



PEI Federation of Labour's Submission to the Employment Standards Review

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Introduction: The PEI Federation of Labour is the Island's largest worker organization, representing approximately 10,000 workers who work in a variety of occupations in both the public and private sectors. Our connection to workers of varying stripes, situations and working conditions gives us an unique opportunity to draw upon the experiences and feedback of our diversified membership and from formal positions taken by our member unions to comment on the provisions of the Employment Standards Act and how it is enforced.

Although we are concerned by the lack of union representation on this committee, we do appreciate the opportunity to bring our concerns and recommendations before you today.

Being that this is the first full review of the Employment Standards system in more than ten years, we feel that this review is long overdue and as you will see from the statistics in our submission there are a way too many sections in our current Employment Standards Act where Island workers lag well behind the rest of Canada.

Importance of Employment Standards -The central goal and purpose of legislated employment standards is to set a socially acceptable minimum floor of labour rights and standards for workers. A floor is needed since there is a fundamental imbalance of power between workers and employers. Most workers on PEI are highly dependent upon maintaining their current employment to support themselves and their families, and the norm is for the demand of workers for jobs to exceed employer demands for labour. So long as we live in an economy with significant unemployment (including high levels of disguised unemployment in involuntary part-time and very precarious, insecure and badly paid jobs), some employers will be able to pay very low wages and provide substandard working conditions.

It also has to be appreciated that employment standards can have positive effects for employers, not just workers, by reducing worker turnover and raising skills and productivity. There are some very tangible and direct links from high standards in the workplace to higher productivity. Decent wages and working conditions reduce the incidence of quits, reducing training costs, and giving an employer the benefit of experienced workers. Longer job tenure means that employers have a major incentive to invest in the skills of employees, which is critical to success in building a knowledge-based economy. Some level of job security also means that workers have an incentive to co-operate to raise productivity. A host of studies have shown that the path to higher productivity lies in the effective combination of new technologies, training, and changes in the organization of work to maximize the use of skills. Many of these studies also show that good labour relations can make a major contribution to the success of workplace restructuring. This productivity offset from good labour standards is one major reason

why increases in minimum wages and minimum standards do not come at the cost of jobs.

Minimum standards also help redress this imbalance of power between employers and vulnerable workers. Employment standards must also be seen as a key means to secure and promote human rights. Paid work is a major part of the lives of workers, and employment still means subordination to the demands of an employer. The employment relationship must be balanced to protect against unreasonable demands and lack of power to enjoy basic freedoms, such as freedom from psychological or physical harassment, and discrimination on the basis of sex, race, or ability.

Ensuring effective protection for vulnerable workers is the key priority for the PEI Federation of Labour in this review of PEI's Employment Standards Legislation. Our Legislation falls far short of providing such protection due to lack of effective enforcement of current provisions, exclusion of many workers from coverage, and minimum standards which are far below most jurisdictions in Canada.

Those who are most vulnerable to substandard wages and working conditions and to unjust dismissal include women, recent immigrants and workers of colour, and young workers, especially those working in smaller firms, and in particular sectors and occupations. Setting a statutory minimum provides an important floor of rights and standards for **ALL** workers. Basic rights and standards of so-called "core workers" who are often seen as not requiring protection are frequently violated due to ongoing economic restructuring, privatization, deregulation and free trade. Even full-time, permanent, unionized workers are not infrequently obliged to work long hours, denied access to needed leaves of absence, and subjected to harassment in the workplace. The same is true of non-unionized professionals and managers, who often work very long hours and can be subject to unjust dismissal.

Changing Realities and Key Challenges - Market driven "globalization," contracting-out, privatization, and deregulation have greatly increased competitive pressures on employers, leaving many seeking a cost advantage by depressing wages and working conditions, and by fundamentally restructuring employment relationships to make jobs more unstable and precarious.

