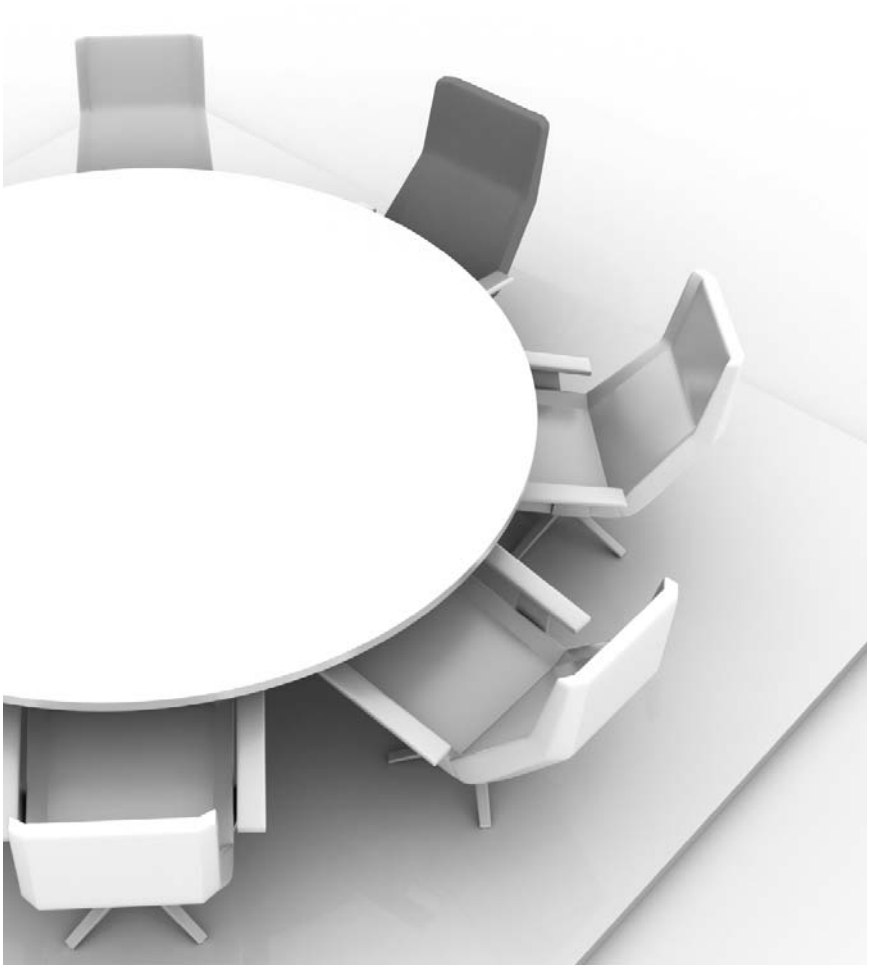

Conciliation:
A Guide for Employer and Union Committees

Conciliation and Labour Tribunals Division
Nova Scotia Labour & Advanced Education

NOVA SCOTIA

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What is conciliation?

Conciliation is the process of intervention in collective bargaining by a neutral third party knowledgeable in effective negotiation procedures. This third party is called a "Conciliator." This person helps employers and trade unions reach a collective agreement, but has no authority to make decisions.

Some parties successfully negotiate collective agreements without the use of a third party. However, the labour statutes in this province recognize that this is not always possible. Consequently, the Department of Labour and Advanced Education provides the necessary assistance to resolve collective agreements through access to Conciliators.

The Trade Union Act and the Teachers' Collective Bargaining Act require the parties to meet with a Conciliator to try and resolve their contract dispute before they can legally strike or lock out.

How and when is a conciliator appointed?

Conciliators are appointed by the Minister of Labour and Advanced Education (or a delegate) at the written request of one or both parties to collective bargaining when negotiations have broken down.

