



Prince Edward Island Advisory Council on the Status of Women

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Roy Doucette
Director of Community, Cultural Affairs and Labour
PO Box 2000, Charlottetown
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Dear Mr. Doucette:

Thank you for inviting the Prince Edward Island Advisory Council on the Status of Women to review and provide feedback on the report “Enhancing Standards in the Island Workforce.” It is gratifying to see that some of the recommendations that we made to the Review Panel, and some other recommendations which we endorsed, have made it into the report.

On the whole, we see the updates proposed in this report for the PEI *Employment Standards Act* as steps in the right direction. They are generally supportive of women’s equality in workplaces and offer some urgently needed updates to an outdated *Act*. The recommendations respect the rights of citizens to know and understand the legislation that applies to them in their workplaces. The recommendations also codify policy and good employment practice in helpful ways.

While the letter below offers minor comments and corrections, and while we continue to see opportunities for future improvements to *the Employment Standards Act*, we urge that government enact the changes recommended in the “Enhancing Standards in the Island Workforce” report as soon as possible, with the exception of proposed provisions allowing for more than one minimum wage in Part 6.2(a).

The Employment Standards Review Panel is to be applauded for its efforts. The principles articulated at the outset of the report are balanced and reasonable, and the proposed changes to the *Act* support the principles. We appreciate the over-riding objective, to “foster a productive workforce,” and we strongly emphasize the role of employment standards in creating an atmosphere of fairness, clarity, and security in workplaces so employers and employees can focus on accomplishing their goals without fear of unjust treatment. Well-treated employees are productive employees; fair employers get the best out of their co-workers. We would also note that much real “productivity” in PEI remains unpaid, in homes and communities, and that much of women’s work remains outside the scope of employment standards.

The following notes discuss points of interest and recommend corrections, where errors exist. In addition, we recommend ways in which Labour Division policy and practice could support the enactment of new provisions for the benefit of employers and employees. While we identify a few typographical or grammatical errors we noted, we did not undertake to proofread the document.

PART 1: Recommended changes appear to be positive.

PART 2: The new statement of purpose (Part 2: Purpose) is an especially valuable addition to the *Act*, and we strongly support its inclusion. The *Employment Standards Act* directly affects the lives of many Islanders, as employers and employees, and a statement of the *Act's* purpose helps make the language and intent of legislation plain and transparent for ordinary citizens.

For women, item (d) “to contribute in assisting employees to meet work and family responsibilities,” is an important recognition of the need for balance between work in the paid workforce and in unpaid roles in families. We would note that in this context, the term “families” is best understood broadly.

PART 3: The new provisions for information are a good addition. Part 3 provisions make clarity and plain language in other parts of the revised legislation all the more useful, valuable, and important.

PART 4: Recommendations appear to be positive.

PART 5: It should be noted that as a matter of practice, in the application of the *Act*, appointees to the Employment Standards Board should reflect equity of gender and diversity among both “employer” representatives and “employee” representatives. Likewise, knowledgeable individuals from organized labour should always be among “employee” representatives appointed to this Board; the experience of labour organizations, leaders, and members is vital to the analysis of employee/employer dynamics.

Diversity of representation on the Employment Standards Board is all the more important given that the Board is charged with reviewing the *Act* each five years.

It is essential that the *Act* be reviewed on a more regular basis, and we support the report’s recommendation that a review take place every five years. The open and consultative process used in the present review has been very positive. We would advocate for a similar model to be used in future reviews.

PART 6: It must be stated that, as it currently stands, the Prince Edward Island minimum wage is not a livable income for individuals or for families.

We have some concerns about proposed provisions in 6.2(a) to allow the possibility of more than one minimum wage.

We have in the past expressed concern to Executive Council about the possibility of more than one minimum wage rate being applied to Island workers. When this possibility is floated, it is typically suggested that a lower minimum wage is acceptable for youth: we consider this discrimination on the basis of age. Otherwise, it is typically suggested that a lower minimum wage would be acceptable for categories of workers who receive gratuities. Jobs with gratuities are often already low-paid positions; they are often in the service sector, are often seasonal, and are disproportionately held by women.

There is no legislative protection for workers if gratuities, and therefore total earnings, are affected by extrinsic factors such as appearance and age (with lower tips for older workers or less physically attractive workers). The other category of workers often targetted with lower minimum wages are “new” workers, and this discriminates against women because women more often than men leave and re-enter the workforce due to caregiving demands.

As a result of all these factors, we consider alllowing differential minimum wages for different categories of workers as opening the door to discriminatory practice.

We do not consider it necessary to create a provision in the legislation for differential minimum wages in Part 6.2(a) since we cannot imagine a differential wage that would move us closer to livable incomes or that would support equality goals. That being said, we recognize that the current recommendations only make it *legislatively* possible to set more than one minimum wage; if the revised provision remains in the legislation, it is likely to receive negative community response.

PARTS 7, 8, & 9: Recommendations appear to be positive.

PART 10: The reduced official work week is another step in the right direction and a valuable validation of the need for work/life balance. Codifying the practice of “banking overtime hours” is also helpful for employers and employees.