The dominant response of governments to changed economic conditions has not been to protect workers, but rather to deregulate the labour market. Employment standards legislation is supposed to provide a basic level of protection for all workers, but lack of effective enforcement of these standards and shrinking coverage because of the growth of non-standard work make them almost a dead-letter for many vulnerable workers. Many employers are not in compliance with minimum standards. Lack of protection means that growing numbers of workers must put up with substandard wages and poor working

conditions, or leave the job.

There is a huge cost to ineffective enforcement and non-compliance of employers with labour standards. But, it is largely hidden and unaccounted for, borne by vulnerable workers who are unable to access their basic rights. As has been stated by the Law Commission of Canada (2005), the costs of “unbridled flexibility” and labour market deregulation are transferred to workers. The solution to this state of affairs is to push enforcement back into the workplace, and to make sure that the protections of the law are updated to take full account of the changing realities of work and of new social realities.

We reject the view of many employers and policy-makers that promotion and enforcement of basic standards is dated and somehow out of tune with the needs of the new economy. In fact, it is the changing nature of work which demands the renewal of employment standards, and a new determination to make them relevant. The mantra of competitiveness has been used to undermine the goal of promoting worker rights and protections. But, far from undermining economic performance, a strong floor of rights and standards will protect responsible employers who treat their employees with respect and dignity. Weak enforcement of low standards rewards bad employers and marginalizes vulnerable workers, but does nothing to promote long-term economic success. Decent standards must be seen as a central part of a modern, highly productive economy based upon skilled and knowledgeable workers. There is no contradiction between promoting high labour standards and building a highly productive economy.

Overtime Exemptions: The main reason for having Overtime rules is to financially deter employers from forcing workers to work excessive hours on a regular basis and allow workers to not only have a social and family life outside of work but also allow them time to recuperate from the physical and mental stresses that are apart of everyone’s daily work experience.

Considering that study after study is showing that excessive work hours are dangerous, unhealthy, and disruptive of family and community life and with PEI tied only with Nova Scotia already having the highest standard work week in Canada within its Employment Standards Act, it is incomprehensible to us that our Employment Standards would further reduce this deterrence by allowing an exemption that permits a standard work week of up to 75 hours.

Therefore, the PEI Federation of labour urges the Provincial government to remove all overtime exemptions from the Employment Standards Act.

Current Overtime Exemptions to PEI’s Employment Standards Act

HEAVY EQUIPMENT OPERATORS	55 hours
SEASONAL HIGHWAY CONSTRUCTION WORKERS	55 hours
FISH PROCESSING INDUSTRY - INSIDE WORKERS	55 hours
FISH PROCESSING INDUSTRY - OUTSIDE WORKERS	75 hours
PEAT MOSS INDUSTRY	60 hours
COMMUNITY-CARE FACILITY WORKERS	60 hours
AMBULANCE DRIVERS	60 hours
TRUCK DRIVERS	55 hours
SANDBLASTING	60 hours

Standard Work Week: As you can see by the accompanying table, PEI is tied with only Nova Scotia as having the highest standard work week in Canada. As you can also see on the table standard overtime rules in most of Canada’s jurisdictions are that overtime should be paid after **8 hours per day or 40 hours per week**.

Therefore, the PEI Federation of labour urges the Provincial government to change overtime rules in the Employment Standards Act from requiring overtime be paid after 48 hours have been worked to requiring overtime be paid after over 8 hours per day or 40 hours per week have been worked in order to bring PEI more in line with the majority of Canada.

Comparison of Overtime Rules across Canada

Jurisdiction	Overtime rules
British Columbia	Over 8 hours per day or 40 hours per week In BC, overtime pay also includes double time for hours after 12 hours per day
Northwest Territories	Over 8 hours per day or 40 hours per week
Yukon	Over 8 hours per day or 40 hours per week
Federal	Over 8 hours per day or 40 hours per week

Nunavut	Over 8 hours per day or 40 hours per week
Manitoba	Over 8 hours per day or 40 hours per week
Saskatchewan	Over 8 hours per day or 40 hours per week
Newfoundland & Labrador	Over 40 hours per week
Quebec	Over 40 hours per week
Alberta	Over 8 hours per day or 44 hours per week
Ontario	Over 44 hours per week
New Brunswick	Over 44 hours per week
Nova Scotia	Over 48 hours per week
Prince Edward Island	Over 48 hours per week

Right to Refuse Overtime: To remain consistent with the concept of overtime – that of a demand in addition to the usual employment contract – workers should possess the right to refuse overtime. The right to refuse overtime allows the worker to choose whether they wish to earn premium pay, or maintain those hours for family or personal pursuits.

