



## ***INTERIM REPORT***

Phase One:  
**Stakeholder Consultations and Feedback**



## TABLE OF CONTENTS

<b>I.</b>	<b>ACKNOWLEDGEMENTS</b>	3
<b>II.</b>	<b>BACKGROUND</b>	3
<b>III.</b>	<b>PANEL AND REVIEW PROCESS</b>	5
<b>IV.</b>	<b>CURRENT SETTING</b>	7
<b>V.</b>	<b>EXECUTIVE SUMMARY</b>	10
<b>VI.</b>	<b>STAKEHOLDER FEEDBACK</b>	11
	1. <i>Structure of the Act</i>	11
	2. <i>Issues and Proposed Changes</i>	12
<b>VII.</b>	<b>OTHER CONSIDERATIONS</b>	26
<b>VIII.</b>	<b>APPENDICES</b>	34
	<i>APPENDIX I – Terms of Reference</i>	

\*List of References: Page 36

## I. ACKNOWLEDGMENTS

The *Employment Standards Act Comprehensive Review Panel* (the “Panel”) wish to acknowledge the time and efforts of stakeholder groups and individuals who contributed to *Phase One* of the review process through written submissions and, in some cases, oral presentations. These groups were dealing with many competing demands, dominated by the effects of the COVID-19 pandemic, and still made time to prepare submissions or communicate their intention to comment during the public round of consultations (*Phase Two*).

The Panel also wants to recognize the responsiveness and support provided by the Labour and Industrial Relations Division of the Department of Economic Growth, Tourism and Culture and its Director, Patricia McPhail, and dedicated Office Manager, Hazel Walsh.

## II. BACKGROUND

The administration of the Prince Edward Island *Employment Standards Act* falls under the Employment Standards Branch (the “Branch”) of the Labour and Industrial Relations Division of the Department of Economic Growth, Tourism and Culture. In the Fall of 2021, the Minister responsible, Matthew MacKay noted, “Last year, we committed to conducting a comprehensive review of the *Employment Standards Act*, and I’m pleased to announce we are moving forward with that process to ensure individuals are supported and treated fairly in workplaces across Prince Edward Island.”<sup>1</sup>

The Acts contain provisions that outline the rights and minimum obligations of employees and employers, administrative responsibilities involving the work of the *Branch*, and the structure and processes of the PEI Employment Standards Board (the “Board”). The provisions reflect a wide range of benefits and terms and conditions of employment including wages, hours of work, holidays, leaves of absence, notice of termination, complaints and enforcement, and penalties.

Other Canadian jurisdictions have either undergone comprehensive reviews in recent years or are contemplating a similar process to ensure their employment legislation remains relevant within evolving workplaces, e.g., Ontario’s 2017 “The Changing Workplaces Review”<sup>2</sup> and the 2018 “Report on The Employment Standards Act” prepared for the *British Columbia Law Institute* by the Members of the *Employment Standards Act Reform Project Committee*<sup>3</sup>.

The PEI *Employment Standards Act* was last reviewed sixteen years ago (2006). Since then, calls to complete a comprehensive review have been made by several interest groups and the *Board*. A review is also included as one of the *Key Actions: To help Islanders in need* within the “Belonging and Thriving: A Poverty Reduction Action Plan for Prince Edward Island (2019-2024)”<sup>4</sup>. The *Youth Employment Act*, which will be

1 Government of Prince Edward Island News Release - October 15, 2021; [Review of Employment Standards Act is underway | Government of Prince Edward Island](#)

2 [The Changing Workplaces Review: An Agenda for Workplace Rights \(ontario.ca\)](#)

3 [Employment-Standards-Act.pdf \(bcli.org\)](#)

4 [pei-poverty-reduction-action-plan\\_web.pdf \(princeedwardisland.ca\)](#); p.12

reviewed in conjunction with the *Employment Standards Act*, provides specific employment requirements for persons under the age of sixteen.

Although a comprehensive review is arguably overdue, there have been numerous updates to the *Employment Standards Act* and Regulations since the last review including the recent pay transparency (Bill No. 119) and pre-natal pregnancy loss (Bill No. 34) amendments to the *Employment Standards Act* and the introduction of the Domestic Violence, Intimate Partner Violence and Sexual Violence Leave Regulations. The *Non-disclosure Agreements Act* and the *Temporary Foreign Worker Protection Act* are examples of other employment-related legislation introduced, that are responsive to evolving workplace issues. Additionally, the “2021 Minimum Wage Review Report” provided insight into the *Board’s* analysis and intended approach to its annual review of the Minimum Wage Order when noting its plan to “. . . respect requests from multiple stakeholders for a transparent, predictable approach to setting PEI’s minimum wage.”<sup>5</sup>

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5 [2021\\_employment\\_standards\\_board\\_minimum\\_wage\\_review\\_report.pdf](#); p.1

### III. PANEL AND REVIEW PROCESS

The *Panel* is advisory in nature and consists of a chairperson and two side-panel members comprised of an employer representative and an employee representative. The side-panel members are mindful of how matters may affect employers and employees and the chairperson is neutral and does not hold affiliations with employer or employee organizations. The chairperson was selected through a request for proposals (RFP) process and side panel members were selected through *Engage PEI* and all began their onboarding process in October 2021.

#### *Chairperson, Andrew Thompson*

Andrew is a Chartered Professional in Human Resources and has experience with employment matters in the PEI public sector. His previous employment includes senior human resources roles with the *City of Charlottetown*, *Health PEI*, and the *Province of PEI* including his appointment as CEO of the *PEI Public Service Commission*.

#### *Employee Representative, Hans Connor*

Hans is a lawyer currently employed with the *PEI Union of Public Sector Employees* and has experience in dealing with employment matters on behalf of employees.

#### *Employer Representative, Isabelle Keeler*

Isabelle is a lawyer currently employed with *Cox & Palmer* and has experience in dealing with employment matters on behalf of employers.

The *Panel* shares a belief that employee and employer interests are not mutually exclusive, and that balanced and equitable employment legislation is in the best interest of all stakeholders and the broader Island community. They also have respect for all people and their individual differences and recently completed training on the “Gender-based Analysis Plus (GBA+)” tool<sup>6</sup> developed by the *Status of Women Canada* to enhance their related training, education, and lived experiences.

<sup>6</sup> What is Gender-based Analysis Plus - Women and Gender Equality Canada

The review process consists of the following three Phases as outlined within its *Terms of Reference* (“Appendix 1”):

### Phase One

The initial phase consists of the *Panel* carrying out research, consulting with organizational stakeholders, and producing an interim report to help guide a broader public consultation process. The *Panel* reviewed related reports, personal accounts, news articles, population and workforce statistics, and other cited works as part of its ongoing research to ensure a broad and evidence-informed review. Canadian interjurisdictional comparators including Federal, Provincial and Territorial employment standards legislation and related policy work also helped situate Prince Edward Island and will continue to inform the Panel’s analyses. This approach was expected to take up to twelve months to complete.

The *Panel* sent over eighty (80+) invitations in late December 2021 and early January 2022 to a diverse group of stakeholders comprised of academics, the *Board*, the *Branch*, related government bodies, industry groups, unions, and other umbrella organizations representing the interests of employers and employees in Prince Edward Island. The intention was to gather information from these groups regarding concerns they have with current employment standards and what they would like to see changed or put into the legislation. The *Panel* received twenty-four (24) written submissions and some participants also made in-person and virtual oral presentations. The issues raised are compiled within this Interim Report and will be used to help guide the second round of consultations.

The *Panel’s* invitations to participate coincided with the virulent COVID-19 *Omicron* variant wave at the beginning of 2022 and several groups commented on the challenge of finding time to research and/or adequately consult with members. Accordingly, extensions were provided to many groups and several others declined to make a submission but still expressed their intention to engage in the public consultation phase following the publication of the Interim Report.

The *Panel* met collectively for all stakeholder presentations and reached consensus on the Interim Report which is being made public and will advise Islanders of the full range of issues identified by stakeholders and their proposed options for change.

### Phase Two

This is a second round of consultations wherein the broader public, stakeholders who made submissions in *Phase One*, and those who were unable, will be able to comment on the proposed options for change within the Interim Report and/or make other recommendations for change. The period for receiving public feedback shall not exceed five months and will not be less than two months. The second round of



consultations will be a broader public process incorporating advertised opportunities for online comments, written submissions, and participation in public meetings.

### *Phase Three*

The *Panel* will present reasoned recommendations and outline potential changes to the *Employment Standards Act* and *Youth Employment Act* in a final report to the Minister of Economic Growth, Tourism and Culture. The *Panel* was asked to also note employment and related matters raised by participants that might fall outside the scope of the *Employment Standards Act*. This phase of the process is expected to take up to five months.

## IV. CURRENT SETTING

Any potential changes to the *Employment Standards Act* and *Youth Employment Act* should be relevant within the current and near future environment in which they will be used. Stakeholder submissions referenced current social, economic, and labour force data and emerging employment themes that reflect today's work environment and supported their proposed changes to the *Employment Standards Act* and *Youth Employment Act*.

