2020-353

The Governor in Council on the report and recommendation of the Minister of Labour and Advanced Education dated November 13, 2020, and pursuant to clause 12(1)(b) of Chapter 37 of the Acts of 2010, the Labour Board Act, is pleased to approve amendments made by the Labour Board to the regulations governing trade union procedure, N.S. Reg. 101/1972, made by the former Labour Relations Board (Nova Scotia) and approved by the Governor in Council by Order in Council 72-933 dated August 29, 1972, to provide for service and the posting of notices and documents by electronic or other means and the correction of erroneous references and updating of language throughout the regulations, in the manner set forth in Schedule “A” attached to and forming part of the Report and Recommendation, effective on and after December 23, 2020.
Schedule “A”

Labour Board

I certify that at a meeting on November 2, 2020, the Labour Board, pursuant to clause 12(1)(b) of Chapter 37 of the Acts of 2010, the Labour Board Act, passed a motion to amend the regulations governing trade union procedures, N.S. Reg. 101/1972, made by the former Labour Relations Board (Nova Scotia) and approved by the Governor in Council by Order in Council 72-933 dated August 29, 1972, to provide for service and the posting of notices and documents by electronic or other means and the correction of erroneous references and updating of language throughout the regulations, in the manner set out in the attached.

The amendments to the regulations referred to above are effective on and after the date they are approved by the Governor in Council.

Dated and signed at Halifax Regional Municipality, Province of Nova Scotia, on November 9, 2020.

Labour Board

per: [Signature]

Karen Hollett, Chair
Amendment to the Regulations Respecting Trade Union Procedures
made by the Labour Board under
clause 12(1)(b) of Chapter 37 of the Acts of 2010,
the Labour Board Act

1 The regulations respecting trade union procedures, N.S. Reg. 101/1972, made by the
Governor in Council by Order in Council 72-933 dated August 29, 1972, are amended by
adding the centred heading "Interpretation" immediately before Section 1.

2 Subsection 1(1) of the regulations is amended by
(a) striking out the clause letter before each definition;
(b) adding the following definition immediately after the definition of "Act":

"Chief Administrator" means the Chief Administrator of the Board;

3 The regulations are amended by adding the centred heading "Part I" immediately after
Section 1.

4 Subsection 2(1) of the regulations is repealed and the following subsection substituted:

(1) Service of a document required to be served by these regulations may be made by
any of the following methods, unless these regulations specify a particular method
of service:

(a) in person;
(b) by registered mail, addressed to the recipient at any of the following for
the recipient:

(i) their address for service,
(ii) their last known or usual address,
(iii) the principal office of their place of business referred to in an
application, complaint, intervention or reply in a proceeding;

(c) by facsimile transmission;
(d) by e-mail or through such other form of electronic document exchange as
the Board authorizes.
The regulations are amended by adding the following Section immediately after Section 2:

2A (1) Except as directed by the Board under subsection (2), a notice that is required to be posted under these regulations may be posted by 1 or more of the following means:

(a) posting of the notice along with all copies of the notice that the employer has received in a conspicuous place or places on the employer’s premises where the document is most likely to come to the attention of the employees;

(b) posting of the notice on a secure website to which all of the employer’s employees have access;

(c) simultaneous distribution of the notice by e-mail to the employer’s employees, to the last known e-mail address of each employee.

(2) The Board may specify and direct the means for posting a notice under these regulations.

(1) Clause 3(1)(b) of the regulations is amended by

(a) striking out “Relations”;

(b) striking out “697” and substituting “202”.

(2) Subsection 3(2) of the regulations is amended by striking out “his” and substituting “the Chief Administrator’s”.

(3) Subsection 3(3) of the regulations is amended by striking out “him” and substituting “the person”.

(1) Subsection 4(3) of the regulations is amended by

(a) adding “by a means specified in Section 2A” immediately after “posting”; and

(b) striking out “him” and substituting “the person”.

Section 6 of the regulations is repealed and the following Section substituted:

Where, in accordance with Sections 25, 29, 31, 32, 95 or 97 of the Act or subsection 20(2) or (3) of these regulations, or for any other reason, the Board has directed that a vote be taken of the employees in a bargaining unit, the Chief
Administrator is responsible for taking the vote and, subject to the direction of the Board, has authority to do all of the following:

(a) determine all matters pertaining to the taking of the vote;
(b) issue directions that the Chief Administrator considers necessary for the taking of the vote;
(c) ascertain the result of the vote, which the Chief Administrator must report to the Board.