If either the employer or the union requests the appointment of a Conciliator, or if the parties jointly request the appointment, the application is processed as soon as reasonably possible and both parties are advised of the appointment in writing.

The Conciliator then contacts the spokespersons for the parties by telephone to arrange the time and place of meetings.

What is the purpose of conciliation and what are the benefits?

Conciliation provides an impartial third party to assist employers and unions in reaching mutually agreeable solutions to outstanding issues.

The Conciliator has a great deal of experience helping parties find acceptable solutions, but does not have the power to impose a settlement.

Conciliation is an opportunity for the parties to revisit the outstanding issues in a new or different forum. With the help of the Conciliator's knowledge and experience, the parties will be expected to explore alternative solutions.

How is conciliation conducted?

At the appointed start time, the Conciliator meets both parties in the main hearing room, introductions are made, and a sign-in sheet is circulated.

The Conciliator outlines the process in detail. This includes what the parties can expect from the Conciliator and what he/

she expects from them. The parties are given an opportunity to ask questions relating to the process.

The chief spokespersons are asked to summarize all of the outstanding issues. The Conciliator will request details later, as required. The Conciliator expects to be provided with copies of the outstanding issues together with a copy of the current collective agreement (if applicable).

When the Conciliator is comfortable that the parties and he/she understand the issues, the Conciliator sends one party to a break-off room. The Conciliator then meets with each party separately. This is an opportunity for the Conciliator to get the initial details and each party's view about the outstanding issues. The Conciliator may ask each committee to consider solutions that may differ from their stated position. This is the time when the parties are asked "to think outside the box."

The Conciliator continues the process by moving between the two committees. At any time during the conciliation process, however, either party is free to suggest a face-to-face meeting. The Conciliator decides which approach will best move the process forward, i.e. separate caucus sessions with or without the Conciliator being present, face-to-face meetings, or a combination of both.

The Conciliator will pressure both committees to find a solution; however, it must always be a solution that is acceptable to both parties. The Conciliator may appear to be on the other side, but he/she is just ensuring that each party fully understands and discusses the position taken by the opposite party. The Conciliator is an impartial third party who has nothing to gain from the outcome of the negotiations between the parties; therefore, the pressure exerted is purely in the interests of both parties reaching a collective agreement.

It is the parties' collective agreement, and they decide what is acceptable. The Conciliator does not negotiate for them.

What are the rules at conciliation?

There are very few hard and fast rules for the conciliation process. The Conciliator, as the Chair of the session, expects the parties to use common sense and to be courteous to each other and the Conciliator. The following general principles apply:

- Allow each person to speak individually and to make their points without interruption.
- Focus the discussion on the issues at hand.
- Respect the other side and their position.
- Refrain from abusive language or behaviour.
- Turn cell phones off during joint sessions.

- If a comment made by either negotiator needs correction, request a brief caucus to review the matter.

What does conciliation cost?

The Conciliator and the meeting rooms are provided by the provincial government at no cost to the parties. All other costs related to conciliation (including photocopies, faxes, phone calls, transportation, parking, wage loss, meals, and accommodation) are the responsibility of each party.

Who participates?

The Trade Union Act and the Teachers' Collective Bargaining Act require the parties to complete conciliation and certain other procedural requirements as outlined in the legislation prior to participating in a strike or lockout.

Who should attend?

Normally, the employer and the union each send a negotiation committee. Each committee must have the authority to bargain a tentative collective agreement. Each committee also appoints a chief negotiator/spokesperson.

Should lawyers attend?

Conciliation is a form of dispute resolution that is as informal as possible and lawyers are not required. The parties may, however, use the services of a lawyer, who may attend the conciliation session or be available to their clients by phone, fax, etc.

Please note that it is not the role of the Conciliator to provide legal advice.