The Government of PEI Department of Finance released its "Forty Eighth Annual Statistical Review 2021"<sup>7</sup> and the associated news release observed, "The data shows that while external factors such as the COVID-19 pandemic and trade restrictions on the agriculture sector did keep certain sectors and areas of the economy stagnant, there were some significant areas of growth and signs of rebound during another challenging year . . ."<sup>8</sup>

<sup>7</sup> [Annual Statistical Review](#)

<sup>8</sup> News Release - Government of PEI: Department of Finance; Published Date: Wednesday, July 13, 2022; [Annual Statistical Review showcases PEI's resilience and growth in 2021 | Government of Prince Edward Island](#)

The following highlights provide a brief “socio-economic snapshot” for Prince Edward Island and were obtained from the review and its associated news release:

- 2021 GDP increased by 6.6 per cent (Real GDP by industry) following a contraction of 1.8 per cent in 2020 and 4.6 per cent growth in 2019;
- International exports increased by 12.5 percent, to reach \$1.7 billion;
- The value of total fish landings in 2021 almost doubled, increasing by 92.9 per cent to \$478.5 million, following a 28.9 per cent drop in 2020. Lobster landings reached 47.2 million pounds, valued at \$370.9 million;
- Farm cash receipts valued \$568.1 million, a drop of 1.4 per cent compared to 2020;
- Retail sales in 2021 increased for the twelfth consecutive year, with a 19.7 per cent increase. Sales were valued at \$3.0 billion;
- Housing starts totaled 1,267, an increase of 2.2 per cent;
- Tourism was the industry that was most severely impacted by COVID-19, as it bore the brunt of travel restrictions, capacity limits and event cancellations. The total number of room nights sold at fixed roof accommodations rose by 68.0 per cent in 2021, following a decline of 63.9 per cent in 2020;
- The All-Items Consumer Price Index for PEI showed inflation was 5.1 per cent in 2021, following no change in 2020. (*Statistics Canada reported that PEI's rate increased to 11.1% in May 2022 and is still leading the nation*) Energy prices increased 26.6 per cent, while food prices increased 3.2 per cent and shelter was up by 8.5 per cent;
- Island population as of July 1, 2021 was 164,318, an increase of 1.9 per cent over 2020 and the highest growth among provinces;
- International immigration was slowed by the pandemic in 2020 and into the first half of 2021. The second quarter of 2021 showed signs of recovery, with a 15.9 per cent increase as compared to the second quarter of 2020. Preliminary data show that 1,211 immigrants arrived on Prince Edward Island in 2020/21;
- Other international migration<sup>9</sup> totaled 864, resulting in a total of 2,075 for net international migration;
- The aging of the Island population is illustrated by a median age that has risen from 24.8 years in 1971 to 42.4 years in 2021. Although the median age has declined from 43.9 in 2016, this downward trend is not projected to continue. Furthermore, while only 11.0 per cent of the population was 65 years and older in 1971, this proportion had risen to 20.2 per cent in 2021;
- Employment averaged 79,400, an increase of 2,700 over 2020 or 3.5 per cent;
- The labour force participation rate increased from 64.7 per cent in 2020 to 65.1 per cent in 2021;
- The unemployment rate averaged 9.2 per cent, a decrease of 1.2 percentage points over 2020 (*Statistics Canada June 2022 Labour Force Survey for PEI: The number of unemployed persons in May was 4,500, down 2,700 from one month ago and down 6,200 compared to June 2021<sup>10</sup>*); and
- Total labour income increased by 10.2 per cent.

<sup>9</sup> Includes emigrants, non-permanent residents, returning Canadians and Canadians temporarily abroad.

<sup>10</sup> Labour Force Survey Monthly | Government of Prince Edward Island



The following excerpts were selected from “The Women in PEI Statistical Review Fourth Edition (2020)” and its “statistical snapshot of the female population in PEI based on sex and gender-disaggregated data on population, education, work and income, health, justice, violence, shelter services, and leadership”<sup>11</sup>:

*According to 2016 census data, 2,735 individuals made up the Aboriginal population of PEI, including First Nations, Inuit, and Métis. Sixty-eight percent (68%) of Aboriginal people identified as First Nations, followed by 26% Métis, and 2.7% Inuk (Inuit). Sixty-eight percent (68.3%) of First Nation respondents identified their ancestry as Mi’kmaq.*<sup>12</sup> (p.19)

*In total, 4.7% (6,640) of individuals in PEI identified as a member of a visible minority group<sup>13</sup>, which represents a more than three-hundred and fifty percent (350%) from a reported 1,825 in 2006.*<sup>14</sup>

*Approximately 26% of the PEI population age 15 and over lived with a disability. In 2017, there were a higher number of females (16,840) with disabilities than males (12,980) with disabilities in PEI. Overall, 28.3% of females in PEI lived with a disability, compared to 23.4% of males. This is consistent with data from other Atlantic Provinces but slightly higher than Canada.*<sup>15</sup>

The PEI Department of Finance’s, Statistics Bureau “2021 Census: Population and Dwelling Counts” notes that Canada became the first country to provide census data on transgender and non-binary people. “Beginning in 2021, the precision of “at birth” was added to the sex question on the census questionnaire, and a new question on gender was included. At the provincial level, of the 126,900 people aged 15 and older living in a private household, 420 were transgender (260) or non-binary (160), accounting for 0.33 per cent of the population in this age group, on par with the national percentage.”<sup>16</sup>

The *Atlantic Provinces Economic Council (APEC)* “Looking Ahead: Bulletin 4 - March 2021”<sup>17</sup> projected that Atlantic Canada’s aging population and accelerated retirement age will shrink the labour force by 130,000 by 2040 and that this decrease must be offset by either more skilled workers moving into the region or a modest increase in participation by those already living here including underrepresented demographic groups, e.g., women to the same rate as men, disabled persons, older workers, and within marginalized communities like Black Atlantic Canadians and Indigenous people. The report goes on to say that “Various policies and initiatives may be required to reduce barriers to participation and employment. This is important to help meet the region’s labour challenge and to ensure inclusive growth.” (p.4) If that is not achieved, they propose that the region will need “... even greater investments in new technology ... to boost output and thereby reduce the number of needed workers.” (p.2)

11 [women\\_in\\_pei\\_a\\_statistical\\_review\\_2020.pdf](#); p.5

12 [Aboriginal Population Profile, 2016 Census - Canada \[Country\] \(statcan.gc.ca\)](#); July 18, 2018, p.19

13 Employment Equity Act definition of visible minorities as “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour”. PEI and Canada. 2016 Census. Statistics Canada Catalogue no. 98-316-X2016001. Ottawa. Released November 29, 2017.

14 [Visual census: Ethnic origin and visible minorities, Prince Edward Island \(statcan.gc.ca\)](#).

15 [Surveys and statistical programs - Canadian Survey on Disability \(CSD\) \(statcan.gc.ca\)](#); p.22

16 [2021 census reports.pdf \(princeedwardisland.ca\)](#); p.11-12

17 [APEC Bulletin 4 Labour EN \(1\).pdf](#)

## V. EXECUTIVE SUMMARY

The *Employment Standards Act* and *Youth Employment Act* provide minimum employment standards and outline the rights and obligations of Island employees and employers. These terms and conditions of employment should be relevant within the current and near future environment in which they will be used and must strive to reflect modern workplace practices and broadly held societal ideals that are in the best interest of all Islanders. This includes an awareness that workers deserve access to a minimum wage that maintains a “suitable standard of living”, reasonable hours of work that allow for respite and work-life balance, and access to leaves of absence that provide job protection during special circumstances. The Acts must also recognize the need for clear rules, consequences for noncompliance, and well-defined administrative processes that enable predictability, operational flexibility, and equitable competition for employers.

There have been numerous societal and employment related changes since the last review (2006) which underline the need to examine and update the legislation, e.g., a growing population<sup>18</sup> and labour force<sup>19</sup>; shifts in population demographics (e.g., visible minorities<sup>20</sup>, aging population<sup>21</sup>, steady international immigration); the emergence of independent contractors and the gig economy<sup>22</sup>; the rapid progression of technology; the growth of temporary or precarious employment versus standard full-time employment; a growing reliance on temporary foreign workers within certain sectors (i.e., agriculture and seafood processing)<sup>23</sup>; increased societal expectations in areas such as diversity and inclusion, workplace harassment, and domestic violence; and COVID-19 drawing attention to a number of issues including working from home and access to paid sick leave.

The *Employment Standards Act Comprehensive Review Panel* was mandated to consult with stakeholders and the broader Island community to modernize the legislation in response to these changes and make recommendations to update the legislation accordingly. The review provides an opportunity for diverse perspectives from stakeholder submissions and public input to develop fair and equitable terms of employment that achieve a balance between the interests of Island employees and employers.

The review was designed with two rounds of consultations (organizational stakeholders and the public) and associated interim and final reports to maximize opportunities for input. Stakeholder submissions referenced current social, economic, and labour force data and emerging employment themes that reflect today’s work environment and supported their proposals for change. The feedback identified a number of issues and suggested changes to the Acts ranging from specific proposals (e.g., proposed language), to guiding principles (e.g., inclusion, equity, transparency) to broad-based emerging issues (e.g., a livable income, a tightening labour market, telework, gig economy).

18 According to Statistics Canada provincial population estimates for July 1, 2021, “PEI’s population is estimated to be 164,318. This marks the sixth consecutive year PEI has led all jurisdictions in population growth.”; Government of PEI Population Report 2021; PEI Statistics Bureau; p.1; [PEI Population Report \(princeedwardisland.ca\)](https://princeedwardisland.ca)

19 Statistics Canada’s Labour Force Survey shows P.E.I.’s seasonally adjusted employment in May 2022 totaled 85,600, a new all-time high for employment. This is an increase of 6,800 from one year ago and up by 1,100 from April 2022.; Published June 10, 2022; [Labour Force Survey Monthly | Government of Prince Edward Island](https://www.gov.pe.ca/en/employment/lfs-monthly-reports)

20 PEI’s visible minority population grew from 1,825 in 2006 (1.4% of total population) to 6,640 in 2016 (4.8%). 2016 Census - Statistics Canada Catalogue no. 98-316- X2016001 and 2006 Census - Statistics Canada Catalogue no. 92-591-XWE. Ottawa. Released March 13, 2007; [Visual census: Ethnic origin and visible minorities, Prince Edward Island \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/98-316-x2016001/article/00001)

21 “The age cohort with the largest percentage increase over the past ten years has been for those aged 65 and over. The largest increase has been in the 65 to 74 age group, as the baby boomers move into retirement age.” The PEI Department of Finance, Population Report 2021; p.8

22 [Gig economy Definition & Meaning - Merriam-Webster](https://www.merriam-webster.com/dictionary/gig%20economy) - “economic activity that involves the use of temporary or freelance workers to perform jobs typically in the service sector”

23 [Temporary foreign workers in the agriculture and agri-food sectors, by industry \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/98-316-x2016001/article/00001)

These suggestions are outlined within this interim report for the sole purpose of generating further input and discussion during the upcoming public round of consultations. Following the public consultations, the *Panel* will carry out an analysis of the proposals for change and bring forward reasoned recommendations in its final report to the Minister of Economic Growth, Tourism and Culture.

