

# Teachers and the Law

January 2011

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# Big-picture Questions

- Who am I?
- Why was I invited here?
- How can I help you?

# What is the NSTU?

## What is a union?

- An organization of employees formed to regulate the employer-employee relationship
- Why is a union useful? What, if anything, does a union do to the balance of power in a workplace?
- Personal autonomy vs. strength in numbers
- Is it a lobby group?
- Is teaching a self-regulating profession?
- Is it like a corporation? (yes and no)

# Who comprises the NSTU?

- All teachers employed by term, probationary, permanent contract in NS and faculty and professional support of the NS Community College are members of the NSTU (about 11,000)
- Reserve and Active Reserve membership available to substitute teachers
- Members pay annual dues of \$690 (tax deductible) and run the NSTU like a democratic government/corporation (members are like citizens/shareholders)

# What are the objectives of the NSTU?

- Advance public education
- Protect and enhance benefits of members
- (a student's learning environment is a teacher's working environment)

# What exactly does a union do?

- Bargains for a Collective Agreement (employment contract)
- Deals with consequences of failure to achieve a Collective Agreement (strike, lockout)
- Helps members being disciplined by employer
- Provides information regarding certification and loss of certification
- Deals with benefits issues (disability)
- Addresses issues related to working conditions (ie. OHS-air quality, Accommodation-a member who can't climb stairs)
- Professional practice issues-education in your field (professional development)

# The NSTU in one slide

- Member Services (Economic Welfare)  
(contracts and conflicts) (pension and insurance)  
“teachers as employees”
- Professional Development (“teachers as teachers”)
- Counseling Services
- Early Intervention Program

# If the NSTU is a bunch of employees, who is in charge?

- Provincial Executive is our Board of Directors
- PE is comprised of elected members-regional representation. President of NSTU is like Chair of Board of Directors
- PE hires Executive Director and executive staff (like me, one of ten exec. staff)



# The 3-handed game

- Public education has 3 major actors (excluding the students, who are the stars...)
- NS Dept. of Education
- Regional School Board (ie. HRSB)
- NSTU

# Single most important function of NSTU (in my opinion)

- Collective Agreements!
- What is a collective agreement?
- How many collective agreements do teachers have? 2
  - NSTU and Province of NS (provincial agreement)
  - NSTU and Your School Board (regional agreement)

# Contractual Framework

- 2 collective agreements apply to each teacher
  - Teachers' Provincial Agreement (NSTU & DOE) &
  - Regional Agreement (NSTU & AVRSB)
- C.A.s contain terms of employment, mechanism for resolving disputes (arbitration)
- Labour law applies in unionized workplace (Employment law in non-unionized workplace)
- C.A.s replace public common law court system with quasi-private arbitration system

# TEACHERS' PROVINCIAL AGREEMENT

\*expired July 31, 2010. Currently negotiations ongoing

## Some Articles Negotiated:

- Duties of Teachers
- Tenure (Contracts)
- Certification
- Teaching Experience
- School Year

# TEACHERS' PROVINCIAL AGREEMENT

- Leaves (maternity, parental, adoption, etc.)
- Insurance
- Marking and Preparation Time
- Professional Development
- Service Award
- Salary

# TPA-the 3 types of contracts

- Permanent contract
- Probationary contract
- Term contract
  
- (Did you forget long-term sub?)

# (The Holy Grail)

## Permanent Contract

- How can it be terminated?
  - Only “just cause”
  - Except for layoff due to lack of work
  - Entitlement to a position with School Board
  - Significant degree of job security
  - Complex procedures set out in Education Act

# The Probationary Contract

- Benefits same as permanent teachers with very few small exceptions (LOA for example)
- Max 2 probationary years (minimum one probationary year)
- Thereafter, automatically converted to permanent contract unless terminated
- How can it be terminated?
  - For “reasons” which must be provided in writing (but note, I didn’t say “just cause”)
  - Technically no job security
  - Education Act procedure



# Term Contract

- Benefits same as permanent and probationary teachers except it is time limited
- Never crosses school year (August 1-July 31)
- Very little job security outside of contract period
- Strangely, job security better than probationary teachers in some cases?! (huh?)
- Term teachers can generate preference for upcoming jobs in future based on regional agreements (collective agreement between NSTU and Your School Board)

# **ARTICLE 32 – SUBSTITUTE TEACHERS**

**Definition:**

**Teacher or other qualified person engaged on a day-to-day basis to take the place of a person regularly employed as a teacher by the Board**

# ARTICLE 32 – SUBSTITUTE TEACHERS

## Rate of Pay:

- Effective August 1, 2009:
  - ❖ \$160 per day
  - ❖ More than 21 consecutive teaching days is paid regular salary (your place on the salary grid divided by 195 school days in a year)