No worker who is unwilling or unable to work overtime should be forced to work, except in emergencies. Saskatchewan, Manitoba, Ontario, and the Yukon have taken the step to legislate a worker’s right to refuse overtime. Saskatchewan’s provisions are particularly effective, as they do four things:

- No employer can force a worker to work overtime, except in emergency situations
- No disciplinary action can be taken against a worker who refuses overtime
- Onus is on employer to prove “emergency situation”
- Defines emergency situation as “sudden or unusual occurrence or condition that could not, by the exercise of reasonable judgment, have been foreseen by the employer.”

Saskatchewan’s provisions protect workers who attempt to maintain balance in their lives, but allow for the labour needed to address emergencies.

We believe this will not unduly inconvenience employers, as in any workplace there is a mixture of workers – those who take as much overtime as they can get, and those who value time away from work.

Therefore, we ask the provincial government to add an employee’s right to refuse overtime into PEI’s employment standards similar to Saskatchewan’s provisions.

Statutory Holidays: As you can see on the chart below workers on PEI are tied with Newfoundland and Nova Scotia for having the lowest number of Statutory Holidays in Canada at **6**. Even workers on PEI who fall under Federal jurisdiction are entitled to **9** paid holidays.

Thus, we request that the provincial government add Victoria Day and Thanksgiving Day as statutory holidays in order to bring PEI more in line with all other Canadian jurisdictions outside of Atlantic Canada.

Comparison of Statutory Holidays across Canada

Jurisdiction	Number Stat Holidays	Recognize Victoria Day and Thanksgiving Day
Northwest Territories	10	Yes
Yukon	9	Yes
Federal	9	Yes
Alberta	9	Yes
Nunavut	9	Yes
Saskatchewan	9	Yes
British Columbia	9	Yes
Ontario	8	Yes
Quebec	8	Yes
Manitoba	8	Yes
New Brunswick	7	No

Newfoundland & Labrador	6	No
Nova Scotia	6	No
Prince Edward Island	6	No

Minimum Duration of Vacations: Much like rest breaks and days of rest, vacations are not just an employment frill – they are essential to maintaining a worker’s mental health, productivity and well being. It is the only time in the year where a worker can leave their work behind, go on a trip and spend extended time with family.

As you can see from the table below, Prince Edward Island provides two weeks of annual vacation with pay after one completed year of employment. In eleven jurisdictions, including Nova Scotia, New Brunswick and Newfoundland; employees are entitled to an additional week of vacation with pay after a specified period of service. This can vary from five to six years of continued employment in most jurisdictions. In New Brunswick and Nova Scotia it is available after eight years of continuous employment and in Newfoundland fifteen.

Therefore, We recommend that after eight (5) years of continuous employment on Prince Edward Island that employees be granted three weeks of annual vacation with pay and vacation pay be increased to 6% to compensate for the longer duration to bring us more in line with the most Canadian jurisdictions.

Comparison of Duration of Vacation across Canada

Jurisdiction	Vacation Pay	Duration of Vacation
British Columbia	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Manitoba	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks

Alberta	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Quebec	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Northwest Territories	4% vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Nunavut	4% of vacationable earnings After 5 years: 6%	* After 1 year of employment: 2 weeks * After 5 years of employment: 3 weeks
Federal	4% of vacationable earnings After 6 years: 6%	* After 1 year of employment: 2 weeks * After 6 years of employment: 3 weeks
Saskatchewan	3/52 of vacationable earnings After 10 years of employment: 4/52 of vacationable earnings	* After 1 year of employment: 3 weeks * After 10 years of employment: 4 weeks
New Brunswick	4% of vacationable earnings After 8 years: 6%	*After 1 year of employment: 2 weeks (One day for each calendar month worked, or 2 weeks; whichever is less.) *After 8 years of employment: 3 weeks