9 Section 7 of the regulations is amended by striking out “Chairman or Vice-Chairman” and substituting “Chair or a Vice-chair”.

10 Subsection 8(1) of the regulations is amended by striking out “18” and substituting “19”.

11 The regulations are amended by striking out “22-24” and substituting “23-25” in the line immediately after the heading “Application for Certification”.

12 (1) Subsection 9(1) of the regulations is amended by striking out “4” and substituting “5”.

(2) Clause 9(2)(d) of the regulations is amended by striking out “4” and substituting “5”.

13 (1) Clause 11(1)(b) of the regulations is amended by striking out “subsection (2) of Regulation 9” and substituting “subsection 9(2).

(2) Clause 11(1)(c) of the regulations is amended by adding “in accordance with subsection (2)” immediately after “posting”.

(3) Subsection 11(2) is repealed and the following subsection substituted:

(2) On receiving a Notice to Employees of Application for Certification, the employer must forthwith post the notice and keep it posted for a period of 10 days by any means identified in clauses 2A(1)(a) to (c) that the employer considers is most likely to come to the attention of the employees in the proposed bargaining unit, unless otherwise specifically directed by the Board under subsection 2A(2).

(4) Subsection 11(3) is repealed and the following subsection substituted:

(3) Immediately upon posting the Notice to Employees of Application for Certification in accordance with subsection (2), the employer must file
with the Board a completed Return of Posting, in a form approved by the Board, that includes either

(a) the specific means by which the notice was posted by the employer in accordance with subsection (2); or

(b) if the means of posting was specified and directed by the Board under subsection 2A(2), confirmation that the notice was posted as specified and directed.

14 (1) Clause 12(1)(a) of the regulations is amended by striking out “his” and substituting “the employer’s”.

(2) Subsection 12(2) of the regulations is repealed and the following subsection substituted:

(2) The employer must verify the list of the employer’s employees by a statutory declaration to the effect that the employer has complied with this Section to the best of their knowledge and ability.

(3) Clause 12(3)(a) of the regulations is amended by striking out “him” and substituting “the respondent”.

15 Section 14 of the regulations is amended by striking out “he” wherever it appears and substituting “the respondent”.

16 Section 16 of the regulations is amended by striking out “subsection (3) of Section 22” and substituting “subsection 23(3)”.

17 The regulations are further amended by striking out “26 and 27” and substituting “28 and 29” in the line immediately after the heading “Amendment and Revocation of Certification”.

18 (1) Clause 17(3)(c) of the regulations is amended by adding “, for posting in accordance with subsection (4)” immediately after “Certification”.

(2) Subsection 17(4) of the regulations is repealed and the following subsection substituted:

(4) On receiving a Notice to Employees of Application for Revocation of Certification, the employer must forthwith post the notice and keep it posted for a period of 10 days, by any means identified in clauses 2A(1)(a) to (c) that the employer considers is most likely to come to the attention of the employees in the proposed bargaining unit, unless otherwise
specifically directed by the Board under subsection 2A(2).

(3) Subsection 17(5) of the regulation is repealed and the following subsection substituted:

(5) Immediately upon posting the Notice to Employees of Application for Revocation of Certification in accordance with subsection (4), the employer must file with the Board a completed Return of Posting, in a form approved by the Board, that includes either

(a) the specific means by which the notice was posted by the employer in accordance with subsection (4); or

(b) if the means of posting was specified and directed by the Board under subsection 2A(2), confirmation that the notice was posted as specified and directed.

(4) Clause 17(6)(a) of the regulations is amended by striking out “his” and substituting “the employer’s”.

(5) Subsection 17(7) of the regulations is repealed and the following subsection substituted:

(7) The employer must verify the list of the employer’s employees by a statutory declaration to the effect that the employer has complied with subsection (6) to the best of their knowledge and ability.

19 The regulations are amended by striking out “28” and substituting “30” in the line immediately after the heading “Voluntary Recognition”.

20 Section 21 of the regulations is amended by striking out “28” wherever it appears and substituting “30”.

21 The regulations are amended by striking out “29 and 30” and substituting “31 and 32” in the line immediately after the heading “Transfer of Business and Successor Rights”.

