



report

**Legal Strategies
Component
Coordinating
Committee
Videoconference**

November 3, 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
November 3, 2020**

PARTICIPANTS

	In-house	External
BCGEU/NUPGE	Thom Yachnin	
HSABC/NUPGE	Jeanne Meyers Tonie Beharrell	
HSAA/NUPGE		Dan Scott (Seveny Scott)
SGEU/NUPGE		Rick Engel (Gerrand Rath Johnson)
MGEU/NUPGE	Helen Krahn Paul McDonald Sara Mason	
OPSEU/NUPGE	Eric O'Brien Adrienne Liang	
NSGEU/NUPGE	Robin MacLean	Gail Gatchalian (Pink Larkin)
PEI UPSE/NUPGE	Hans Connor	
NAPE/NUPGE	Paula Schumph	
NUPGE	Larry Brown, President Bert Blundon, Secretary-Treasurer Len Bush, Managing Director Diane Fowles, Administrative Representative Nadia Ibrahim, National Representative	Andrew Astritis (RavenLaw)

1. Welcome and Introductions

Nadia Ibrahim welcomed participants to the meeting. She acknowledged that the National Union office is located on the traditional unceded territory of the Algonquin Anishnaabeg people.

Ibrahim asked participants to introduce themselves.

2. Opening Remarks—Larry Brown, NUPGE President

Larry Brown provided opening remarks, acknowledging the political context and uncertainty surrounding today's US election.

He commented on the many legal issues emerging across Canada, with the Alberta government leading the attacks on unions. Bill 32, which was the subject of the [previous Legal Strategies Component Coordinating Committee videoconference](#), represents a step towards a right-to-work model. In Manitoba, the recently introduced Bill 16 is also anti-union and mean-spirited in nature, specifically targeting public sector unions.

Brown reiterated that NUPGE is working on responses to the provincial government austerity that is expected in the wake of the pandemic, which would have implications for bargaining rights. The need for tax fairness, which has largely been missing from the public debate, must be emphasized.

3. Report on the CLC Legal Challenges Coordinating Committee—Larry Brown, NUPGE President

Brown directed participants' attention towards the October 2020 report of the Canadian Labour Congress's [Legal Challenges Coordinating Committee](#), which was circulated to participants. Brown co-chairs this committee with CLC President Hassan Yussuff. The report provides a scan of key legal cases that are important to workers and their unions.

4. Update on *Restoring Balances in Alberta's Workplaces Act* (Bill 32)

[Bill 32, the *Restoring Balances in Alberta's Workplaces Act*](#), was passed and received Royal Assent in July. The key issues with the legislation were discussed in greater detail in the [July 10 meeting of this committee](#).

Because the regulations have not yet been released, many details remain unknown. Regarding the dues opt-in provision, for example, it is not clear how the government will distinguish between core servicing activities and other activities. It is likely to be an onerous process for unions, as well as for employers. It is unclear what level of detail

will be required in the union financial statements, but it is expected that the government will want to obtain a lot of detail, such as on strike funds or investment returns.

It was reported that the regulations are now expected to come out in January or February 2021. Notably, though, the labour federation and non-profit organizations that rely on union funds are already concerned about their future.

At its recent annual general meeting, the United Conservative Party passed a resolution endorsing right-to-work ([CBC News](#)). It is not yet clear whether the aim is to make Bill 32 look more reasonable, or whether the UCP is truly pursuing a right-to-work regime, with Bill 32 as a stepping stone.

A legal opinion, prepared for NUPGE by RavenLaw, regarding a possible legal challenge to Bill 32 was shared with the committee. In Alberta, a number of labour organizations are exploring the possibility of a legal challenge, but awaiting the further details to be outlined in the regulations.

5. Update on Manitoba's Labour Relations Amendment Act (Bill 16)

The Pallister government introduced proposed changes to the *Labour Relations Act* in October. The bill contains both specific attacks on public sector unions, such as the required compensation statements, and attacks on workers more generally, such as removing interest arbitration.

The proposed changes are summarized in memo #2020-115, circulated to the National Executive Board, which was also shared with the committee. The [Manitoba Federation of Labour has released an analysis](#) of the proposed changes, as well.

It was reported that Bill 16 contains provisions that the joint labour-management committee recommended against in its comments to government earlier this year. The bill represents the next step in the government's anti-union agenda, and it is expected to pass easily in the legislature.

There is no update on a possible legal challenge at this time. The fact that some provisions are specific to public sector unions may be worth noting.

6. Update on *AC and JF v Alberta*

The Charter challenge regarding amendments to the *Child, Youth, and Family Enhancement Act and Regulations* are currently before the Court of Appeal in Alberta. It deals with the test for seeking an injunction when challenging the constitutionality of legislation. The case suggested that the first stage of the test would be subject to a higher test than is normally applicable.

The concern is that establishing a higher threshold, which suggests a strong presumption of the constitutionality of legislation, would make it harder for unions to obtain an injunction staying the implementation of legislation pending a Charter challenge. The case was heard before the Court of Appeal on October 22, but a decision is yet to be released.