Nova Scotia	4% of vacationable earnings After 8 years: 6%	* After 1 year of employment: 2 weeks * After 8 years of employment: 3 weeks
Newfoundland & Labrador	4% of vacationable earnings After 15 years: 6%	* After 1 year of employment: 2 weeks * After 15 years of employment: 3 weeks
Ontario	4% of vacationable earnings	After 1 year of employment: 2 weeks
Prince Edward Island	4% of vacationable earnings	After 1 year of employment: 2 weeks
Yukon	4% of vacationable earnings	After 1 year of employment: 2 weeks

Maternity and Parental Leave: We are pleased that PEI offers 17 weeks Maternity and 35 weeks Parental Leave after 20 weeks of employment which is favorably comparable to most jurisdictions in Canada.

However, there are two shortcomings in the current wording. First, the status of a worker’s benefit plans when they go on leave is up in the air. Many find themselves ineligible for extended health or dental benefits during their leave – at a time when such benefits might be needed the most. Saskatchewan possesses language that prevents this legal difficulty by ensuring a worker can remain on their benefit plan if they choose and pay any associated costs. We support a clause that allows for this option.

Second, there are no provisions for complications during pregnancy. Many other provinces waive notice periods or allow extensions on leave time lines if there is a complication in the pregnancy, birth or post-partum. Allowing for maximum flexibility for a mother with medical complications is both humane and good business practice. The government should include language to protect women whose pregnancies suffer from complications.

We urge the provincial government to adjust maternity/parental leave rules to allow continuation of benefit plans and to waive restrictions for pregnancy and birth complications.

Bereavement Leave: The death of an immediate family member is a traumatic time in anyone's life.

To lessen the financial burden associated with the loss of a loved one and allow the worker time to grieve and deal with family obligations, the Federation asks the government to change PEI's bereavement leave for an immediate family member from 3 days unpaid leave to add one day of paid leave (as in Newfoundland and Quebec) and 4 days unpaid leave. 5 days of unpaid leave total is standard in most provinces in Canada.

Minimum Wage Should Be a Living Wage: While the federation is happy that the provincial government has been increasing the minimum wage on a yearly basis, we are very concerned about the amount of time it is taking to get that wage to a level that workers can subsist on.

As you can see in the table below, our province currently ranks number 10th in the country when it come to Minimum wages. Workers making minimum wage at \$6.80 an hour are bringing home a gross income of \$14,144 that is if they are working 40 hours a week and 52 weeks a year.

In our province, we know that half of all workers in PEI work for \$11.40 an hour or less. Of that number, half are working for less than \$8.00 an hour, 62% of Island women in the paid workforce earn less than \$20,000 each year and the average annual income on PEI is \$22,000, or \$10,000 below the national average. We also need to take into account that the problem with a low minimum wage is compounded by the fact that only 43% of Islanders work full-time and year round causing many to rely on the 55% of their wages that EI supplies.

If we take Statistics Canada's before tax low income cut-off (2004) for a community like Charlottetown, a single individual would need to make \$17,407 just to be at the poverty line. A couple with two children would need to make \$32, 345.00 a year.

While we realize that the minimum wage on PEI will be increasing to \$7.15/hr effective April 1, 2006. It still puts a single individual working at minimum wage, full-time, year round at only \$14,872 which is still \$2,535 below the poverty line and will only move P.E.I. to the rank of eighth in the country.

As you can understand, someone at minimum wage would have a very difficult time to survive.

Our province needs to increase our minimum wage in order to help workers and their family have a decent living. A higher minimum wage would also help businesses because more money would be available to workers and to spend in Island businesses.

Many employers will complain that increases to the minimum wage will hurt their competitiveness but what are we saying about the value of workers if we say that in order for businesses to be competitive, workers must be paid a wage that does not provide them with even a modest standard of living?