22 Subsection 22(2) of the regulations is amended by striking out “his” and substituting “the employer’s”.

23 The regulations are amended by striking out “49 and 50” and substituting “51 and 52” in the line immediately after the heading “Work Stoppages and Jurisdictional Disputes”.

24 Section 24 of the regulations is amended by striking out “49” wherever it appears and substituting “51”.

Schedule “A”: Page 6 of 10
(2) Subsection 24(4) of the regulations is amended by striking out "he shall" and substituting "they must".

(25) Section 25 of the regulations is amended by striking out "50" wherever it appears and substituting "52".

(2) Subsection 25(3) of the regulations is repealed and the following subsection substituted:

(3) Where a trade union, employer or employers' organization involved in a jurisdictional dispute in respect of which an Interim Order has been made applies to the Board to review the interim order, the application must be in writing and the applicant must file with the Board any document that relates to the work in dispute and which may be in the applicant's possession and upon which the applicant proposes to rely in support of their claim for relief or their claim that the relief requested should not be granted, including all of the following, and a statement as to any area or trade practice relating to the work in dispute, and pictures, diagrams or drawings of disputed work:

(a) any union constitution;
(b) any collective agreement;
(c) any agreement or understanding between trade unions as to their respective jurisdictions on work assignments;
(d) any agreement or understanding between a trade union and an employer as to work assignment;
(e) any decision of any tribunal respecting work assignment.

(26) The regulations are amended by striking out "51-56" and substituting "53-58" in the line immediately after the heading "Unfair Practices".

(27) Subsection 26(2) of the regulations is amended by striking out "him" and substituting "the Chief Administrator".

(2) Subsection 26(3) of the regulations is amended by striking out "paragraph (b) of subsection (1) of Section 56" and substituting "clause 56(1)(b)".

(3) Subsection 26(5) of the regulations is amended by

(a) striking out "he intends" and substituting "they intend"; and
(b) striking out "he specifically denies or admits" and substituting "they specifically deny or admit".

(4) Subsection 26(6) of the regulations is repealed and the following subsection substituted:

(6) Within five days of receipt of a copy of the complaint, any person other than the person against whom the complaint is made, if they wish to intervene, shall file a notice of their intervention that includes a statement of their interest in the matter and any facts that they intend to prove at the hearing.

28 Section 27 of the regulations is amended by

(a) striking out "Workforce Development" and substituting "Advanced Education";
(b) striking out "34" and substituting "36";
(c) striking out "51" and substituting "53"; and
(d) striking out "52" and substituting "54".

29 The regulations are amended by striking out "89-130" and substituting "92-107" in the line immediately after the heading "Part II - Construction Industry Labour Relations".

30 The regulations are amended by striking out the note immediately after the heading "Part II - Construction Industry Labour Relations" and substituting the following Section:

27A Part I applies in respect of any proceedings and matters before the Board under Part II unless the provisions in Part I are inconsistent with Part II or as otherwise stated in Part II.

31 The regulations are amended by striking out "92 and 93" and substituting "95 and 96" in the line immediately after the heading "Application for Certification".

32 Section 28 of the regulations is amended by

(a) striking out "subsection (2) of Regulation 9" and substituting "subsection 9(2)";
(b) striking out "4" and substituting "5"; and
(c) striking out "his or".
Clause 29(1)(b) of the regulations is amended by striking out “subsection (2) of Regulation 9” and substituting “subsection 9(2)”.

Clause 29(1)(c) of the regulations is amended by adding “in accordance with subsection 11(2)” immediately after “posting”.

Section 29 of the regulations is further amended by adding the following subsection immediately after subsection 29(1):

(1A) Immediately upon posting the Notice to Employees of Application for Certification in accordance with subsection 11(2), the employer must file with the Board a completed Return of Posting, in a form approved by the Board, that includes either

(a) the specific means by which the notice was posted by the employer in accordance with subsection 11(2); or

(b) if the means of posting was specified and directed by the Board under subsection 2A(2), confirmation that the notice was posted as specified and directed.

Subsection 29(2) of the regulations is amended by striking out “Subsection (1) of Regulation 11” and substituting “Subsection 11(1)”.

Subsection 29(5) of the regulations is amended by striking out “subsection (2) of Regulation 15” and substituting “subsection 15(2)”.

Subsection 30(2) of the regulations is amended by striking out “he wishes” and substituting “they wish”.

The regulations are further amended by striking out “94” and substituting “97” in the line immediately after the heading “Accreditation”.