Preparing for Conciliation

1. **Be prepared; do your homework before you come to the meeting**
   - Gather all relevant information about each outstanding issue.
   - If possible, obtain legal, financial, or other professional advice before the meeting.
   - Develop options for resolving outstanding issues.
   - Consider the other party's perspective. (What are their concerns and interests?)
2. **Select a spokesperson**
   - The chief negotiators should be the spokespersons for their committees and, therefore, control the discussion.
3. **Consider the possible meeting length**
   - The time required for conciliation cannot be predicted. Some cases resolve in a few hours while others require many days.
   - Arrive early and be prepared to be flexible about when the session will end. If either committee has a commitment that limits its availability, the Conciliator should be advised as soon as possible.

- The Conciliator expects participation so long as issues are being resolved and the momentum is maintained.

The cornerstone of the conciliation process

There are two main elements in conciliation:

1. **Impartiality** is essential to the work of the Conciliator. This means that he/she will be evenhanded, objective, and fair. The Conciliator will not be on either party's side. If a Conciliator knows either of the parties personally or has any interest in the outcome of the bargaining, he/she will withdraw from the case, unless the parties, with full knowledge of the potential conflict, agree otherwise.

   Participants who believe that the Conciliator assigned to their case has a conflict of interest should contact their chief spokesperson, the Executive Director of Labour Services, or the Chief Industrial Relations Officer.

2. **Confidentiality** is paramount for effective dispute resolution. Conciliators protect confidential information received during the conciliation process. You can be guaranteed that information identified as confidential will not be shared with the other party without your expressed permission.

   Conciliators are professionally bound by a Code of Conduct for Conciliators/Mediators that prohibits any comments to the press/media about any cases in progress at any time.

What is the conciliator's role?

The Conciliator

- assists the parties in resolving their outstanding issues
- promotes a climate of non-adversarial dispute resolution
- ensures that the process is managed fairly and that each party has every opportunity to express their point of view
- makes every effort to keep the discussion focused on the issues
- suggests ideas/options for the parties' consideration, but will not attempt to impose any settlement

The parties have a duty to make every reasonable effort to conclude a collective agreement.

What happens if an agreement is reached?

The Conciliator reviews and confirms the agreed items.

The parties prepare a written Memorandum of Settlement, with the assistance of the Conciliator if necessary. This document includes each agreed item.

The Conciliator reviews the commitment made by the parties as contained in the Memorandum of Settlement, and each committee member signs the document.

What happens if an agreement is not reached?

If the Conciliator determines that an agreement will not be reached, he/she declares an impasse. The law then requires the Conciliator to file a confidential report with the Minister of Labour and Advanced Education.

A 14-calendar-day countdown period begins at 12:01 am on the day following the filing of the report. During the countdown period, the employer is not permitted to increase or decrease rates of wages or alter any other term or condition of employment.

The Conciliator may request the parties to attend a meeting during the countdown period in a further attempt to reach a settlement and avoid a work stoppage.

If the parties are unable to reach a settlement, the following conditions must be met before either party may engage in a legal work stoppage:

1. The 14-calendar-day countdown must have expired; and
2. Written 48 hours' notice of intention to strike by the union or lockout by the employer must be received by the Minister.

In addition to the above, any union wishing to commence a strike must have conducted a secret-ballot vote where the majority of affected members have voted to support strike action.

Please note: The 48-hour notice of strike or lockout must be received by the Minister's office during normal business hours (8:30 am to 4:30 pm, Monday to Friday, excluding holidays). The Minister's office sends written acknowledgement of the notice to both parties and confirms the time of receipt. After-hours notices are acknowledged as being received the next business day.

If a notice of strike or lockout is given, does a work stoppage have to proceed?

- Both parties always have the option of settling their dispute at any time, including after the notice has been provided to the Minister. In addition, the parties have up to six months from the expiry of the 14-day countdown period to strike or lock out the other party.
- If the six-month period expires without a strike or lockout, the parties must re-apply for conciliation and fulfill the other conditions of the law before they will be entitled to legally take strike or lockout action.

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