## VI. FEEDBACK

This section details the full range of issues brought forward by stakeholders during *Phase One*, as well as their proposals for change and concerns regarding the impacts and unintended consequences of potential changes. The issues, trends and options for change are not exhaustive and do not represent preferences or recommendations of the *Panel*.

### 1. Structure of the Act(s)

Issues related to layout, headings, and numbering can be confusing and were raised during consultations. This modernization process provides an opportunity to either restructure the Act(s) or bring forward a new Act(s).

There were numerous references to imprecise language and opportunities to reword various provisions to improve clarity and understanding – these suggestions can be addressed with legislative counsel/drafters.

There were recommendations to allow sufficient time for employers to make necessary adjustments for any proposed changes; and that prospective amendments and/or a new Act(s) should use ‘plain language’ to increase understanding and accessibility, and that language should be aligned with the principles outlined in the “2018 Interministerial Women’s Secretariat Guidelines for Gender and Diversity Consideration in Policy Design and Implementation.”<sup>24</sup>

<sup>24</sup> [genderdiversity\\_guidelines\\_eng\\_2018.pdf \(princeedwardisland.ca\)](#)

## 2. Issues and Proposed Changes

### ***Employment Standards Act***

The following is a sequential listing of stakeholder issues and proposed changes to the *Employment Standards Act* broken out by **Heading** and **Section** (stakeholders are not identified):

#### **Definitions - Section 1.**

(c) “employee” and (d) “employer”: There were suggestions to expand the definition of employee to include ‘gig workers’<sup>25</sup> and/or address the employment status of ‘dependent contractors’ as a category that more closely resembles an employee versus an ‘independent contractor’ (employer), i.e., to address their entitlement to certain provisions of the legislation such as notice of termination. There was also a suggestion that a worker should be ‘presumed’ to be an employee unless proven otherwise, i.e., the person receiving the worker’s services would have the responsibility to prove that the person is ‘not an employee’ covered by the Act.

The definitions for employee and employer in other jurisdictions are closely aligned with PEI’s.

There were also questions as to whether managers are classified exclusively as employers or employees (manager is currently listed within the employer’s definition). Eight other provinces and all three territories who responded to a jurisdictional scan (plus PEI), define an employer in part as a person ‘. . . having control or direction of or being responsible, directly or indirectly, for the employment of an employee . . .’. Four of those provinces, like PEI, also have a listing of employer ‘types’ within the definition that includes ‘manager’. Additionally, when managers are classified as employees there were often limits or exemptions, e.g., provisions dealing with hours of work and overtime pay.

(f) “extended family” and (g) “immediate family”: There are family definitions throughout the Act that are inconsistent with the current definitions and seem to better reflect a modernized societal view of family relationships, i.e., “family member” under s. 22.3 *Compassionate Leave* and s. 22.5 *Emergency Leave*, and “parent” under s. 22.11(1)(d) *Leave Related To Critically Ill Child* and s. 22.12(1)(c) *Leave Related To Crime-Related Disappearance Or Death Of Child*. There were suggestions that the more expansive and updated definitions should be integrated into the current extended and immediate family definitions and applied consistently across leave benefits.

(q) “regular rate of wages”: There was a stated need to clarify this term and identify how it should be calculated for individuals working variable shifts. There was a suggestion to replicate the approach outlined in Section 3. *Calculating rate of pay during leave of the Domestic Violence, Intimate Partner Violence and Sexual Violence Leave Regulations*.<sup>26</sup>

<sup>25</sup> *Gig worker Definition & Meaning - Merriam-Webster*: “a person who works temporary jobs typically in the service sector as an independent contractor or freelancer”; this category has grown with the prevalence of digital App platforms like *Uber* and *SkipTheDishes*.

<sup>26</sup> S. 3. Domestic Violence, Intimate Partner Violence and Sexual Violence Leave Regulations: Where the wages of an employee vary from day to day, the employee’s rate of pay for each day of leave pursuant to these regulations shall be at least equivalent to the employee’s average daily earnings, exclusive of overtime, for the days on which the employee worked during the 30 calendar days immediately prior to the commencement of the leave.

There were several proposals to remove the “farm labourer” and “salesperson” exceptions (discussed in s. 2. *Application*). If they or some modified version remain, it was suggested they should be defined along with the term “commercial undertaking” as currently noted in s. 2.(5) *Farm labourers*.

### **Purposes - Section 1.1**

A few stakeholders referenced the purposes of the Act including a preference for keeping the purposes as opposed to some form of preamble. Others discussed the opportunity to articulate loftier standards that “reflect the value of work in peoples’ lives” and to include more contemporary language that reflects societal values of equity, diversity, and inclusion. There was also a request for the *Panel* to identify guiding principles for the public phase of consultations (*Phase Two*).

### **Application - Section 2.**

This section drew considerable feedback for the elimination of exemptions and the provision of minimum standards across the board for all employees and employers. Proponents for this change assert that exemptions are outdated and create a “subclass of workers” and make it “more difficult to gain a livable income”. There was also a suggestion that potential exemptions, and the scope, could be addressed through applications to the *Board* requiring a transparent assessment and ruling, or through a regulatory approach that could allow a more detailed and nuanced approach. One stakeholder offered that the “home care workers” exemption could be narrowed to only apply to ‘babysitting’ services.

The list of sections deemed to apply in unionized environments under s.2(4) can be challenging with respect to continued updating and modifications. One suggested approach is to establish a blanket rule to have the minimum standards apply to all provincially regulated employees, with a provision allowing for negotiation of those standards through a collective bargaining process. Another concern raised is one of jurisdiction and the possibility of disputes coming to the *Board* instead of going through a collective agreement’s grievance process, i.e., s. 2.(4)(g) and (h).

A jurisdictional scan with responses from eight provinces identified wide-ranging lists of exemptions for different types of workers from various provisions of their respective employment standards legislation e.g., hours of work, overtime, statutory holidays, rest periods, notice of termination. All eight provinces have language excluding various types of ‘farming’ work and operations.



### Administration - Sections 2.2 and 3.

There were a couple of specific proposed changes under this heading: to amend language in s.3(2)(d) to allow an inspector to request copies of records rather than having to “take” or “make copies”, i.e., not having to attend the premises; and the addition of a provision allowing an inspector to inspect and question a person for the purposes of ensuring compliance with the legislation.

### Employment Standards Board - Section 4.

The composition of the *Board* was discussed within a couple of submissions suggesting a larger *Board* (increase by three or more) and a more inclusive recruitment process with a focus on diversity, equity, and representation from vulnerable employee groups. There were also questions on the role of an appointed vice-chairperson(s) and whether they are intended to be a voting member (as is the practice). If so, it was suggested they have the potential to upset the balance between employee and employer representatives.

Section 4.(16) discusses the *Board's* jurisdiction and that its decisions are final and conclusive with the ability to reconsider its rulings and revoke its decisions. Reconsiderations are typically used sparingly, as is the case in other Canadian jurisdictions, however, there is no guidance regarding what threshold should be met when considering the merit of a reconsideration request. Section 4.(1) of the *PEI Labour Act* is identical to this section of the *Employment Standard Act* and there was a suggestion to use language similar to s. 18. of the *Labour Act* Regulations to provide guidance on when to entertain a request for reconsideration.<sup>27</sup>

### Wages (Minimum Wage) - Section 5.

This section received feedback with respect to the processes for determining and publishing minimum wage orders, and the vital role income and employment plays in the quality of life of individuals and the broader community. A number of stakeholders made reference to a “decent living” or “livable income/wage” that enables workers to not only afford “cost of living increases”, the “necessities of life”, and “maintain a suitable standard of living” as referenced in section 5.(3), but to be able to “fully participate in the community”, “live with dignity”, and have a “cushion” above the poverty line that allows for things such as “social inclusion”<sup>28</sup> and “small contingency budget” considerations.

In its “2021 Minimum Wage Review Report”<sup>29</sup> the *Board* noted the feedback it received with respect to poverty levels and a minimum wage review that takes “. . . into account the social and economic effects of the minimum wage rates in the province<sup>30</sup> . . . when it wrote, “Poverty was a theme raised in multiple submissions and the Board’s background documents. The Board recognizes that poverty is a broad social issue that will not be eradicated solely through minimum wage orders. Still, the Board acknowledges the

<sup>27</sup> Section 18. PEI Employment Standards Act Regulations: Where it appears that the Board has made a decision in ignorance of some material fact, or by reason of some technical irregularity, or if there is good reason for the Board doing so, the Board may entertain an application to reconsider a decision or order made by it under the Act.