Subsection 31(1) of the regulations is amended by striking out “4” and substituting “5”.

Clause 31(2)(c) of the regulations is amended by striking out “4” and substituting “5”.

Clause 31(2)(f) of the regulations is amended by striking out “paragraph (b) of subsection (3) of Section 94” and substituting “clause 97(3)(b)”.

Subsection 32(2) of the regulations is amended by striking out “him” and substituting “them”.

Schedule “A” : Page 9 of 10
(1) Subsection 34(1) of the regulations is amended by striking out “subsection (1) of Regulation 32” and substituting “subsection 32(1)”. 

(2) Clause 34(1)(a) of the regulations is amended by striking out “it intends” and substituting “they intend”. 

(3) Subsection 34(2) of the regulations is amended by striking out “he” and substituting “they”. 

39 The regulations are amended by striking out “98” and substituting “101” in the line immediately after the heading “Revocation of Accreditation”. 

40 The regulations are amended by striking out “96” and substituting “99” in the line immediately after the heading “Employer’s Complaint of Unfair Practice by Accredited Employers’ Organization”. 

41 Section 39 of the regulations is amended by striking out “96” and substituting “99”. 

42 The regulations are further amended by 

(a) striking out “Panel” wherever it appears and substituting “Board”; 

(b) striking out “Regulation” wherever it appears and substituting “Section”; 

(c) striking out “Chief Executive Officer” wherever it appears and substituting “Chief Administrator”; 

(d) striking out “he has” wherever it appears and substituting “they have”; and 

(e) striking out “his” wherever it appears and substituting “their”. 

Schedule "A": Page 10 of 10
AMENDMENTS TO THE
TRADE UNION PROCEDURE REGULATIONS
ADDITIONAL INFORMATION AS REQUESTED BY EXECUTIVE COUNCIL

By way of Minute Letter dated July 2, 2020, Executive Council requested that the Department of Labour and Advanced Education confirm that it has conducted consultations with employer-side stakeholders in relation to the proposed amendments to the Trade Union Procedure Regulations.

In addition, Executive Council requested more information on the topic of existing travel costs to conduct in-person votes as compared to the costs of the e-voting system proposed in the original Report and Recommendation.

Employer Stakeholder Consultation

On September 15, 2020, the Department of Labour and Advanced Education contacted the following employer stakeholders to seek their feedback on the proposed changes:

- Merit Construction (Paul Dube, Heather Cruickshanks)
- Canadian Federation of Independent Business (Jordi Morgan)
- Construction Association of Nova Scotia (Duncan Williams)
- Halifax Chamber of Commerce (Patrick Sullivan)
- Health Association of Nova Scotia (Alison McGrath)
- Restaurants Canada (Luc Erjavec)
- Retail Council of Canada (Jim Cormier)

The Department heard from four stakeholders - Restaurants Canada, Retail Council of Canada, Merit Construction and the Private Sector Employer Roundtable. Generally, employer stakeholders support changes to modernize and create efficiencies, provided any measures adopted by the Labour Board maintain the integrity of Trade Union Act processes and procedures.

The following cautions and caveats were highlighted:

- Secret ballot voting - privacy/confidentiality considerations, length of time to conduct vote (may take longer than typical five-day quick vote), need for list of employees, employees without email, ensuring electronic secret ballot votes are reliable, free of outside influence
- Electronic service of documents - must ensure receipt, issues of incorrect email addresses, spam folders, employer not noting incoming mail
- Posting notices electronically - questions were flagged as to the method, ensuring employee awareness

One stakeholder asked to be advised of voting options prior to change so they could be assured that the technology is reliable. Another stakeholder asked to review the specific language of the regulatory changes. Details of the employer consultation is found at page 7 of this Report and Recommendation.

Union Feedback

LAE also reached out to the Nova Scotia Federation of Labour - who indicated they could not support the proposed changes nor provide feedback without more specific information - and Mainland Nova Scotia Building Trades who provided the following feedback:

- The electronic service of documents or posting notices electronically may create efficiency (little concern here)

In terms of the secret ballot voting, issues of privacy and security were flagged, as was the issue of whether the proposed change is consistent with the Trade Union Act.

Further to feedback from the Mainland NS Building Trades, LAE had a discussion with Pink Larkin, a dispute resolution law firm, who raised concern that the e-voting changes would fundamentally change how union certifications are approached in Nova Scotia and are inconsistent with the Trade Union Act. Legal counsel for LAE has since reviewed the concerns of Pink Larkin and agrees that there is merit to same and that the initial proposal arguably is inconsistent with the legislation.

