SUPREME COURT OF NOVA SCOTIA

Citation: *Nova Scotia Teachers Union v. Nova Scotia (Attorney General)*, 2019 NSSC 176

Date: 20190604
Docket: Hfx No. 469869
Registry: Halifax

Between:

Nova Scotia Teachers Union

Plaintiff

v.

Attorney General of Nova Scotia, representing Her Majesty the Queen in Right of the Province of Nova Scotia

Defendant

DECISION
Motion for Production of Documents

Judge: The Honourable Justice Jamie Campbell

Heard: May 15 and 16, 2019, in Halifax, Nova Scotia

Counsel: Gail Gatchalian and Balraj Dosanjh, for the Plaintiff
Andrew Taillon, for the Defendant

By the Court:

[1] The Nova Scotia Teachers Union and the Attorney General of Nova Scotia are engaged in a dispute about the constitutionality of Bill 75, the *Teachers' Professional Agreement and Classroom Improvements (2017) Act*[1], which came into force on February 21, 2017. That piece of legislation imposed a collective agreement. The NSTU says that the Province substantially interfered with teachers' freedom of association and failed to respect the process of meaningful and good faith consultation. They say that is the case in part because the Province had already decided in 2015 to impose the same terms by legislation.

[2] A motion was argued on May 15, 2019 regarding the admissibility of comments alleged to have been made by the Deputy Minister of Finance to the NSTU's chief negotiator. This motion is about the production of documents that relate to Bill 148, the *Public Services Sustainability (2015) Act*[2], which was passed in December 2015 but not proclaimed into force. The NSTU says that the documents relating to that bill help to prove that the Province intended throughout the negotiation process to legislate a collective agreement if one could not be negotiated on terms the reflected its position. The Province claims that the documents sought by the NSTU are not relevant because they don't pertain to the bill that is being challenged. The Province also says that they are subject to public interest privilege and labour relations privilege.

Background

[3] The NSTU is the exclusive bargaining agent for teachers employed by school boards in Nova Scotia. The Minister of Education is the employer in respect of the terms and conditions of work as set out in the *Teachers' Collective Bargaining Act*[3]. The NSTU and the Minister of Education reached a collective agreement on May 14, 2013 effective from August 1, 2012 to July 31, 2015. The NSTU gave the Minister notice to bargain a new collective agreement on June 18, 2015.

[4] On September 20, 2015 the Minister and the NSTU exchanged bargaining proposals. The Province sought, among other things, a three-year wage freeze, two

[1] S.N.S. 2017, c. 1
[2] S.N.S. 2015, c. 4
[3] R.S.N.S. 1989, c. 460

years of limited wage increases, and the ending of the service award accrual as of July 31, 2015, with payment to be based on the teacher's salary as of that date.

[5] In November 2015, the Province indicated its willingness to agree to a four-year collective agreement with wage freezes for the first two years, limited wage increases in the third and fourth years and the ending of service award accrual as of July 31, 2015 with payment to be based on the teacher's salary at retirement. The NSTU says that the Deputy Minister of Finance and the NSTU's chief negotiator had a discussion away from the formal negotiating table in which it was suggested that if the NSTU did not agree to the Province's proposal by November 12, 2015 the Province would introduce legislation that day to impose terms that would be less favourable. That discussion was the subject of a motion with respect to its admissibility in this litigation.

[6] The negotiating teams agreed to the proposal. The union says that it did so to avoid less favourable terms being imposed by legislation. Members of the NSTU were told by the union executive that the tentative agreement should be ratified because if it were not, less favourable terms would be imposed by legislation. The members of the NSTU rejected that tentative agreement by a vote held on December 1, 2015.

[7] On December 14, 2015 the Province introduced Bill 148, the *Public Services Sustainability (2015) Act*. That bill included the wage restraint provisions that the Province had proposed and froze service award accrual effective March 31, 2015. It calculated service awards based on the employee's salary as of March 31, 2015, rather than on the date of retirement. Bill 148 received Royal Assent on December 18, 2015 but was not proclaimed in force. It could have been proclaimed at any time.