<sup>28</sup> “The category would include expenses such as school supplies and fees, reading materials, minimal recreation and sports fees, art or music classes, child’s birthday or holiday gift, a small budget for entertainment (e.g. tickets for a movie, museum fees), restaurant meal, daytrip or children’s toys or games.” “Charlottetown Living Wage 2020”. p.12

<sup>29</sup> [2021 employment standards board minimum wage review report.pdf](#)

<sup>30</sup> Section 5.(3) PEI Employment Standards Act



argument that viable employers in this jurisdiction should not be allowed to rely on poverty wages. These considerations have informed the Board's preliminary development of a transparent approach to setting PEI's minimum wage." (p. 3)

In 2019, the PEI Legislature also recognized this connection when it amended the *Employment Standards Act* s. 5(3) and added, "measures of poverty and the ability of an employee to maintain a suitable standard of living<sup>31</sup>, ..." to the criteria to be considered by the Board, among other matters, when advising Cabinet on the Minimum Wage Order.

Along with the stated need for a suitable standard of living or livable income, there were requests to ensure a "transparent, fair and predictable" process and a suggestion to set a target and, once achieved, tie future increases to the Consumer Price Index (CPI). There were also references to maintaining the current annual reviews to ensure responsiveness to variable socio-economic factors, and a suggestion to increase the advanced notification requirements in s. 5.(6) – currently a minimum of fourteen (14) days.

Plans put forward in the *Board's "2021 Minimum Wage Review Report"* appear to be aligned with some stakeholder suggestions when it "signaled" a recommended \$15/hour minimum wage target for April 2024 and a formula-based approach founded on Statistics Canada's *Market Basket Measure (MBM)* incorporating changes in CPI within its annual minimum wage review process. The *Board* went on to note that, "The Legislative Assembly's Special Committee on Poverty in PEI" recommended that Statistics Canada's *MBM* be adopted for policy and regulatory purposes (July 2020). The *MBM* also plays a central role in defining low income in Canada (*Poverty Reduction Act*, 2019)."

The Tourism Industry Association of Prince Edward Island's recent "Tourism Workforce Action Plan (April 2022)"<sup>32</sup> outlined several short- to long-term objectives in response to a tighter labour market and the importance of competitive compensation for their industry. Under "What We Heard", the report stated in part "Employers recognized that wages in the tourism industry need to increase to remain competitive. The province's minimum wage is \$13.70 per hour (effective April 1, 2022), and according to the Canadian Centre for Policy Alternatives, the living wage rate for Charlottetown, Prince Edward Island, is much higher<sup>33</sup>." (p.12)

There were also requests pursuant to s. 5.(1)(d) to conduct a more comprehensive analysis of deductions, and to ensure that any mandatory equipment requirements are directly supplied by the employer or some other scheme that fully reimburses employees.

31 Section 5.(3)(c) PEI *Employment Standards Act*

32 [TIAPEI-Final-Strategy-Report-Workforce Action Plan.pdf](#)

33 "The living wage rate for Charlottetown, PEI is \$19.30 per hour." [Charlottetown Living Wage 2020 | Canadian Centre for Policy Alternatives](#); November 2, 2020

## Pay and Pay Protection - Section 5.2

Stakeholders made the following suggestions to update this particular section: methods of payment in s. 5.2 (1) could be broadened to capture other current and future modes of payment; reduce the window for deeming payment of a “bad cheque” under s. 5.2 (2); adjust s. 5.5(3)(b) allowing for *automatic enrollment* with the ability to opt out of voluntary workplace savings/ pension plans where the employer is matching contributions; introduce reasonable limits regarding how and within what timeframe deductions for overpayments can be made; ensure that payroll records and the associated tracking of types of paid and unpaid leave are current and aligned with information commonly held as part of an employee’s pay records; and a need for clarification on notice required in the “directors’ liability” provision in s. 5.7.

An *Act to Amend the Employment Standards Act* (Bill No. 119) received Royal Assent in November 2020 and new **Pay Transparency** language (s. 5.8-5.10 and ancillary amendments) came into effect on June 1, 2022. The new language stipulates that employers can not request an applicant’s pay history, that publicly advertised job ads must contain the position’s expected pay or pay range, and contains anti-reprisal language protecting employees from a variety of permissible activities related to these provisions. There were no submissions related to these subsections – likely due in part to the recent commencement date.

## Paid Holidays - Section 6.

There are currently eight paid holidays and a provision allowing “a day prescribed as a paid holiday in the regulations.” A jurisdictional scan revealed a range of six to ten (6-10) paid holidays across all provinces and eleven plus (11+) for the federal government.

### 2022 Provincial Jurisdictional Scan – Paid Holidays

Paid Holidays	AB	BC	ON	QC	MB	SK	NS	NB	NL	PE
Days	9	10	9	8	8	10	6	7	6	8

There was a request to add *Thanksgiving* and a request to maintain the status quo given the impact on already escalating employer operational costs.

There were also suggestions to clarify the language in s.7 indicating which employees qualify for a paid holiday versus the current language which outlines “employees not entitled”, to clarify the above mentioned “regular rate of wages” and how it should be calculated, and to reconsider the ability and circumstances for adding a paid holiday through regulations.

## Vacation Pay - Section 11.

The current PEI thresholds for annual vacation with pay are two weeks for an employee who works for an employer for a continuous twelve months and three weeks after working eight years.

### 2022 Provincial Jurisdictional Scan – Annual Vacation

Vacation (After)	AB	BC	ON	QC	MB	SK	NS	NB	NL	PE
12 mos	2wks	2wks	2wks	3wks	2wks	3wks	2wks	2wks	2wks	2 wks
3 yrs				4wks						
5 yrs	3wks	3wks	3 wks		3wks					
8 yrs							3wks	3wks		3 wks
10 yrs						4wks				
15 yrs									3wks	

There were proposals to enhance this benefit by decreasing the entitlement for three weeks vacation from eight to five years and to increase the vacation pay in 11. (c)(i) from 4% to 6%, i.e., the equivalent of three weeks pay versus the current two-week; and general commentary on when employees should be entitled to start using their vacation time, whether they should have more flexibility regarding how they use their allotment, and whether vacation time should be enhanced for longer serving employees.

There were also requests to adjust the language to reflect the reality that most employers pay vacation pay during regular pay periods, as opposed to “at least one day before the employee’s vacation begins”, and to stay away from the advancement of vacation pay and its inherent challenges.

## Hours of Work (Overtime) - Section 15.

An interjurisdictional scan revealed that effective May 2022, the standard hours of work during a work week are forty hours (40 hours/week) in five provinces, forty-four in three (44 hours/ week), and forty-eight (48 hours/week) in two. Four provinces also provide overtime beyond an eight-hour day (8 hours/day) with BC escalating to double time after twelve hours (12 hours/day).

## 2022 Provincial Jurisdictional Scan – Hours of Work Per Week and Day

Hours of Work/Week	AB	BC	ON	QC	MB	SK	NS	NB	NL	PE
1.5 OT Over	44	40	44	40	40	40	48	*44	*40	<b>48</b>
<b>Hours/Day</b>	<b>AB</b>	<b>BC</b>	<b>ON</b>	<b>QC</b>	<b>MB</b>	<b>SK</b>	<b>NS</b>	<b>NB</b>	<b>NL</b>	<b>PE</b>
1.5 x OT Over	8	8	N/A	N/A	8	8	N/A	N/A	N/A	<b>N/A</b>
2 x OT Over	N/A	12	N/A	N/A	N/A	N/A	N/A	N/A	N/A	<b>N/A</b>

\* For those earning minimum wage

There were submissions requesting that PEI move to a standard forty-hour work week (40 hours/ week), an eight-hour day (8 hours/day), and those requesting the status quo.

There was also discussion regarding a manager being included under the employer definition and therefore, not having access to overtime. Some stakeholders requested an explicit exemption for managers and supervisors as well as 'salaried employees' if their earnings per hour do not average below minimum wage, and the ability to average overtime hours over the course of a month/four weeks.

As outlined under section 2. *Application*, farm labourers (not including a commercial undertaking), salespersons and home care workers are exceptions and exempt from this section of the legislation. There are also currently four standard work week exemption orders: Highway Construction and Maintenance, the Seafood Processing Industry and Trucking at fifty-five (55) hours/week; and the Health Care Industry (community care facility employees) after ninety-six (96) hours in a two-week period. There were comments on the merit of continuing *Board* exemptions under s. 15.(2) and, if they were to continue, that exemption orders should require a written decision and posting requirements.

It was noted that there is a gap and a need for language specifically dealing with shift workers and their schedules, e.g., averaging hours of work over multiple weeks or pay periods, rest periods between shifts, prorating leave benefits, posting of schedules, advance notice for changing scheduled shifts, dealing with twelve-hour shifts.

### Rest Periods - Section 16.

There was some discussion on whether there should be access to exemptions from the rest day provision for well defined extenuating circumstances, and that employees would be able to deny the request. Others did not believe there should be any exemptions.

## **Reporting Pay and Tips or Gratuities - Section 17.**

A submission suggested there should be language to address situations where an employee is required to repeatedly report to work or a work-related activity and to address breaks between shifts including what is commonly referred to as split-shifts, i.e., fulfilling the day's hours of work in two shifts as opposed to consecutive hours with assigned rest periods.

There were also questions regarding whether there should be language addressing reporting pay and inclement weather, e.g., when work is cancelled due to a severe weather event, but it was not advertised or communicated to employees.

With respect to pooling of tips and gratuities there was a suggestion that not only should employers advise new employees, in writing, of any pooling policy in place at the time of hire but that it should also be openly posted in the workplace.