PART 11: The addition of Thanksgiving Day as a new paid holiday is commendable. We will all have a little bit more to be thankful for when this is enacted!

Likewise, the reduced qualification period for paid holidays, which is helpful to part-time employees, will benefit women, who are disproportionately represented in part-time work. It is gratifying to see changes in the section on vacation that bring us in line with other jurisdictions.

PART 12: Recommendations appear to be positive.

PART 13: This section on reporting or training pay is another overdue addition. There is a grammatical error in 37(4), which should read “Activities performed by the employer to meet a condition of employment . . . **ARE** not considered work.”

PART 14: Recommendations appear to be positive.

PART 15: The bulk of our submission to the Review Panel was devoted to maternity, parental, and adoptive leave, and the recommended changes to legislation offer significant improvement in this area. Clearly, based on our research and our recommendations, we see maternity, parental, and adoptive leave as an area where there is significant opportunity for future improvement.

We strongly support making maternity, parental, and adoptive leave available to more new parents, and section 40(a) broadens eligibility. We continue to recommend that job-protected leave should be extended to new parents regardless of work history.

The proposed extension of leave for employees to care for seriously ill children is a compassionate addition to the *Act*.

The proposed requirement that an employee not returning to work provide notice is reasonable and respectful.

The proposed employer obligation to employees on leave if operations are suspended or discontinued is a positive addition.

It is very important to note that where the proposed legislation refers to “paternal” leave, this is an error, and in every instance this should read “parental” leave. We assume the use of “paternal” is a typographical error, since Prince Edward Island does not have paternity leave (a leave designed particularly for father following the birth or adoption of a child) and the present recommendations do not appear to intend to implement such a leave. “Parental” leave, on the other hand, is eligible for federal leave benefits, is available to either parent (including same-sex partners where “paternity” may not apply), and can be divided between parents. **Replacing the word “paternal” with “parental” is the one correction to the report that should by all means be made before the proposed legislation goes any further.**

It would be valuable for government to examine employment standards, policies, and practices related to maternity, parental, and adoptive leave in the light of other policy goals outside the scope and purpose of the *Employment Standards Act*. Women’s equality goals are clearly supported by good policy on parental leave, but there are also opportunities to advance goals in early childhood care and education and in population growth.

PART 16: The proposed changes to Compassionate Care Leave bring the regulations for this leave in line with federal guidelines, which is appropriate.

PART 17: We were very pleased to see the recommendation that sick days and family leave be combined and extended and that unpaid leave be available after three months’ employment. We were also pleased to see it recommended that there be three days *paid* sick leave after ten years of employment.

Our submission to the Review Panel and our comments today are based on gender- and diversity-based analysis, which views principles of equality and fairness in light of *outcomes*. In other words, we seek to analyse legislative changes in light of the effects they will have for women and diverse populations and to ensure that these *effects* are equal. This requires that we consider the current, *unequal* positions of women and diverse populations in the current social, economic, political, and cultural order. Provisions for sick leave and family leave provide a case in point and an example of the Review Panel’s responsiveness.

Our discussion with the Review Panel explained that lack of paid sick or family leave under the *Act* discriminated against women even though women and men had access to the same number of days of leave, because women have more caregiving responsibilities than men, meaning they had greater need of leave, and meaning that unpaid leave had a greater negative net effect on women. For these reasons, we see change in this section of the *Employment Standards Act* as particularly positive.

It would be preferable for women to see this paid sick leave available *sooner* than ten years after beginning employment, for two reasons: women’s first ten years of employment often coincide with their childbearing years, and, even if they do not, women are more likely than men to leave and re-enter the workforce due to caregiving responsibilities and so are less likely to accumulate ten years of service. However, the paid sick leave after ten years is very likely to help women who are facing the triple demands of working in the paid workforce, caring for children, and caring for older adults.

Regardless of these additional considerations, the new provisions for Sick and Family Leave are a significant improvement for employees and an appropriate recognition of the established practice among better employers.

PART 18: It is a relief to see provisions for paid bereavement leave recognized in this proposal. In Section 46.1 “family member” should be defined the same way it is defined in Part 16: Compassionate Care Leave.

PART 20: We are pleased with the clear and easy-to-follow articulation of this section. Current legislation is nearly uninterpretable to a lay reader, and the recommended rewriting is a big improvement. The provisions recommended are, in our estimation, fair and reasonable.

PART 22: Recognizing and articulating the principle of equal pay for equal work is very valuable in the Employment Standards Act, and this section proposes a very good statement of the principle. Stating the principle clearly is particularly important in light of new provisions for posting the Act in Part 3: Information.

PART 23: We support repealment of the *Youth Employment Act* and inclusion of its provisions in the *Employment Standards Act*, and we are pleased with the improved clarity of Part 23 as it is proposed.