And what of the very profitable and successful businesses that have benefitted from a low minimum wage such as McDonalds, Tim Hortons, Wal-Mart etc. Profitable companies that choose to reward executives, share holders and owners rather than pay workers a living wage. Low-income Islanders are forced to subsidize these companies with their underpaid labour and our communities are increasingly left to subsidize corporate profits through charities such as food banks. Government supports low-income workers as well when they are earning so little each month that their income must be subsidized through social assistance. For those small businesses that cannot quickly adjust to an increased minimum wage temporary support should be provided through, for example, short-term tax measures.

So what kind of a increase are we talking about? The minimum wage needs to increase to at least \$ 8.25 an hour just to lift individual workers out of poverty and to \$10.00 an hour to move it to a living wage. Such a move would benefit not only those most in need but contribute to healthy communities and a vibrant productive economy.

We urge the government to do what it can to eliminate the working poor on PEI and ensure that all working Islanders can afford to live on the wages they work so hard to earn.

Current Minimum Wage Levels Across Canada

Jurisdiction	Hourly Rate	Effective Date
Nunavut	\$8.50	March 3, 2003
Northwest Territories	\$8.25	December 28, 2003
British Columbia	\$8.00	November 1, 2001

Quebec	\$7.60	May 1, 2005
Ontario	\$7.45	February 1, 2005
Manitoba	\$7.25	April 1, 2005
Yukon	\$7.20	October 1, 1998
Saskatchewan	\$7.05	September 1, 2005
Alberta	\$7.00	September 1, 2005
Prince Edward Island	\$6.80	January 1, 2005
Nova Scotia	\$6.50	April 1, 2004
New Brunswick	\$6.30	January 1, 2005
Newfoundland	\$6.25	June 1, 2005

Notice of Termination: While feel that the current Notice of Termination rules for individual employees in PEI’s Employment Standards Act is comparable to the rest of the country, we are concerned that with regard to large scale group terminations, Prince Edward Island is the only jurisdiction in Canada which does not require a minimum notice period prior to any permanent layoff of a group of employees.

We believe that this oversight needs to be corrected. Enhanced notice should be required for group (layoffs) because the disruption of a large group of workers being laid off is significant. With a group layoff, not just one family is affected, but an entire community – people who work together and often share social time together are all affected. The extra human cost of group layoffs necessitates more notice to allow for planning, preparation and response.

The PEI Federation of Labour suggests that if a company intends to layoff 10 or more employees in an establishment within 4 weeks of each other there should be a layoff notice of 8 weeks for 10-99 employees, 12 weeks for 100 to 299 employees, and 16 weeks for layoffs of over 300 employees. If the company does not give the proper notice, the employee shall be paid their regular wages for the number of required notice weeks in lieu of notice.

Comparison of Notice of Termination for Groups across Canada

Jurisdiction	Number of Employees	Minimum Notice
Quebec	10 employees or more in an establishment within 2 months The terminations are for technological or economic reasons.	10-99 employees: 8 weeks 100-299 employees: 12 weeks 300 employees or more: 16 weeks
Nova Scotia	10 employees or more in an establishment within 4 weeks	10-99 employees: 8 weeks 100-299 employees: 12 weeks 300 employees or more: 16 weeks OR Pay in lieu
Saskatchewan	10 employees or more in an establishment within 4 weeks	10-49 employees: 4 weeks 50-99 employees: 8 weeks 100 employees or more: 12 weeks
New Brunswick	More than 10 employees representing at least 25% of the employer's workforce (whether termination or layoff) within 4 weeks	6 weeks OR Pay in lieu
Northwest Territories	25 employees or more within 4 weeks	25-49 employees: 4 weeks 50-99 employees: 8 weeks 100-299 employees: 12 weeks 300 employees or more: 16 weeks