7. Component Reports: Roundtable on Provincial Legislation, Arbitration, or Cases of Note

Participants reported on their many ongoing and recent fights. What follows is a high-level summary of the updates.

Wage Restraint

Wage restraint legislation continues to be a challenge in many provinces. In Alberta, there are rumours that wage-restraint legislation is being drafted.

Challenges to wage-restraint legislation are in progress in Ontario and Nova Scotia. In Nova Scotia, the unions are awaiting a Court of Appeal decision on their right to rely on affidavits and expert reports. In Ontario, several unions individually challenged the wage-cap legislation and are expecting the challenges to be consolidated.

Collective Bargaining

Several participants reported on bargaining. Most Components are facing unfriendly, or even hostile, right-wing governments. In addition to the issues at hand, Components are adapting to bargaining virtually.

For its master civil service agreement, the MGEU is awaiting appointment of an interest arbitration board. After the Minister failed to do so, a court ruling upheld that the government is obliged to do so. The province is appealing the ruling but must comply with the order in the meantime. It is expected that the Court of Appeal decision will come before arbitration hearings begin in June next year.

The PEI Federation of Labour, including PEI UPSE, has been lobbying the provincial government to include first-contract arbitration in the *Labour Relations Act* to bring PEI in line with other provinces.

Following the change in provincial leadership, some of NAPE's general service members have been taken out of the bargaining unit because their positions were moved under the umbrella of executive counsel. In a similar instance in the past, raising the possibility of a Charter challenge prompted the government to settle.

Secondary Picketing

A coalition of BC unions, including HSABC and the BCGEU, is awaiting a decision in their Charter challenge to the *Labour Relations Code* provision that restricts picketing at a secondary location.

Health and Safety

HSABC and NUPGE commissioned a report by Dr. John Murphy on COVID-19 infection control among health care workers, following up on [the first paper released in March](#). Dr. Murphy's latest report shows that the evidence once again supports the use of N95 masks among health care workers. HSABC is working with the BC government, the Health Employers Association of BC, and members on the issue of PPE.

It was noted that NUPGE has been exploring issues related to working from home during the pandemic. There is a gap in occupational health and safety legislation and workers' compensation systems when it comes to working from home.

Political Context

Provincial elections recently took place in BC and Saskatchewan. Nova Scotia and Newfoundland and Labrador have seen their Premiers step down in recent months. Both provinces are expecting elections within the next year.

A number of participants flagged concerns about the possibility of public sector cuts as part of post-pandemic austerity.

Wins

In Manitoba, the labour movement, including the MGEU, was recently successful in a legal challenge to the *Public Services Sustainability Act*. In June, a Manitoba judge ruled that the wage-freeze legislation was unconstitutional. However, the government is appealing the ruling, with the pretrial conference scheduled for December.

In BC, the recent ruling in the Cambie Surgeries Corporation case was a major victory for public health care. HSABC supported the BC Health Coalition in the case. It is expected that the ruling will be appealed and may make its way to the Supreme Court of Canada, and so the union continues to work with the coalition and other intervenors.

The BCGEU successfully challenged at the Court of Appeal an incident in which a former member was terminated following certification, but prior to the negotiation of a first contract. The employer had argued the labour board was the only place to address this issue. The court upheld that if there is no remedy available to a worker at the labour board, they are entitled to proceed to the courts.

Other Issues

The BCGEU has filed an application seeking leave to appeal a BC Court of Appeal decision in the highly publicized case involving Bryce Casavant, a former member and special constable. The case, which found that termination of special constables should

be dealt with under the *Police Act* and not by the Labour Relations Board, raises concerns about the impact on the union's ability to represent its members.

The Nova Scotia Teachers Union is challenging Bill 75, which imposed a contract on teachers in 2017. A hearing of merits is scheduled for February or March 2021.

8. Supreme Court Ruling on *Fraser v Canada (Attorney General)*—Andrew Astritis, RavenLaw

A NUPGE briefing was circulated to the committee. Astritis provided further background and commentary on the case, noting that the ruling is an important equality win.

In her decision, Justice Abella simplified the test for breach of equality rights into 2 parts: whether the law creates a distinction by group, and whether it reinforces or perpetuates historical disadvantage. It is notable that the court considered whether the pension law had a disproportionate impact on a protected group (i.e., women), even if it appeared “neutral.” It is also significant that the Appellants didn't need to show intent, or that the pension law itself caused inequitable distribution of child care obligations. What mattered is that it had a differential impact and perpetuated historical disadvantage.

Given the above, this case has broader implications. It opens up questions about legislation that, even if it doesn't explicitly treat groups differently, has disproportionate impacts on a group. There are likely cases of discrimination based on sex and on disability.

9. Closing Remarks and Next Steps

Bert Blundon, Secretary-Treasurer, provided closing comments. He reiterated the uncertainty surrounding the U.S. election outcome. Given the impact of American politics on Canada, we might see repercussions, but also learn from, other jurisdictions' politics, policies, and legal challenges.

Blundon and Brown thanked participants for joining the videoconference. The next meeting of this committee will be scheduled in 2021.



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.

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