[8] Negotiations picked up again in January 2016. They continued in April and May 2016. The parties went to conciliation in August of that year. The negotiating teams reached an agreement for the framework of a second tentative agreement. The NSTU provincial executive voted to recommend acceptance of the agreement. It was put to the membership on October 4, 2014. Once again, the membership rejected the tentative agreement.

[9] On December 3, 2016 the NSTU was in a legal strike position. The union said that it would begin job action on December 5, 2016. Schools were closed that day by the Minister of Education. Schools re-opened the next day. The legislature

had been recalled. Legislation was not passed that day and the parties agreed to continue negotiations.

[10] On January 20, 2017 a third tentative agreement was reached between the parties. That too was rejected by the membership on February 9, 2017. On February 11, 2017 the government announced that the legislature would sit once again.

[11] On February 14, 2017 the government introduced Bill 75, *An Act Respecting a Teachers' Professional Agreement and Classroom Improvements*. It ended the strike action and imposed a four-year collective agreement. It froze wages for two years, provided limited wage increased for the next two years and ended the accrual of the service award as of July 31, 2015 with payment of the award based on the teacher's salary at retirement.

[12] On October 31, 2017 the NSTU filed an Application in Court challenging the constitutionality of Bill 75. The NSTU claimed that it was a violation of the guarantee of freedom of association in s. 2(d) of the *Canadian Charter of Rights and Freedoms* and the guarantee of freedom of expression in s. 2(b). The NSTU claims that the threat of legislation in November 2015 lead to the first tentative agreement. Bill 148 "hung over the collective bargaining process" after December 2015. In enacting Bill 75, in 2017, the Province substantially interfered with collective bargaining in a way that did not respect the process of meaningful and good faith consultation.

[13] The Province argues that it did not violate the *Charter* in enacting Bill 75 and points to the two tentative agreements that were negotiated with the NSTU and rejected by its membership. The Province says that Bill 75 contained provisions that were like the wage restraint and service award provisions in the first tentative agreement that was reached in November 2015.

[14] In response the NSTU says that the first tentative agreement was itself bargained in bad faith and in violation of s. 2(d) of the *Charter*. That is because the Province intended to achieve the wage restraint and service award provisions by legislation if the NSTU had not been prepared to agree to those terms. The Province "already had its mind made up" and a strategy in place in 2015 to achieve that outcome and because of that failed to engage in meaningful and good faith consultation.

The Documents

[15] That is where the dispute about the documents arises.

[16] The NSTU is seeking documents that relate to Bill 148, in 2015. That is the bill that was passed in December 2015 but was not proclaimed in force. The NSTU says that the threat of Bill 148 had an influence on the rest of the collective bargaining process. Bill 148 is alleged to be evidence of the Province's intention to impose wage restraint and end the service award by legislation so that the subsequent negotiations were not undertaken in good faith.

[17] The documents over which the Province has claimed privilege are described in the Province's Supplementary Affidavit Disclosing Documents sworn by Angela Kidney, Director of School Board Labour Relations for the Department of Education and Early Childhood Development on April 1, 2019. The affidavit claims solicitor client privilege over communication containing the advice of legal counsel. Public interest immunity is claimed over all documents "giving, relating to, or created to provide, advice to Cabinet, on the basis that the documents reflect deliberations of the Executive Branch of Government and there is a need for candid and open dialogue concerning sensitive political matters". Public interest immunity was claimed over all of the documents contained in chart attached, except for an August 19, 2015 presentation "Public-Sector Leaders Moving Forward Together". The Province also claimed privilege over certain of the letters and presentations as being confidential and protected from disclosure based on labour relations privilege.

[18] All the documents are contained in a letter from the Secretary of the Executive Council to Department of Justice Counsel dated March 18, 2019. They have been provided to the court for review. They range in date from January 15, 2015 to December 10, 2015. They are "Minutes from Meeting of Executive Council", or Cabinet minutes, slide presentations consisting of advice to Cabinet and a report and recommendation to cabinet.