PART 24: We support new provisions that make it more difficult to lay off long-term employees and see this as a positive change for older women workers. The definition of “just cause” is acceptable, although it continues to allow for mandatory retirement if this is the “established practice of the undertaking in which the employee is employed”; we consider mandatory retirement generally discriminatory and particularly problematic for women, who may have accumulated fewer years in the paid workforce, and therefore fewer pension benefits, as a result of caregiving responsibilities.

Other recommendations appear to be positive.

PART 25: Recommendations appear to be positive.

PART 26: Recommendations appear to be positive. In 59(3), there is an incorrect spelling. It should read “a maximum amount equivalent to six months’ pay.”

PART 27: Recommendations appear to be reasonable and to enhance transparency.

Recommendations regarding compliance with the Act are, obviously, essential to ensuring that the proposed changes have positive effects. It is imperative that the recommendations regarding compliance be implemented.

The addition of provisions for mediating settlements is laudable, as long as the inspector is appropriately qualified/skilled/experienced as a mediator of conflict. As a matter of practice, inspectors should receive some training in gender- and diversity-based analysis so they can bring knowledge of equity and equality principles to their work.

The requirement that an inspector receive a *written* complaint is problematic for employees with low literacy. It is to be hoped that as a matter of practice there would be support and help available within the Department of Community and Cultural Affairs Labour Division for any employee with low literacy to prepare a written complaint, since this is an especially vulnerable group of employees. Likewise, employers with low literacy require similar help and support when complaints are made against them.

PART 29: Recommendations appear to be positive.

PART 30: Recommendations appear to be positive.

PART 31: Recommendations appear to be positive.

PART 32: The additions recommended to protect complainants are essential to the proposed revisions to the Act. This is another very good addition.

PART 33: Recommendations appear to be positive.

PART 34: It is valuable and important to help ensure compliance by codifying consequences of non-compliance. Fines for repeat contraventions appear to be reasonable.

PART 35: The proposed regulations appear to be positive. There are several errors in this section: 73(d) should read “define any word used **BUT** not defined in this Act” and 73 (e) should read “designate types of employment that **ARE** or **ARE** likely to be harmful . . .”

PARTS 36 & 37: Recommendations appear to be positive.

REGULATIONS: While troubling inequities are entrenched in PEI practice and are reflected in the Regulations (for example, allowing for potentially underpaid piecework and exempting caregiving and other domestic employment from minimum wage provisions), this letter is probably not the best forum for outlining those troubles.

NON-LEGISLATIVE RECOMMENDATIONS

Compliance: We agree wholeheartedly that the need for compliance with the legislation is a central issue. We support the recommendations for increased education for employers and employees, increased presence of inspectors, improved enforcement, penalties and deterrents, and prosecution of repeat offenders.

We strongly support the recommendations that non-legislated initiative should include more educational awareness programs, greater distribution of the revised Act, spot audits of high risk sectors and employers, more work site visits, and a protocol with the Department of Justice.

Resources: We strongly support the Review Panel’s call for sufficient resources to develop and present public education and awareness materials, distribute resources and copies of the Act, hire an additional officer to conduct audits of high-risk sectors and employers.

We strongly support the call for resource-sharing with other agencies, such as the Human Rights Commission and the Occupational Health and Safety Division, and **we offer the support of the PEI Advisory Council on the Status of Women staff in sharing resources and advice regarding gender- and diversity-based analysis whenever it is needed.**

Minimum Wage: Regarding minimum wage, we strongly support the principle that Islanders deserve livable incomes. We agree that no one working full-time for a full year should ever be living in poverty, we support the Review Panel’s recommendation that government continue to increase the minimum wage while considering income-tested tax benefits for low-wage earners. This recommendation is an adequate start to addressing income issues.

We strongly support the specific recommendations of the Review Panel with regard to criteria used to establish the minimum wage: removing reference to “reasonable return on private investment” and “permitting public input by submission to assist the Board in reviewing the minimum wage rate.” We will save further discussion of the minimum wage issue for such future consultations.

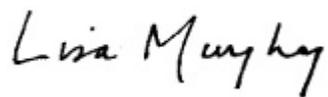
While we respect the diplomacy of the Review Panel’s recommendation that legislation be amended to provide for the possibility of more than one minimum wage rate, we do not support including this in legislation, for the reasons outlined above.

CONCLUSION: The issues addressed by the *Employment Standards Act* are complex and inter-related. As a result, it is important that any changes made to the legislation in light of the current consultation or in light of debate in the Legislature be made extremely judiciously. It is for this reason that we urge adoption of the recommended changes as a whole and as expeditiously as possible, with the one exception noted above.

We are gratified and pleased to see the care and attention with which this report was created, and we again thank the Review Panel for their respectful engagement of representative groups from the community and their thoughtful incorporation of recommendations for community organizations. We look forward to participating in future consultative reviews of the *Employment Standards Act*.

Thank you again for the opportunity to provide feedback on the “Enhancing Standards in the Island Workplace” report on proposed changes to the *Employment Standards Act* and the *Prince Edward Island Youth Employment Act*. Please do not hesitate to contact us to clarify any points made in this letter or to seek input on gender- and diversity-based analysis.

Sincerely,



Lisa Murphy
Director