**Note:** There was no feedback on the following leave provisions other than suggestions for consistency in definitions as noted under **Definitions Section 1.** and the rationale for when certain leaves become available – some suggesting that employees should be eligible as soon as they are hired:

- **Maternity, Parental and Adoption Leave – Sections 18.-22.02**
- **Family Leave – Section 22.1**
- **Leave Related to Critically Ill Child – Section 22.11**
- **Leave Related to Crime-Related Disappearance or Death of Child – Section 22.12**
- **Compassionate Care Leave – Section 22.3**
- **Emergency Leave – Section 22.5**
- **Court Leave – Section 23.2**
- **General Provisions Concerning Leave – Section 23.3**



## Sick Leave - Section 22.2

The COVID-19 pandemic and its resulting isolation requirements and other related restrictions highlighted the limitations of personal sick and caregiving leave provisions across the country and required jurisdictions to implement temporary funding programs to lessen the impacts on employees and employers. Employers continue to deal with the financial and operational impacts including a tightening of the labour market and concerns remain that employees with limited access to sick leave might face the difficult choice of going to work sick or staying at home and not being paid.

The Government of Canada has pending amendments to the *Canada Labour Code*<sup>34</sup> for up to ten (10) days paid Medical Leave per year (currently five Personal Leave days/year) and announced on their *Protecting our Recovery by Finishing the Fight Against COVID-19* webpage that, "On November 26, 2021, the government introduced Bill C-3 to amend the *Canada Labour Code* to provide 10 days of paid sick leave per year to workers in the federally regulated private sector, covering almost one million workers. The government will consult with federally regulated employers and workers on implementation of this legislation. The government will also convene provinces, territories, and other interested stakeholders to develop a national action plan to legislate paid sick leave across the country, while respecting provincial-territorial jurisdiction and clearly recognizing the unique needs of small business owners."<sup>35</sup>

Within the PEI *Employment Standards Act* there are three annual sick days without pay available to employees who have been employed by an employer for a continuous period of at least three months and one additional day of paid sick leave for employees who have been employed by an employer for a continuous period of at least five years. A scan of other Canadian jurisdictions revealed that British Columbia has three unpaid sick leave days per year and recently added five annual paid sick leave days and only Quebec (2 days/year)<sup>36</sup> and PEI (1 day/year) also provide employees with access to paid sick leave. In addition, the Yukon's *Making Work Safe Panel* recently brought forward twenty-two (22) recommendations for amendments to establish ten paid sick days per year (10 days/year) and to explore options for a "co-funded" financial support model to support businesses. Alberta, Ontario, Manitoba, and Saskatchewan all have provisions for some form and measure of unpaid sick or personal leave.

This benefit was referenced in most submissions and encompassed a wide range of suggestions for additional paid sick days (2-10 days) as well as calls for the status quo or, if there is an increase in this benefit, that any increase would only apply to sick days without pay (still providing job protection), or a decrease in the current waiting/eligibility period of five years. There were concerns with respect to the cost of increased paid sick days and questions regarding how an increase would be funded. One stakeholder referenced

<sup>34</sup> The coming into force date would be fixed by Order in Council; Background: Amendments to the Canada Labour Code to provide ten days of paid sick leave - Canada.ca

<sup>35</sup> *Protecting Our Recovery by Finishing the Fight Against COVID-19* - Canada.ca

<sup>36</sup> These two days encompasses sick and various health related leaves



their recent survey of small businesses in which one small business noted “Covid almost buried us as a small business. We can’t afford any additional expenses.”

A November 2021 News Release from the BC Ministry of Labour noted the following when announcing the pending amendment and inclusion of five paid sick days in their *Employment Standards Act*: “The Province looked to other jurisdictions that have mandated paid sick leave, including in the United States, Australia, New Zealand and several European countries. Their experiences have shown the cost increases for most business were less than expected. They also experienced significant benefits, including increased productivity and retention of trained staff, reduced risks of injury, improved morale and increased labour-force participation.”<sup>37</sup>

An associated report on the estimated gross cost of these paid sick day provisions by *The Centre for Future Work* noted, “To some observers, requiring employers to cover up to 10 days paid sick leave for all workers sounds like a daunting change in employment practice – akin to having to pay out an extra two weeks’ worth of wages or salaries to all workers every year. This level of protection is the norm in other industrial countries, however,<sup>38</sup> and is already met by many Canadian employers.<sup>39</sup> And in practice, the final impact of a requirement for 10 days paid sick leave will not have nearly as dramatic an impact on total business operating costs as is implied in these dire business predictions. The ultimate gross impact of this measure on bottom-line business costs will in fact be muted by several intervening factors:

- *Not all workers will qualify for the full 10 days paid sick leave entitlement (since the benefit, in most proposals, is phased-in as a worker accumulates tenure in a job).*
- *Many employers already offer similar benefits, and hence will experience little or no increase in compensation costs.*
- *On average, not all entitled paid sick days will be claimed by workers.*
- *Even when workers are absent on paid sick days, not all will be replaced with alternative staff during their absence.*
- *Labour compensation costs account for a relatively small share of total business expenses, and this further dilutes the final impact on gross expenses”.*<sup>40</sup>

<sup>37</sup> [Five paid sick days coming Jan. 1 \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/employment-labour/employment-standards/employment-standards-act/changes/2021-11-15)

<sup>38</sup> Most OECD countries already require paid sick leave of two weeks or more; see OECD (2020), Heymann et al. (2020), Hyeet al. (2020), and Raubet al. (2018)

<sup>39</sup> As discussed within the report, about half of Canadian workers are already covered by paid sick leave benefits.

<sup>40</sup> [BC-Sick-Days-Cost-Report.pdf](#); p.5

The “Women in Prince Edward Island Statistical Review Fourth Edition (2020)” illustrates how access to sick benefits and other types of personal leave has more of an impact on women than men when it noted that “In 2020, females in PEI lost an average of 15 days per worker, compared to 14.3 days for females nationally. Males in PEI lost an average of 9.2 days per worker, which is on par with the national average for males . . . Females working full-time lost more hours of work due to illness or disability. Although this table (data) does not include additional time spent doing unpaid work such as providing care to children, vulnerable adults, and seniors, it does show that females lost more hours of work due to personal and family reasons than males.”<sup>41</sup>

There were also suggestions to remove requirements for medical certificates (‘sick notes’) citing the *Canadian Medical Association’s (CMA) 2018 presentation to Ontario’s Standing Committee on Finance and Economic Affairs* in which they stated the following concerns regarding the administrative burden and associated pressure on the healthcare system as well as the possibility it would disincentivize employees from staying home and thereby increase the risk of spreading viruses with coworkers and clients: “In addition to adding a physical strain on patients who are ill, the requirement for employees who are ill to get a sick note, may also contribute to the spread of viruses and infection. Allowing employers to require sick notes may also contribute to the spread of illness as employees may choose to forego the personal financial impact, and difficulty to secure an appointment, and simply go to work sick.”<sup>42</sup>

#### **Domestic Violence, Intimate Partner Violence or Sexual Violence Leaves - Section 22.4**

There was positive feedback regarding this provision and its associated regulations, as well as a suggestion to increase the benefit from three to five days paid leave and encouragement to continue being a leader with respect to respectful workplaces education and training.

#### **Bereavement Leave - Section 23.**

As mentioned in Definitions - Section 1. above, the references to “immediate family” and “extended family” do not account for less “traditional” family compositions and one submission pointed out that extended family includes an aunt and uncle, but not a niece and nephew.

#### **Unpaid Leave for Reservists - Section 23.1**

There was a suggestion to amend this section and join five other provincial jurisdictions (i.e., AB/ MB/NS/ON/SK) who have brought their employment standards in line with new *Canada Labour Code* provisions and updated their reservists’ military leave provisions in the interest of moving to one national standard. The submission indicated that “PEI is home to more than 250 reservists, i.e., part-time sailors, soldiers and aviators . . . (and) given the value that reservists’ military service represents for civilian employers and communities, it is important to optimize conditions for them to fulfil military commitments. At the same time, reservists’ civilian employers deserve clarity and certainty when they grant military leave.”

<sup>41</sup> [women\\_in\\_pei\\_a\\_statistical\\_review\\_2020.pdf\(princeedwardisland.ca\)](#); p. 45

<sup>42</sup> [MAINTAINING ONTARIO’S LEADERSHIP ON PROHIBITING THE USE OF SICK NOTES FOR SHORT MEDICAL LEAVES - BR2019-03.pdf\(cma.ca\)](#); (p.4)

The proposed changes would specify that leave for training would apply to “military skills training” and the minimum civilian-employment period before provisions become applicable, would decrease from six months to three; they would limit permissible military leave to a total of not more than 24 months in a 60-month period, with exceptions permitted for national emergencies; extend the period an employer can defer the return-to-work of a reservist-employee, from two weeks to four; and, include protection against discrimination, such that no employer could refuse to hire a potential employee because they are a member of the reserve force.

#### **Sexual Harassment - Section 24.**

Given the new (2020) *Occupational Health and Safety Act* Workplace Harassment Regulations there was discussion regarding the feasibility of removing this provision from the *Employment Standards Act*. The current provisions simply define sexual harassment, state that employees are entitled to employment free of sexual harassment, require employers to issue a policy statement concerning sexual harassment, and direct employees to the *Human Rights Act* for remedy. Although these are beneficial provisions, the Occupational Health and Safety Regulations, along with the *Human Rights Act*, are more comprehensive in their definition of workplace harassment, detailing worker and employer responsibilities, and providing investigative and remedial processes.

#### **Notice of Termination - Section 29.**

This provision ensures employees are given advance warning of termination of employment or pay in lieu of notice so they can prepare accordingly and plan for other employment. This obligation does not apply when an employer has just cause or when dealing with the exceptions outlined in subsection (2). There was one suggestion to define and possibly codify the criteria for an employer to establish “just cause” to terminate an employee.

There were stakeholder suggestions to reduce the eligibility requirement from six to three months of continuous employment with an employer, or to require one weeks notice after three but less than six months of continuous employment. Another stakeholder proposed to maintain the status quo and noted that employers require those six months to properly assess the suitability of employees.