Nunavut	25 employees or more within 4 weeks	25-49 employees: 4 weeks 50-99 employees: 8 weeks 100-299 employees: 12 weeks 300 employees or more: 16 weeks
Yukon	25 employees or more within 4 weeks	25-49 employees: 4 weeks 50-99 employees: 8 weeks
Federal	50 or more employees in an industrial establishment within 4 weeks	16 weeks before termination date of first employee in group whose employment is to be terminated
Manitoba	50 employees or more within 4 weeks	50-100 employees: 10 weeks before termination date of first employee 101-300 employees: 14 weeks before termination date of first employee 301 employees or more: 18 weeks before termination date of first employee OR Pay in lieu
Newfoundland & Labrador	50 employees or more within 4 weeks	50-199 employees: 8 weeks 200-499 employees: 12 weeks 500 employees or more: 16 weeks OR Pay in lieu, including overtime the employee would have worked.

British Columbia	50 employees or more at a single location within 2 months	50-100 employees: 8 weeks before termination date of first employee 101-300 employees: 12 weeks before termination date of first employee 301 employees or more: 16 weeks before termination date of first employee Pay in lieu or a combination of notice and pay in lieu
Ontario	50 employees or more in an establishment: representing more than 10% of the number of employees in the establishment who have been employed there for at least three months; or the terminations are caused by the permanent discontinuance of at least part of the employers business at the establishment; within 4 weeks.	50-199 employees: 8 weeks 200-499 employees: 12 weeks 500 employees or more: 16 weeks OR Pay in lieu

Alberta	50 employees or more at a single location within 4 weeks	4 weeks
Prince Edward Island	Not Specified	Not Specified

Compliance and Effective Enforcement: A central priority for the Federation in this review is to ensure that measures are put in place so that there is effective employer compliance with and enforcement of the Act.

It should go without saying that there is little ultimate point in proposing or legislating substantive improvements in employment standards if they do not become the lived reality of our workplaces. It is incumbent upon the Province, not just to set a decent minimum floor of rights and standards in law, but also to ensure that the law is effectively communicated and enforced.

As things stand, standards are widely ignored and violated by employers. There is only limited education and proactive enforcement by government inspectors. Individual complaints arise almost entirely after the severance of the employment relationship for unpaid wages, unfair dismissal, or similar issues, and even employers found to be in persistent violation of the law face weak, if any, sanctions.

As noted by the Law Commission of Canada (2004) “Unrepresented workers have a very limited ability to take action against violations of labour standards” and there is “a real and perceived threat of reprisal against employees who complain about their employment while on the job.”

The situation is better in some provinces than in others, but the *2004 Annual Report of the Provincial Auditor of Ontario* is probably reflective of the general situation. It found that notwithstanding concerns raised in the 1991 audit proactive inspections had been virtually abandoned despite their success in uncovering violations, and that the policy of no prosecutions meant there was little incentive for employers to respect standards. It noted that promoting awareness of employee rights and employer responsibilities is essential to the widespread observance of minimum standards.

The federal jurisdiction is no different. Government funded independent evaluation studies undertaken in 1997 and 1998 found massive non-compliance with Part III by employers. Phase I of the evaluation undertaken by independent consultants for the

Department of Human Resources and Skills Development found that only 25% of employers covered by the *Code* were in full compliance; 25% were in widespread non-compliance; with the other 50% somewhere between these two poles. Many common working practices in the federal jurisdiction – such as long hours – are in violation of the *Code*. Widespread ignorance of *Code* provisions was identified as one factor. Non-compliance was found to be greatest with respect to maximum hours; no payment or provision for statutory holidays; no provision of severance pay, sick leave, maternity and parental leave; and lack of a sexual harassment policy. The evaluation report found that most complaints are made following termination of the employment relationship, for unpaid wages, or for unfair dismissal.

Part of the solution suggested in the evaluation report was to free up more time of officers for education, and part was seen to lie in more effective enforcement.

Currently on PEI, investigations are undertaken almost exclusively of individual complaints, meaning that a single complaint does not usually lead to comprehensive consideration of compliance or noncompliance by an employer, even if there is evidence of a pattern of violations by the employer or within a specific industry. The limits of an individual complaints-based enforcement strategy are that violations with respect to many issues are usually reflective of general working practices of an employer or an industry. The evaluation report found that non-compliance in the federal jurisdiction is just as high in firms from which no complaints have been filed as in firms from which complaints originated.