Relevance

[19] The NSTU's motion is for an order for production. The documents sought must be relevant. "Relevant" is defined in Part 5 of the *Nova Scotia Civil Procedure Rules* as having the same meaning as at the trial of an action. The motions judge must make a determination by assessing whether the judge presiding at the trial or application would find the document to be relevant. The "semblance

of relevancy" test has been displaced by that rule. At an early stage in the process that can only be assessed based on the pleadings and documents that have been filed.

[20] The document must be probative of a material fact in issue in the proceeding. A document is probative if it logically makes something more or less likely. The judge hearing the motion does not assess how probative the material sought would be in the context of the trial of the action but whether it is probative of a material fact in issue.

[21] The NSTU's claim is that Bill 75 was unconstitutional. Freedom of association in the labour relations context is the right of employees to associate in pursuit of workplace goals and to a meaningful process within which they can seek to achieve them. That freedom is breached when government legislation or actions substantially interfere with collective bargaining so that it does not respect the process of good faith consultation. A government can legislate the end to a strike. There must be a consultation before doing that. It can be seen as a replacement for traditional collective bargaining but only if it is a meaningful substitution. The parties must consult in that pre-legislative stage from a position of "approximate equality". To determine whether that has happened requires a probing analysis into the government's actions and positions.

[22] In *British Columbia Teachers' Federation v. British Columbia*[4], the Supreme Court of Canada substantially adopted the reasons of the dissenting judge, Donald J.A. in the British Columbia Court of Appeal decision, *BCTF v. British Columbia*[5]. Justice Donald upheld the trial judge's finding that the Province of British Columbia came into the negotiations "with its mind made up and a strategy in place"[6]. Any negotiation on the part of the union was futile.

[23] Justice Donald held that the inquiry in every case concerning whether the right to bargain collectively had been breached is contextual and fact specific. The case deals with the discrete actions of government. "The actions of the Province, its motivations, and the consequent effects on teachers and the BCTF are facts that are best determined by a trial judge with the necessary fact-finding tools, such as *viva voce* evidence."[7]

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[4] 2016 SCC 49
[5] 2015 BCCA 184
[6] *BCTF*, 2015 BCCA 184, at para. 351
[7] *BCTF*, 2015 BCCA 184, at para. 324

[24] The NSTU argues that the passage of Bill 75 in 2017 did not respect that process of meaningful and good faith bargaining. That is in part because in 2015 the Province threatened legislation and the threat led to the first tentative agreement. The Province then passed Bill 148 but did not proclaim it. It was in that sense more than a threat of legislation it was legislation that could be proclaimed. The NSTU says that the Province had its mind made up on wage restraint and ending the service award and had a strategy in place in 2015 to achieve that outcome.

[25] The Province argues that Bill 148 is not relevant to the constitutionality of Bill 75. It is not necessary at this stage to determine whether or the extent to which Bill 148 influenced the negotiations. It is only necessary to determine whether Bill 148 is relevant. The material fact in issue is the NSTU's assertion, made in the pleadings, that the Province had a plan to legislate if the NSTU did not agree to terms that were consistent with the Province's fiscal mandate. Bill 148 and the discussions leading up to it are relevant because they would make the existence of the asserted fact more likely.

[26] The Province argued that Bill 148 did not apply to teachers, except for the provisions that related to the ending of the accrual of public service awards. If it had no relation to teachers and their collective agreement negotiations their fear of the legislation being proclaimed and imposing terms on them was unreasonable and entirely unfounded. Bill 148 defines a collective agreement as including a professional agreement under the *Teachers' Collective Bargaining Act*. It defines a service award as including those paid to teachers. At s. 11 it extends the operation of collective agreements in the public sector for four years. That includes the NSTU professional agreement. It provides for no increases in the first and second years of that freeze. It allows for increases of 1%, 1.5% and .5 % in the following years. A collective agreement could provide for a compensation rate beyond those amounts if the collective agreement was prescribed by regulations or was approved by the Treasury and Policy Board before being concluded.

