UPSE)
- Newfoundland & Labrador Association of Public and Private Employees (NAPE)

The National Union of Public and General Employees is an affiliate of the Canadian Labour Congress and a member of Public Services International.

15 AURIGA DRIVE
NEPEAN, ONTARIO
CANADA / K2E 1B7

[613] 228-9800
FAX [613] 228-9801

www.nupge.ca

national@nupge.ca