Annual Vote Expense Estimates - April 2016 to November 2019

The below information was manually collected and extracted from various sources – Labour Board decisions, Systems Applications and Products in Data Processing (SAP software), etc. As such, the various travel-related expenses used to identify the total approximate cost to conduct representation votes are estimates and not actual costs (as there is no ability to run specific reports in SAP).

Accordingly, the summary of costs is based on the following assumptions:

- For votes requiring an overnight stay, an estimated cost of $250 was used for hotel and meals
- For votes where an overnight was not required, meal expenses were based on per diems
$0.43 was used for the purpose of calculating and estimating mileage related expenses
travel expenses for local votes are not included in the calculation.

Summary
- During the period April 2016 to November 2019, the Labour Board spent approximately $12,500 on travel related expenses (e.g. mileage, hotel, meals) to conduct representation votes.
- During this period, the Board conducted approximately 82 representation votes at various workplace locations across Nova Scotia.
- 50% of the votes were in the Halifax Regional Municipality (HRM) area (these travel costs are not included in this costing estimate, but likely included expenses such as taxis and some personal vehicle mileage).
- This is approximately $3400 annually for approximately 40 votes (as the HRM votes are not included in this estimate).

Potential E-voting Costs
The following assumptions were made when estimating potential annual Board costs for e-voting:
- the services of the software vendor, Simply Voting, would be used to conduct electronic voting (this vendor is currently used by the Canada Industrial Relations Board, Ontario Labour Relations Board, BC Labour Relations Board and the Federal Public Sector Labour Relations and Employment Board)
- the per vote cost charged by Simply Voting is approximately $1,700 per vote
- approximately 12 votes per year would be conducted by electronic voting.

Summary
- Based on the above assumptions, the approximate annual e-voting costs would be $20,500.
- Prior to moving forward with Simply Voting, a Threat Risk Assessment and Penetration Testing would be required at an estimated cost of $25,000 and $5000-$10,000 respectively. A Privacy Impact Assessment is also required and can be done internally at no cost.
- All such costs can be absorbed by the Labour Board’s current budget. In addition, it should be noted that this would not be a COVID-only approach; it is anticipated that e-voting would be conducted in the future, as the circumstances of any given representation vote may dictate.

The Department received feedback from the following employer stakeholders. Please note the Private Sector Employer Roundtable was advised of changes by another stakeholder and submitted feedback.

<table>
<thead>
<tr>
<th>EMPLOYER STAKEHOLDER</th>
<th>FEEDBACK</th>
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<tbody>
<tr>
<td>Restaurants Canada</td>
<td>E-voting, telephone or mail-in ballots</td>
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<td></td>
<td>Electronic service of documents</td>
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<td>Posting notice other than as physical copy in the workplace</td>
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<tr>
<td>Restaurants Canada</td>
<td>Supports proposal provided measures in place to ensure process is truly a supported ballot - free of coercion, intimidation, outside influence</td>
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<td>No comment</td>
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<td>No comment</td>
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<tr>
<td>Retail Council of Canada</td>
<td>Generally, supports efforts to modernize, create efficiencies, harmonize with best practices across Canada provided integrity of procedures protected</td>
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<td>In advance of regulatory changes, present stakeholders with voting method options demonstrating technology is reliable, protecting quality and integrity of vote</td>
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<td></td>
<td>No comment</td>
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<tr>
<td>Merit Construction</td>
<td>Concerns about validity/integrity of vote</td>
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<td></td>
<td>Concerns about email, going to right address, mailbox (not spam) etc.</td>
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<td></td>
<td>How is the notice being disseminated – is it being received</td>
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<tr>
<td>Private Sector Employer Roundtable</td>
<td>Generally supportive, but wishes to see specific regulatory language</td>
</tr>
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<td>Supports and believes should be considered when employees are on various leaves to enhance participation in a vote. Cautions include privacy/confidentiality, timing of vote, need for list of employees, sample signatures, &quot;missed&quot; employees, no email</td>
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<tr>
<td></td>
<td>Supportive provided Board can ensure receipt (issues re spam and employer not noting incoming mail)</td>
</tr>
<tr>
<td></td>
<td>Supportive depending on method to ensure employees are aware</td>
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