[27] The affidavits filed by the NSTU assert that the NSTU executive believed that Bill 148 applied to teachers and that its passage influenced how the union approached collective bargaining. Bill 148 on its face applies to teachers and the NSTU. It imposed a wage freeze and wage restraint as well as ending the accrual of the public service award for teachers and other public sector employees. The bill provides that the Treasury and Policy Board could specifically approve collective agreements that did not comply with the provisions of the legislation. Whether that

provision reduced or eliminated the extent to which the NSTU was bargaining with a view to the proclamation of Bill 148 will be an issue for the judge hearing the Application in Court. Now the issue is only whether Bill 148 and the documents relating to its planning, drafting and passage are relevant.

[28] The material fact in issue is whether the Province had its mind made up and entered negotiations with no intention of deviating from that plan. Bill 148 is relevant to that issue and the documents that relate to it are probative in the sense that they could make that assertion more or less likely.

[29] The documents are relevant.

Public Interest Privilege

[30] Even if they are relevant the Province says that the documents are privileged.

[31] Cabinet documents are confidential. There are strict rules intended to prevent anyone from leaving a cabinet meeting and disclosing information about the deliberations in cabinet. However, there is no "absolute privilege" that attaches to them. What was formerly called Crown privilege has become public interest immunity. The Crown, as a body that can be sued like any other person, cannot obtain privilege over its documents merely by asserting it. That would be "contrary to the constitutional relationship that ought to prevail between the executive and the Courts in this country"[8]. It is for the courts to weigh whether the public interest in non-disclosure outweighs the interest of disclosure to the other party in the litigation. The opinion of the Minister or other public official must be given due consideration and proper deference particularly in relation to objections to the disclosure of documents based on their contents. On the other hand, courts can assess whether candour in making a report to cabinet would be lessened by the possibility that it might be disclosed in the course of litigation.

[32] In *Nova Scotia Provincial Judges' Assn. v. Nova Scotia (Attorney General)*[9], Justice Ann E. Smith, provided what the Court of Appeal referred to as a "meticulous" analysis of public interest immunity. Justice Smith noted that public interest immunity is a common law rule of evidence that arises when relevant

[8] *Carey v. Ontario*, [1986] 2 SCR 637, at para. 39
[9] 2018 NSSC 13

evidence is not admitted because it would be contrary to the broader public interest to admit it. Courts must balance the possible denial of justice that could result from non-disclosure against the injury to the public that would arise from disclosure of documents that were not intended to be made public.

[33] Justice Smith referred to and quoted from *Leeds v. Alberta*[10]. In that case the court noted the "clear trend" toward the concept of extensive disclosure of Crown documents and that Cabinet documents like other evidence, should be disclosed unless such disclosure would interfere with the public interest. That general trend was noted as being even more evident when the Crown is a party to the litigation and has a direct interest in seeking immunity to improve its position in respect of the litigation. Any claim that the Crown, as a party to litigation, should not be subject to full discovery and disclosure must be scrutinized.

[34] Justice Smith applied the factors set out by the Supreme Court of Canada in *Carey v. Ontario* as summarized in *Leeds*.

[35] The first factor is the "nature of the policy concerned". In *Carey* the court referred to the importance of protecting sensitive material regarding national security, national defence, or diplomatic negotiations. The material here does not relate to any of those issues.

[36] The issue of the way that government negotiates with public sector unions has broad public policy implications. It is important to preserve the ability of government to negotiate contracts applying mandates and strategies that are impressed with confidentiality. It is also true that the way in which government addresses the demands of public sector employees and unions and its compliance with the *Charter* in doing so, is of interest to the public more generally. Disclosure in that context may be more important than in a single commercial transaction but might also carry more risk of influencing other labour negotiations given the ongoing relationships involved.

[37] The second *Carey* factor relates to the contents of the documents.

[38] The Province argues that the documents reflect the deliberations of the cabinet and there is a need for candid and open dialogue concerning sensitive political matters. That is a relevant consideration that is often cited as a reason to

[10] (1990), 106 A.R. 105 (Q.B.)

deny disclosure. As Justice La Forest noted in *Carey*, some business is best conducted in private. It is important to consider the nature of the documents in their full context.