# Your Magic Number is 195

- Teachers are paid only for 195 days per year (not holidays, not vacation)
- Salary is described as annual but earned on a daily basis
- Salary earned over 10 months but spread over 12; August is an advance, July is money previously earned
- Unpaid time off is more painful since  $1/195$  is more than 10% of your biweekly pay cheque

# REGIONAL AGREEMENTS

## Some Articles Negotiated:

- Method of Payment
- Leaves (sick leave, bereavement leave, etc.)
- Staffing (seniority, **term recall**, transfers, promotions)
- Some Working Conditions (school climate, class size)

# NOVA SCOTIA TEACHERS UNION LEGISLATIVE/CONTRACTUAL FRAMEWORK

**Education Act**

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graph TD; A[Education Act] --- B[Teachers' Collective Bargaining Act – Teaching Profession Act]; B --- C[Provincial Collective Agreement]; C --- D[Department of Education Regulations (Governor in Council and Ministerial)]; D --- E[Regional Collective Agreements];
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**Teachers' Collective  
Bargaining Act – Teaching Profession Act**

**Provincial Collective Agreement**

**Department of Education Regulations  
(Governor in Council and Ministerial)**

**Regional Collective Agreements**

Janine, aren't there other laws that matter?

- OHSA
- YCYA
- PPA
- CC
- TUA

# Common sense but please indulge me

- Facebook, Twitter
- Texting, cell phone
- Email during class time
- Group punishment/the elusive “zero”
- Over familiarity
- Staff room wisdom
- Physical Contact
- Criminal allegations (see next slide)



# Criminal law issues

- For teachers, delicate balance required when working with police
- Need police cooperation and support
  - to avoid and manage conflict involving students, parents, others
  - to address issues with alcohol/drugs, weapons, theft, vandalism
  - to promote good citizenship
- Need to be wary of police where allegations made against teachers/other employees

## Teachers should not (are not required to)

- Go with police upon request, unless arrested
- Give a statement at any time, even if arrested
- Sign a document of any kind
- Talk to the police at any time under any circumstances
- Report to the police station to answer questions
- Allow police to enter their residence without a warrant
- Submit to a polygraph
- Teachers should contact Union immediately to seek advice and support

## R. v. (Citadel High Student L.D.)

- Incident at CHS November 2008 resulted in criminal charges against student for resisting arrest and assaulting police
- Friday physical altercation b/w L.D. and another student
- Differing evidence on what LD was told on Friday (leave for Friday only or suspended?)
- Differing evidence on notice to parent of Monday suspension (voicemail for parent or no communication?)

## R. v. Citadel High Student L.D.

- \*lesson re documentation of parental communication (“Obviously the communication of this important detail should have been given a much higher priority.” sec. 123 E.A.)
- Monday L.D. attended. Was informed of suspension. Bad behaviour ensued. L.D. denied that she was suspended. L.D. either refused to leave or reluctantly was leaving when police took custody of her, cuffed her and removed her. Differing evidence of what happened (papers thrown from desk, overzealous police, was she entitled to insist on taking the stairs or was that resisting arrest?)

## R. v. Citadel High Student L.D.

- Students in L.D.'s class laughed as L.D. "played to audience". Police evidence was that she was having general conversation with friends telling them that that police couldn't arrest her and she was not leaving. Where *was* she going when she left room 301? The stairwell/hallway/another classroom?
- NS Provincial Court accepted L.D.'s assertion that she was planning to leave the school...Therefore police were not acting within scope of authority and L.D. acquitted of charges

# Hussack v. Chilliwack

- Negligence analysis
  - duty of care
  - standard of care (“careful or prudent teacher”)
  - breach of standard of care
  - damages flowing from breach
- Causation established (damages were found to have been caused by Board’s failure to meet duty of care)
- No contributory negligence found (parent/student)
- Teacher found negligent for failure to properly train student/ensure coached to avoid danger of being struck in face by another student’s stick

# Hussack v. Chilliwack School District (2009)

- Habitually absent 13-year-old student injured in 1998 (!) during Phys. Ed. class field hockey game
- Teacher wanted to ensure mandatory p.e. credit earned, knew of student's experience/love of hockey
- Instructed on 4 basic rules
- Concussion, latent psychological injuries, depression
- Note the identity of Defendant (not teacher personally, vicarious liability of Board)

# Hussack v. Chilliwack

- \$125,000 general damages
- \$220,689 past lost income
- \$1,000,000 future lost income
- \$40,000 future care
- “But-for” test
- No “crumbling skull” (defence of pre-existing condition that would have manifested regardless)
- Thin-skull principle applied (take your victim as you find him-despite overbearing father, student’s vulnerability to injury, liability established)