The evaluation report, echoed in the 2004 Audit of Part III of the Canada Labour Code , proposed a system of administrative penalties or fines as an alternative to time-consuming and expensive prosecutions, combined with greater powers for inspectors to make immediate determinations and decisions.

One key problem today is that resources are overwhelmingly devoted to the investigation and resolution of individual complaints (mainly against former employers) rather than the proactive kinds of activities which would lead to much higher levels of compliance by employers and protection of the rights of currently employed workers.

Greater compliance requires more resources, and greater political will to undertake proactive education and enforcement. The first step should be education and publicity. There should be mandatory posting of employment standards in all Island workplaces, and popular materials summarizing standards and how complaints can be filed should be distributed on a regular basis to employees, starting from the date of hiring. These materials should be translated and widely distributed to conform to languages in common use in the workplace. More resources should be devoted to educating employers on their

obligations, and employees on their rights. Funds should be made available to community and worker organizations to promote greater worker awareness of standards and of the procedures through which violations could be reported. Seminars for employers should be convened with employer groups. Consideration should be given to requiring workplace education sessions in cases where an employer has shown a pattern of frequent violations of the Act. The provincial government should develop strategic plans for education, to be based, in part, upon complaints received and on identified patterns of abuse.

The second step is audits. Comprehensive audits should be undertaken of individual employers, based upon identified patterns of complaints and on information available to inspectors. In the course of a complaints based inspection, employers should be routinely liable to a general audit of their degree of non-compliance. In most instances, an individual complaint arises because of more general non-compliance.

Detailed orders for compliance should be issued with minimum delay after an inspection. Strategic plans for audits of employers in problem industries should be developed on the basis of information developed in the course of investigations based upon complaints, with a view to undertaking audits of employers even if no individual complaint has been filed by an employee. As noted by the Provincial Auditor of Ontario, “targeted inspections of high-risk business sectors have been effective in the past” and have revealed “high rates of violations.” While requiring additional resources, audits are an efficient means of promoting compliance, and can sometimes save the costs of investigating repeated individual complaints from problem firms and sectors.

Inspectors should be mandated to investigate not just individual complaints, but also third-party complaints filed by non-profit organizations representing workers. Provisions for anonymity are essential if workers wish to bring an employer into compliance and secure respect for the law without severing the employment relationship. In the current context, individuals filing individual complaints may be subject to reprisal, and fear of reprisal is very real. Dismissal of an employee for filing a complaint should be prohibited, with violations subject to significant sanctions.

All employers found to be in non-compliance after an inspection and made subject to an order should be subject to a follow-up inspection within the next year, and fines should be imposed if there is again found to be non-compliance. The level of fines should include all costs of the investigation. Any third offence should lead to prosecution and the imposition of substantial financial penalties. Also, persistent offenders should be “named and shamed.” Procedures should, of course, be established so that employers can appeal orders and fines, first through an internal review and ultimately through the courts. But, it is important that immediate and effective penalties be imposed. To assist in promoting

compliance, orders should be made for prompt back-payment of any unpaid wages, including unpaid overtime and vacation pay, to all workers affected by previous non-compliance.

Conclusion: Once again, the PEI Federation of Labour would like to express its appreciation for allowing us to present our submission before you today.

As we said in our introduction, this review is long overdue and we are hopeful that it will produce a more coherent Code and enforcement regime that will all protect workers in the province, ensure fairness in the workplace, and make sure that Island workers receive an Employment Standards Act that is comparable to rest of Canada.

Island workers are as productive, hardworking, and as skilled any other workers in Canada and they deserve an Employment Standards Act that recognizes this and doesn't treat them as second class citizens. We hope that this committee brings forth recommendations that realize this and brings our Employment Standards Act up to the level enjoyed by the rest of Canada.