[39] The content of the documents, as potentially disclosing cabinet discussions and affecting the candour with which discussions can take place in cabinet, must be considered. That would not be limited to the exchange between Ministers of the Crown but should include the concern about the candour with which civil servants and those advising the cabinet can speak to cabinet. Materials that disclose confidential discussions within cabinet, such as the exchanges among Ministers or comments or questions asked to those providing presentations to cabinet would have the very real potential to affect the candour of communications in cabinet. Legal advice, whether directly from legal counsel or reported by others from legal counsel must be protected. Legal advice itself is privileged. But references to the legal implications of cabinet decisions though perhaps falling short of solicitor client privilege should be protected as part of public interest immunity.

[40] Before reviewing each of the documents, with a view to their contents, the remaining *Carey* factors should be considered.

[41] The third *Carey* factor is the level of the decision-making process. As in the *Nova Scotia Provincial Judges' Assn.* case the decision is at a high level, cabinet. That factor favours non-disclosure.

[42] The fourth factor is the timing of the disclosure. In this case the decision has been made. There has been no evidence filed to indicate that the documents disclose an ongoing decision-making process or that a decision from cabinet is pending or could be pending with respect to the information referred to in the documents. Bill 148 was introduced more than four years ago. There has been no evidence to indicate that the public sector employee and union negotiations referred to in the documents remain ongoing. There is no evidence of a more generally applicable government strategy that would be compromised by the disclosure of the documents.

[43] The fifth factor is the importance of producing the documents in the administration of justice. That involves a consideration of the importance of the case and the need or desirability of producing documents to ensure that the case can be fairly and adequately heard. The case that the NSTU seeks to make is that the Province had already made up its mind to legislate a resolution to the matter before it even consulted with the union. The material relating to the planning

around Bill 148 would be relevant to that. Bill 148 was not back to work legislation, but it did purport to limit the amount of salary increases that public sector unions could negotiate. It was not limited in its application to the NSTU but did include the NSTU. It was structured as a statutory limit.

[44] There is a strong public interest in determining whether the Province breached the *Charter* rights of NSTU members.

> In this case, the public interest in the administration of justice includes the public interest in seeing that government officials act in accordance with their constitutional obligations when dealing with collective bargaining with public sector unions. I am not persuaded on the evidence before me that there is a public interest greater than this one that could justify withholding the documents sought from production.[11]

[45] There is a delicate balance between the concern for the rights of the public sector union litigant in an issue of general public concern and the public importance of allowing government to develop strategies in confidence to negotiate effectively with public sector unions. While labour relations privilege does not apply in this context as its own form of privilege, the labour relations interests of the Province must be considered.

[46] The sixth *Carey* factor is whether there is any allegation of improper conduct by the executive branch toward a citizen. Government should not be able to hide behind public interest immunity when the rights of a citizen are at stake. The purpose of secrecy in government, as noted by Justice La Forest in *Carey*, to promote its proper functioning, and not to facilitate improper conduct.

[47] Here, the NSTU claims that the rights of its members have been breached by the Province. The Province is asserting public interest immunity over documents that are relevant to the union's claims against it.

[48] The assessment of whether public interest privilege applies requires a balancing of interests. The factors to be considered are not applied mechanically. In each case any factor may take on more significance than the others. Generally, in this case, the confidentiality of cabinet deliberations must be acknowledged as an important interest. So too is the ability to access relevant information for the

[11] *BCTF v. British Columbia* 2013 BCSC 1216

determination of litigation, particularly *Charter* litigation. It is significant here that the material sought to be disclosed does not impinge on deliberative secrecy, and there is no evidence that it would affect ongoing or future negotiations with public sector unions. Portions of the documents can be redacted to protect solicitor-client privilege or information about the legal implications of cabinet decisions without depriving the reader of the needed context. Each of the documents over which privilege has been claimed has to be considered with a view to that balancing.