As of May 2022, PEI and NB are the only provinces with **no notice** requirements until six-months of continuous employment whereas six other provinces require notice after three months, Manitoba after thirty (30) days, and Saskatchewan thirteen (13) weeks. Furthermore, PEI and NB require **two weeks notice** after six months of employment with five provinces after one year and three others after two years. The other notices of termination thresholds continue to vary as they progress up to a maximum of eight weeks notice.

## Notice of Termination Jurisdictional Scan – updated May 2022

PROVINCE:	AB	BC	ON	QC	MB	SK	NS	NB	NL	PE
<b>No notice</b>	3mo	3mo	3mo	3mo	30 days	13wks	3mo	6mo	3mo	<b>6 mo</b>
<b>1 week</b>	3mo - 2yr	3mo - 12mo	3mo - 1yr	3mo - 1yr	30 days - 1yr	13wks - < 1yr	3mo - 2yr		3mo - 2yr	
<b>2 weeks</b>	2yr - 4yr	12mo - 3yr	1yr - 3yr	1yr - 5yr	1yr - 3yr	1yr - 3yr	2yr - 5yr	6mo - 5yr	2yr - 5yr	<b>6mo - 5yr</b>
<b>3 weeks</b>		3yr - 4yr	3yr - 4yr						5yr - 10yr	-
<b>4 weeks</b>	4 - 6yr	4 - 5yr	4 - 5yr	5 - 10yr	3 - 5yr	3 - 5 yr	5 - 10yr	> 5yr	10 - 15yr	<b>5 - 10 yr</b>
<b>5 weeks</b>	6yr - 8yr	5yr - 6yr	5yr - 6yr						> 15yr	
<b>6 weeks</b>	8yr - 10yr	6yr - 7yr	6yr - 7yr		5yr - 10yr	5yr - 10 yr				<b>10 - 15 yr</b>
<b>7 weeks</b>		7yr - 8yr	7yr - 8yr							
<b>8 weeks</b>	> 10yr	> 8yr	> 8yr	> 10yr	> 10yr	> 10yr	> 10yr			<b>&gt; 15 yr</b>

### Starting point for notice being required:

Amount of Notice	Length of Employment Required	Provinces
<b>1 week</b>	Three months	AB, BC, ON, QC, NS, NL, SK (expressed in weeks)
	Six months	NB, PE
	Thirty days	MB

There were proposals to consider adding notice rules for group terminations (e.g., 50 or more employees within a prescribed timeframe) including the requirement to also notify the Minister responsible as exists in other jurisdictions.

The following proposals were also made with respect to notice of termination requirements: to eliminate notice requirements for employees or, if it remains, consider consequences for noncompliance; to distinguish between termination and lay-off while also considering seasonally employed workers (rehired in successive seasons); to consider language dealing with constructive dismissal<sup>43</sup>; clarification that an employer cannot 'make' an employee take paid vacation during the notice period; to reconsider the wording "... laid off for any reason beyond the control of the employer ..." in subsection (2)(d) to help clarify that it is not intended to apply to more predictable operational problems or business failures; and, if there are amendments to the notice periods "they should be on a go forward basis".

<sup>43</sup> "A constructive dismissal may occur when an employer makes a significant change to a fundamental term or condition of an employee's employment without the employee's actual or implied consent. The employee would have to resign in response to the change within a reasonable period of time in order for the employer's actions to be considered a termination of employment for purposes of the ESA ... Constructive dismissal is a complex and difficult subject." [Termination of employment | Your guide to the Employment Standards Act | ontario.ca](#); Published: November 22, 2017; Updated: June 15, 2022

### **Complaints and Enforcement - Section 30.**

There was some general commentary on the limitations of a complaint-based system and the benefits of a more strategic approach to enforcement and compliance. One noted drawback was the potential hesitation of vulnerable or precariously employed workers coming forward to file a complaint against their employer. Examples of a more proactive approach might include accessible education-based approaches, collecting and analyzing data to identify priority areas for non-compliance, and the capacity to conduct audits and inspections.

There was a suggestion that an employee's and employer's respective complaint and appeal processes should be more aligned in terminology and filing requirements and that the employer's appeal timeline should be increased from ten to thirty days to allow sufficient time "to understand the order and assess the prospect of an appeal". Finally, there was a suggestion to look at language within Part 7 - Investigations, Complaints and Determinations of the *PEI Temporary Foreign Worker Protection Act* when updating the Complaints and Enforcement provisions of the *Employment Standards Act* and especially s. 34.<sup>44</sup> which addresses confidentiality for complainants (employees filing a complaint).

### **Offences and Penalties - Section 38.**

Stakeholders proposed changes to provide the *Branch* with powers to encourage compliance beyond just making an employee "whole", that includes administrative penalties for failure to comply with the Acts and/or the ability to issue tickets for offences.

### **General (Posting Orders) - Section 39.1**

A 2019 interjurisdictional scan revealed that every other jurisdiction publishes decisions of their respective employment standards ruling bodies and that PEI's *Board* is pursuing the same. Along with posting orders, there was some discussion on the feasibility of also requiring employers to post *Employment Standards Act* and *Youth Employment Act* information sheets.

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<sup>44</sup> TFWPA S. 34. "Where complainant requests confidentiality (1) Where requested in writing by a complainant, an inspector shall not disclose any identifying information about the complainant unless (a) the disclosure is necessary for the purposes of a proceeding under this Act; or (b) the inspector considers the disclosure is in the public interest."



## **Youth Employment Act**

There was encouragement to maintain a standalone Act to help ensure safe and age-appropriate terms and conditions of employment for youth, i.e., persons under the age of sixteen. It was also suggested to explore the feasibility of including a minimum age of entry to the workforce and if it was enacted, whether there should be a mechanism to assess and provide for exemptions, e.g., a theatre or film production. Stakeholder submissions also included the following proposals:

### **Application of the Act - Section 2.**

To explore whether the exemption of “an enterprise in which only members of the employer’s family are employed” should remain in place recognizing that it could end up with an employer not being subject to rules limiting hours of work and employment in the construction industry.

### **Inspection – Section 7.**

Review s. 7.(2) to ensure it is aligned with s. 44 of the *Occupational Health and Safety Act* and broaden the potential dangers to young persons to include other industries and hazards.

### **Obligations of the employer - Section 8**

Ensure proper translation for youth where English is an additional language and clarify whether the role for enforcing s. 8 falls to the Inspector under the *Employment Standards Act* or an Occupational Health and Safety Officer under the *Occupational Health and Safety Act*.

### **Offence - Sections 9.**

Consider increasing the fine amounts.

## **VII. OTHER CONSIDERATIONS**

This section expounds on some of the issues and concepts raised by stakeholders, introduces items to consider for inclusion to the *Employment Standards Act*, and takes a brief look at the role and work of the *Branch*.

### **Telework and the Right to Disconnect**

A couple of stakeholders referenced the emerging practice of *telework*, whose use accelerated through the COVID-19 pandemic, and the concept of an employee’s *right to disconnect*. The submissions did not identify specific challenges or propose changes to the Acts but noted the potential impact on provisions such as hours of work, overtime, working conditions, and employees on standby or on-call.



In Statistics Canada's "Working from home: Productivity and preferences"<sup>45</sup> report, the authors noted the increase in telework and examined the related issues of productivity and hours of work when they wrote, "At the beginning of 2021, 32% of Canadian employees aged 15 to 69 worked most of their hours from home, compared with only 4% in 2016. . . Of all the new teleworkers<sup>46</sup>, 90% reported being at least as productive of which 32% reported being more productive." The study further revealed that ". . . a large proportion (48%) of the employees who report doing more work per hour also report working longer hours per day than they did in the past. . . Overall, 35% of all new teleworkers reported working longer hours per day while only 3% reported working shorter hours."

Looking forward, the "Working from home: Productivity and preferences" report observed that employees' interests in working from home appear strong as eighty percent (80%) of new telework employees ". . . indicated that they would like to work at least half of their hours from home once the pandemic is over<sup>47</sup>." The February 2022, "Final Report of the Right to Disconnect Advisory Committee"<sup>48</sup> similarly spoke to employees' satisfaction with telework arrangements while also recognizing one of the potential problems when noting, ". . . 'switching off' at the end of the day has been the most reported concern." (p.9) This sentiment and the fact that technologies like smart phones and VPN have made employees continuously available to their colleagues and employers has given rise to a relatively new notion of the *right to disconnect* which was generally defined by the Committee as ". . . the concept that workers should be able to disconnect from workplace communications channels outside of working hours." (p.9)

In response to this relatively new phenomenon and its impact on employees and the workplace, a provision within the federal Minister of Labour's 2019 Mandate letter under the subheading, "Improve labour protections in the *Canada Labour Code*" included the commitment to "co-develop new provisions with employers and labour groups that give federally regulated workers the 'right to disconnect.'<sup>49</sup> As a result, a joint committee comprised of federally regulated employers, unions, and other non governmental organizations engaged in a consultation process and developed a series of recommendations outlined within the February 2022, "Final Report of the Right to Disconnect Advisory Committee". As noted in their Executive Summary, "Fundamentally, there was substantial divergence on how the government should proceed." (p. 7)

45 Tahsin Mehdi and René Morissette; April 1, 2021; Catalogue no. 45280001; [Working from home: Productivity and preferences \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/45280001/article/00001)

46 New teleworker: employees aged 15 to 64 who usually worked outside the home prior to the COVID-19 pandemic but worked most of their hours at home during the week of February 14 to 20, 2021.

47 This percentage remains unchanged when attention is restricted to full-time employees, who represent 96% of new teleworkers.