[49] The cabinet minutes are dated January 15, June 18, August 5, August 6, August 19, September 2, October 29, November 12, and December 10, 2015. The materials were provided in a confidential manner to the court for review.

January 15, 2015

[50] The reference that the Associate Deputy Minister of Finance and Treasury Board and the Executive Director, Labour Relations, Finance and Treasury made a presentation to cabinet entitled "Timing, Strategy & Options", with directions given, should be disclosed. The rest of the document is not relevant and given the risk that confidential information might be released, the document should be redacted.

[51] That presentation does not relate only to the NSTU but to the strategy and planning for the negotiation of union contracts with public sector unions. While openness and transparency in government is an import principle, governments are also tasked with negotiating. No party can negotiate effectively if it is subject to having its strategy made public or disclosed to the other side. Once the negotiations are completed that concern may be reduced, though it is not eliminated. Another concern with the use of slide presentations is that they are in a summary form and may not reflect what the speaker said, and if they contain advice or opinions, they may reflect the views of the person making the presentation and not the cabinet members who heard it.

[52] Redacting portions of a presentation runs the risk of providing information entirely out of context. The interests of justice that might be served by requiring disclosure, may be defeated by redaction of materials that deprive the reader of context or nuance.

[53] The January 15, 2015 presentation and the letter enclosing it, are relevant. The presentation refers to the preparation of "settlement legislation" for the Fall sitting to apply a wage pattern and freeze public service awards. It relates directly

to the NSTU claim. It does not disclose any current government positions that would compromise ongoing negotiations. It does not disclose any discussions that might have taken place in cabinet and does not disclose any cabinet confidences in that sense. Releasing this presentation would not affect the candour with which civil servants would provide advice to cabinet when the subject matter of that advice is no longer current.

June 18, 2015

[54] The minutes refer to a presentation entitled "Wage and Benefits Parity Bill" having been given by the Deputy Minister of Finance, Executive Director, Employee Relations and Benefits, Public Service Commission, Assistant Deputy Minister, Finance and Treasury Board, Associate Deputy Minister, Communications Nova Scotia and the Executive Director, Labour Relations, Finance and Treasury Board. That is the only material in the minutes that is relevant so that the remainder of the minutes should be redacted.

[55] The presentation "Wage and Benefits Parity Bill" does not record any discussions at the cabinet table. It does not disclose the nature of any deliberations. It provides information and recommendations. The recommendations at p. 15 of the documents refer to "legal implications". That presentation was not made by solicitors giving legal advice to cabinet but the section on legal implications does set out what appears to be information from the government's lawyers. It should be removed. Public interest privilege would apply to that portion of the document.

August 5, 2015

[56] Item 15-0549 refers to a request to amend the General Civil Service Regulations to discontinue the public service award for non-bargaining unit civil servants and repeal provisions on voluntary resignations. That is the only portion of those minutes that is relevant. The remainder should be redacted.

[57] The General Civil Service Regulations were amended and approved by Order in Council. That amendment is a public record. The Province announced that the public service award would be discontinued for excluded employees and the regulations gave effect to that. The Report and Recommendation contains sections dealing with the financial impact and legal implications of those amendments. None of that information is relevant to the issue involving the NSTU. The amendment applies only to excluded employees and not to the members of any union. It need not be disclosed and should not be admitted in evidence.

August 6, 2015

[58] Item 15-0549 refers to the same item having been brought forward from the previous day's meeting. Nothing else in those minutes is relevant.

August 19, 2015

[59] The minutes refer to a presentation entitled "Public-Sector Leaders Moving Forward Together" being given. That reference is relevant, nothing else in those minutes is.

[60] The presentation entitled "Public-Sector Leaders Moving Forward Together", is dated August 18, 2015. Privilege was not claimed over this document. The presentation, like the previous ones, does not disclose any discussions between members of cabinet. It sets out the "fiscal realities", a "fiscal plan" and a "Proposed Public Service Sustainability Mandate". The proposed next steps involved a commitment to meaningful collective bargaining and seeking a commitment from public sector unions to engage in meaningful bargaining. The presentation contains no legal advice. It contains northing that could compromise ongoing or future negotiations on the part of government. It should be disclosed along with the letter forwarding it to the Minister.

September 2, 2015

[61] Those minutes refer to a presentation, "Collective Bargaining-Public Services Sustainability Mandate", with the Public Service Commissioner and the Executive Director, Labour/Employee Relations and Benefits, Public Service Commission. That is the only reference in those minutes that is relevant.

[62] The presentation describes the broad approach in dealing with various public sector unions. The document sets out three options. The first was to allow bargaining to proceed without legislation to enforce the fiscal plan. The second was to impose the wage outcome by legislation. The third was to create a framework that preserved collective bargaining but did not impose an outcome. The document is relevant to the NSTU claim and while it discloses the options and considerations that were before cabinet it does not disclose discussions or directly compromise ongoing or future negotiations with public sector unions. Page 5 is entitled "Legal Context". That contains legal advice and should be removed.

Otherwise the document should be disclosed and admitted into evidence along with the letter to the Minister dated September 2, 2015.

October 29, 2015

[63] A presentation was made by the Commissioner, Public Service Commission and the Executive Director, Labour/Employee Relations & Benefits, entitled "Promoting Interest-based Public Sector Collective Bargaining Processes". That is the only relevant portion of those minutes. That portion should be disclosed.

[64] The presentation includes references to what should be the key elements of draft legislation. It suggests tabling legislation in an early sitting of the Legislature, shortly after November 12, 2015. On p. 16 of the document there are two headings. One is "Tabling of Legislation" and the other "Union Notification". Under each there are recommendations. Under each of the recommendations are bullet points. The bullet points contain legal advice. They should be redacted.

[65] Otherwise the document and the letter of October 29 to the Premier confirming that cabinet had directed legislation to be tabled in the Fall 2015 sitting, is admissible. It does not contain information that would compromise the requirement for candour in both cabinet discussions and presentations to cabinet. It is relevant to the NSTU's claim that government has breached the *Charter* rights of its members and the Province is directly involved in the litigation.

November 12, 2015

[66] A presentation was given to cabinet by the Public Service Commissioner. It was entitled "Collective Bargaining Mandate". That is the only portion of those minutes that is relevant. The rest should be redacted.

[67] The document itself refers to "recent off-line discussions with legal counsel for Teachers' Union" resulting in an opportunity for settlement. It sets out the potential terms of the settlement and requests a revision to the existing mandate that would freeze service but not salary for calculation of the service award. The document is relevant to the union's claims and contains no legal advice or disclosure of discussions. It does not relate to or compromise any ongoing negotiations and would not compromise the need for candour in advising cabinet.

December 10, 2015

[68] The cabinet minutes of that date refer to a presentation by the Deputy Minister, Planning and Priorities and the Executive Director Labour/Employee Relations and Benefits, Public Service Commission. It is entitled “Legislative Options-Public Service Sustainability Mandate”. That item is relevant. Nothing else in those minutes is relevant. Those items should be redacted.

[69] The presentation discusses the Public Service Sustainability Mandate at p. 4. There are references to legal matters that could amount to legal advice. In the context of this matter they should be redacted. They are the last three bullet points on p. 4. The presentation goes on to set out the key elements of the draft legislation that was to become Bill 148. The document should be produced with the legal advice on p. 4 redacted. The letter to the Minister of Public Service Commission referring to the presentation and the approval of the draft bill should be disclosed and admitted in evidence as well.

[70] Generally, the documents sought are not privileged. They are relevant to the determination of the NSTU’s *Charter* litigation and there is a strong public interest in having that resolved without having relevant information kept secret. The case is one that does not involve one commercial litigant but is of broad public interest and importance. The information that would be disclosed would not disclose deliberations or debates within cabinet. It would not compromise ongoing negotiations by revealing strategies or positions in those negotiations. It would not act as a disincentive to civil servants to provide frank advice to cabinet, when that advice is to comply with the government’s *Charter* obligations.

[71] The NSTU has been successful on this motion and should have its costs in the amount of $1,500.

Campbell, J.