48 [right-to-disconnect-en.pdf \(canada.ca\)](https://www150.statcan.gc.ca/n1/pub/45280001/article/00001)

49 [ARCHIVED - Minister of Labour Mandate Letter \(pm.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/45280001/article/00001)

In brief, the unions and NGOs primary recommendations were that “The Government should adopt a robust, legislative requirement for workplaces to establish an enforceable right to disconnect policy . . . (and this) . . . should be accompanied by a legislative definition of deemed work, since the two issues are related.” While Employers recommended, “The Government should not adopt a legislative or regulatory requirement related to the right to disconnect but encourage parties to develop policies to ensure proper work-life balance for employees . . . (and that) . . . Deemed work<sup>50</sup> is a separate issue from right to disconnect and it should be addressed through its own consultative process.” (p. 8)

As part of their discussions on a definition of deemed work, the Committee noted that there are three provinces with a definition of deemed work: “. . . in Quebec, an employee is deemed to be at work in the following situations: while available to the employer at the place of employment and required to wait for work to be assigned; during the break periods granted by the employer; when travel is required by the employer; and during any trial period or training required by the employer; in Manitoba, “hours of work” are defined as the hours or parts of hours during which an employee performs work for an employer. It includes hours during which an employee is required by the employer to be present and available to work; in Saskatchewan, an employer is required to pay an employee for each hour or part of an hour in which the employee is required or permitted to work or to be at the employer’s disposal.” (p. 20-21) They further noted that “this definition could be similar to that in place in Quebec. It could ensure that situations like waiting for work to be assigned (on-call/standby) and monitoring communications at the direction of the employer is considered work.” (p.21)

Ontario was the first province in Canada to enact *right to disconnect* law. The *Working for Workers Act, 2021* amended the *Employment Standards Act 2000* in part by adding new Part VII.0.1 Written Policy on Disconnecting from Work which requires “. . . employers with 25 or more employees to ensure it has a written policy in place for all employees with respect to disconnecting from work that includes the date the policy was prepared and the date any changes were made to the policy.” The Act defines “disconnecting from work” as not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work.”<sup>51</sup>

<sup>50</sup> Determining what it means to be at work (what is working time and what is not)

<sup>51</sup> [Working for Workers Act, 2021, S.O. 2021, c. 35 - Bill 27 \(ontario.ca\)](#)

## Gender Wage Gap

Some stakeholders raised the gender wage gap, equal pay and pay equity. There was a request to establish pay equity within the private sector<sup>52</sup>, equal pay for work of equal value wording within the *Employment Standards Act*, and language prohibiting wage discrimination based on sex, in keeping with Section 7 of the *PEI Human Rights Act*. It was noted that both New Brunswick and Ontario have equal pay for “substantially the same work” provisions within their employment standards legislation.

The *Pay Equity Office of Ontario* uses the following language to distinguish between their definitions of pay equity and equal pay for work of equal value: “Pay equity is equal pay for work of equal value (and) compares jobs usually done by women with different jobs usually (traditionally) done by men.” Whereas “Equal pay for equal work addresses situations in which men and women do the same work (and) require that men and women receive equal pay when doing the same job or substantially the same job such as two cooks or two machine operators on the same line.” They go on to say, “Pay equity compares the value and pay of different jobs, such as nurse and electrician (and) equal pay compares the pay of similar jobs.”<sup>53</sup>

The Ontario *Employment Standards Act* Policy and Interpretation Manual notes that, “Pay equity is different from equal pay in that the pay equity legislation compares wage rates of female job classes to male job classes to ensure that women performing jobs that are different from but of equal value to jobs performed by men will receive equal pay. Section 42 of the *Employment Standards Act* 2000, on the other hand, requires that women performing substantially the same job as men, and vice versa, receive equal pay.”<sup>54</sup>

“The Women in PEI Statistical Review Fourth Edition (2020)”<sup>55</sup> states that, “The gender wage gap compares wages earned by females and males. A common method for calculating the gender wage gap is to compare the difference in full-time and full-year wages of females and males and noting discrepancies. A comparison of Statistics Canada Census data shows that females working full-time (and full-year) in PEI averaged \$46,855, or 84% of male’s average income of \$55,726. During this same period, females in Canada who worked full-time (and full-year) averaged \$55,510, or 75% of male’s average income of \$74,289. The gender wage gap in PEI is smaller than any other province in Atlantic Canada<sup>56</sup>.” (p. 49) In 2021 the national hourly average gender wage gap for full-time employees stood at 90% and Prince Edward Island was once again lowest of all provinces at 102%.<sup>57</sup>

52 The PEI Pay Equity Act applies to public sector employers and employees

53 [Pay Equity v. Equal Pay \(gov.on.ca\)](http://gov.on.ca)

54 [Part XII - Equal pay for equal work | Employment Standards Act Policy and Interpretation Manual | ontario.ca](#)

55 [women\\_in\\_pei\\_a\\_statistical\\_review\\_2020.pdf](#)

56 NF: 72% NS: 77% NB: 62%

57 Statistics Canada. [Table 14-10-0340-02 Average and median gender wage ratio, annual](#)

## Gig Economy

Statistics Canada's 2019 research paper, "Measuring the Gig Economy in Canada Using Administrative Data" indicates "The share of gig workers among all workers rose from 5.5% in 2005 to 8.2% in 2016. Some of this increase coincided with the introduction and proliferation of online platforms. Gig workers are usually not employed on a long-term basis by a single firm; instead, they enter into various contracts with firms or individuals (task requesters) to complete a specific task or to work for a specific period of time for which they are paid a negotiated sum. This includes independent contractors or freelancers with particular qualifications and on-demand workers hired for jobs mediated through the growing number of online platforms."<sup>58</sup>

## Precarious Employment

The Canadian Centre for Occupational Health and Safety OSH *Answer Fact Sheets*<sup>59</sup> define standard employment "as a situation where a worker is employed by one employer on a full-time, permanent basis, receiving decent wages and benefits, and has access to and effective protection from regulatory agencies."<sup>60</sup> While "Precarious work (also referred to as non-standard employment) is described as any deviation from standard employment and is characterized as being temporary or casual in nature, lacking benefits, lacking in certain legal protections, and usually associated with low income." They go on to say that "Precarious employment describes work experiences that are associated with instability, lack of protection, and social-economic vulnerability."

The *Fact Sheets* also cite the Law Commission of Ontario<sup>61</sup> which in its 2012 "Vulnerable Workers and Precarious Work Final Report"<sup>62</sup> noted that "Although anyone may be precariously employed, precarity is more likely to affect workers in "already marginalized social locations".<sup>63</sup> This includes women, single parents (who are disproportionately women), racialized groups, new immigrants, temporary foreign workers, Aboriginal persons, persons with disabilities, older adults and youth." and the Poverty and Employment Precarity in Southern Ontario (PEPSO) report<sup>64</sup> which ". . . notes that precarious employment affects community participation, creates social isolation, and often leads to less involvement in democratic processes such as voting."

The Library of Parliament Hill Notes article entitled "Precarious Employment in Canada: An Overview"<sup>65</sup> notes that "According to the International Labour Organization, precarious employment refers to an inadequacy

<sup>58</sup> Sung-Hee Jeon, Hujun Liu and Yuri Ostrovsky; [Measuring the Gig Economy in Canada Using Administrative Data \(statcan.gc.ca\)](https://www.statcan.gc.ca/eng/1130017/2019001/00001-eng); Date modified: 2019-12-16

<sup>59</sup> [Precarious Employment and Vulnerable Workers: OSH Answers \(ccohs.ca\)](https://www.ccohs.ca/osh/answerfact/); Date modified: 2022-07-07

<sup>60</sup> From: Vosko, L. (2006) Precarious Employment

<sup>61</sup> [Executive Summary – LCO-CDO](https://www.lco-cdo.org/)

<sup>62</sup> [Layout 1 \(lco-cdo.org\)](https://www.lco-cdo.org/)

<sup>63</sup> Fudge, Tucker & Vosko, "The Legal Concept of Employment", note 68, 7. "The concept of 'social location' has been developed to specify the ways in which political and economic conditions interact with class, ethnicity, culture, and sexual orientation to shape the meanings and strategies of working men and women":

<sup>64</sup> [Precarious Employment and Vulnerable Workers: OSH Answers \(ccohs.ca\)](https://www.ccohs.ca/osh/answerfact/)

<sup>65</sup> [Precarious Employment in Canada: An Overview - HillNotes](https://www.hillnotes.ca/2019/05/21/precarioust-work-in-canada/)

of rights and protection at work. This can apply to informal work, but also to several types of formal work, including subcontracting, temporary contracts, interim work, certain types of self-employment and involuntary part-time work. These types of employment are more precarious because they are associated with reduced financial security stemming from lower wages, less access to benefits such as private pension plans and complementary health insurance, and greater uncertainty about future employment income.<sup>66</sup>

PEI's primary industries (i.e., agriculture, fisheries, and tourism) rely on seasonal employment which by its nature is often non-standard or precarious employment. A 2007 Statistics Canada Labour Force Survey<sup>67</sup> indicated that about 1 in 10 employees in Prince Edward Island (10.3%) and Newfoundland and Labrador (9.4%) were seasonal workers in 2007, the highest rate of all provinces. New Brunswick and Nova Scotia followed at 5.9% and 5.5%, respectively. *Indeed's Career Guide*<sup>68</sup> defines seasonal work as, ". . . temporary employment that recurs around the same time every year. Businesses that primarily have more customers during specific seasons hire seasonal employees for extra help during their busiest times. Other seasonal jobs require warm or cold weather, so companies shut down in the slow season."

### Items to Consider for Inclusion in the *Employment Standards Act*

**Non-compete Agreements:** Ontario became the first jurisdiction in Canada under its employment standards legislation to prohibit non-competition clauses in agreements with employees on or after October 25, 2021, subject to exemptions for employees in executive positions and certain circumstances involving the sale of a business. Ontario's *Employment Standards Act* guide<sup>69</sup> defines a non-compete agreement "as an agreement, or any part of an agreement, between an employer and employee that prohibits the employee from engaging in any business, work, occupation, profession, project or other activity that is in competition with the employer's business, after the employment relationship between the employee and the employer ends."

According to an October 25, 2021, press release, the purpose of this statutory prohibition is to "help workers in Ontario advance their careers and earn more money" and "give the province a competitive advantage in attracting global talent", while also ensuring that employer's will "still be able to protect their intellectual property through narrower clauses."<sup>70</sup>

66 Organisation for Economic Co-operation and Development, *In It Together: Why Less Inequality Benefits All*, (May 2015)

67 [Seasonal workers, by province \(statcan.gc.ca\)](https://www150.statcan.gc.ca/n1/pub/75-662-x/2008001/article/00001.htm)

68 [What Is Seasonal Work? Definition, How It Works, Types and How to Get a Seasonal Job | Indeed.com](https://www.indeed.com/career-advice/finding-a-job/seasonal-work)

69 [Non-compete agreements | Your guide to the Employment Standards Act | ontario.ca](https://www.ontario.ca/government/employment-standards-act)

70 [Ontario Creating a Better Future for Workers](https://www.ontario.ca/government/employment-standards-act)



In its article, “Non-compete agreements: Legal concerns for Canadian leaders”, *The Human Resources Director (HRD)* spoke with a Senior Law Clerk and Administrative Co-ordinator with an Ontario law firm who made the following comments regarding the impact of the new prohibitions “In the common law, non-compete clauses are typically not enforceable anyway,” he told *HRD*. “The law does not want contracts that restrict people’s abilities to do business or make a living. This is just taking that common law principle and making it part of the legislation. You can’t require somebody to agree that they won’t compete with you – but can make an employee agree that they won’t solicit away your employees or clients when they leave. And you can still make employees agree that they won’t disclose confidential business information when they leave. Naturally, when an employee is still under contract with a company, they’re duty bound not to compete or not to engage in any business that would be to the detriment of their employer.”<sup>71</sup>

Scheduling: Stakeholders suggested the need for language to address the terms and conditions of employment surrounding scheduling and shift work e.g., notice required to change schedules, rest periods, standby, posting/advance notice of schedules, changing shifts, etc.

Travel Time: To consider developing rules related to travel time to clarify when it forms part of hours of work, i.e., ‘deemed work’.

Block Training: Include a leave provision that covers block release training for individuals who work in the trades.

Longer-term Medical Leave: Further to the discussion on paid sick days, there was a suggestion to explore a new provision related to longer-term medical leave that offers job protection beyond sick leave.

Standby or On-call: There are no provisions dealing with employees on standby or performing on-call duties who may be required to respond to work related issues or attend work on short notice. There was discussion on whether employees should receive pay for being on call versus only when they are called in to work, and whether employees can refuse on-call duty.

Related Businesses: There is no provision that stipulates when two or more related employers/ businesses are to be treated as one employer for the purposes of the Act, e.g., ‘common employer doctrine’.

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<sup>71</sup> [Non-compete agreements: Legal concerns for Canadian leaders | HRD Canada \(hcamag.com\)](#)



## Employment Standards Branch

As mentioned, the *Branch* is one section of the Labour and Industrial Relations division of the Department of Economic Growth, Tourism and Culture. The Division's 2020-2021 Annual Report states that the mandate of the Division is to assist in providing stable and fair workplace environments for industry and labour through policy leadership. The Division provides administrative support to the Employment Standards Board and Labour Relations Board, and Workers Compensation Appeal Tribunal.

The *Branch* has one full-time dedicated employee, the Chief Employment Standards Officer (Inspector), with support from the Division's Director and Office Manager. The Officer's role is a blend of public education, regulatory inspection, and enforcement. The Division provides information to the public through telephone contact, office interviews, information seminars, routine inspections, and distribution of departmental literature.

The Annual Report outlines extensive *Branch* activities in the areas of education, investigation, and enforcement including managing approximately 9,000 inquiries, 101 formal complaints, the distribution of over 4,000 pieces of information<sup>72</sup>, visiting approximately 100 employers, carrying out two proactive inspections/audits and filed two formal Orders for non-payment of money owing to employees. Due to COVID restrictions, they were unable to provide their usual public outreach like the list of activities outlined in the 2018-2019 Annual Report, i.e., providing seventy (70) information sessions involving five hundred fifty (550) employers/employees; attending nine job fairs across the Island; setting up information booths at six locations across the Island, and visiting over two hundred seventy-five (275) individual employers.

Public education, outreach and, in this case, increasing the level of awareness regarding employee and employer rights and obligations is essential for any public service. As outlined in its annual reports, this is a key priority area for the Branch with considerable activity given the current human resources. If there was a desire to expand various aspects of public education (e.g., up-to-date online and accessible educational materials/guidelines) and its strategic approach to enforcement and compliance (e.g., additional proactive audits and inspections) there would likely need to be a concurrent analysis of the required human resources.

<sup>72</sup> Including the "2016 Guide to Employment Standards"; [guide\\_to\\_employment\\_standards.pdf \(princeedwardisland.ca\)](https://www.princeedwardisland.ca/guide_to_employment_standards.pdf)

# APPENDICES

## **TERMS OF REFERENCE**

The Honourable Matthew MacKay, Minister of Economic Growth, Tourism and Culture, as confirmed by the Lieutenant Governor in Council, has appointed a Panel to review the *Employment Standards Act* and its associated regulations.

### **1. Background**

- 1.1 The *Employment Standards Act (ESA)* and *Youth Employment Act (YEA)* were last reviewed over a decade ago (2006).
- 1.2 Since that time, the context of work, forms of employment relationships, social expectations for what is addressed by employers, the demographics of the workplace, and economic pressures have shifted and changed.
- 1.3 Over the past number of years, there have been several calls from interest groups, as well as recommendations made by the Employment Standards Board to government, to undertake a comprehensive review of the ESA.
- 1.4 A recommendation to complete a Comprehensive Review of the *ESA* was made in *Belonging and Thriving: A Poverty Reduction Action Plan for Prince Edward Island (2019-2024)*.

### **2. Mandate**

- 2.1 The mandate of the Panel is to conduct a comprehensive review of the Prince Edward Island *ESA* and its associated regulations, and the *YEA*, taking into account the developments noted in the background above and any other factors considered relevant.
- 2.2 The Panel is to make recommendations on legislative changes to the *ESA* and *YEA*, with a view to improving the effectiveness of the legislation.

### **3. Membership**

The Panel will consist of:

- 3.1 A neutral Chair, selected through RFP and retained by way of a Professional Service Agreement.
- 3.2 A member representing the views of employees, selected through EngagePEI.
- 3.3 A member representing the views of employers, selected through EngagePEI.

### **4. Responsibility**

- 4.1 The Panel will examine employment standards legislation in other Canadian jurisdictions for the purpose of identifying contrasts and comparisons with Prince Edward Island's legislation.
- 4.2 The Panel will be responsible for producing an Interim Report, to be used for public consultations, and a Final Report for the Minister.
- 4.3 The Panel will engage in stakeholder and public consultation, including but not limited to consultations with labour and employer organizations, government entities that deal with labour legislation, and any other relevant and appropriate interest groups. The stakeholder and public consultation will follow the timeline and process as set out below.
- 4.4 In conducting the review, the Panel must be mindful of certain factors:

- Existing agreements between the Atlantic Provinces on harmonization of certain employment standards matters.
- Any International Labour Organization (ILO) Conventions that have been ratified by the Province of Prince Edward Island.
- Elements of the *ESA* and *YEA* overlap with other areas of employment law, including matters which are in the jurisdiction of human rights and occupational health and safety. It is likely that participants in the consultation process will provide comments and feedback on these areas of employment law falling outside the scope of the *ESA*. The Panel is directed to take notice of comments on other areas of employment law and report on employment law issues falling outside the scope of the *ESA* in the Final Report.
- The Panel must follow the rules respecting the collection and use of personal information under the Prince Edward Island *Freedom of Information and Protection of Privacy Act*.
- The Panel should ensure that it includes gender and diversity analysis during the process.

## 5. Timeline and Process

5.1 The Review Panel is tasked with conducting the review in the following manner, using the time-lines as guidance:

<b>Stage 1</b>	Initial consultations (ensuring employer groups, employee groups, the Employment Standards Board, Labour and Industrial Relations Division staff, other government entities involved with employment matters, and academics have been engaged) and production of an Interim Report to advise Islanders of the range of issues that have been identified and the options for change that have been proposed.	12 months
<b>Stage 2</b>	A second round of consultations with stakeholders and the public, using the Interim Report as a guide to assist in the solicitation of feedback on the proposed options for change.	5 months
<b>Stage 3</b>	Production of the Final Report, with recommendations on changes that should be made to the <i>Employment Standards Act</i> and <i>Youth Employment Act</i> , to be provided to the Minister.	5 months

5.2 It will be permissible for the Review Panel to shorten the time-lines for completing any of the stages.

5.3 If additional time is required to complete any of the stages of the review, the Panel shall request an extension from the Minister.

5.4 The Panel will present the final, written report to the Minister responsible for the *ESA* and *YEA* at the end of Stage 3.

## 6. Administrative Resources

6.1 The Labour and Industrial Relations Division, of EGTC, will provide assistance with research and administrative requirements of the Panel. This will include:

- Compiling background materials for the Panel, such as legislation, reports and reviews related to employment standards.
- Assistance with meeting logistics, including scheduling meeting times, locations and presenters.

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## ***INTERIM REPORT***

Phase One:  
**Stakeholder Consultations and Feedback**

