

January 18, 2021

CONSULTATION DRAFT**TEMPORARY FOREIGN WORKER PROTECTION ACT****BILL NO.****2021**

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

PART 1 - INTERPRETATION**1. Definitions**

In this Act,

- (a) **“administrative penalty”** means a monetary penalty required to be paid under clause 38(1)(f);
- (b) **“board”** means the Employment Standards Board established under section 4 of the *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2;
- (c) **“certificate of registration”** means a valid certificate of registration issued under subsection 12(1);
- (d) **“director”** means the Director of Labour and Industrial Relations appointed under section 3(2) and, in relation to a function, duty or power that the director has delegated under section 68 of this Act to another person, “director” includes that other person;
- (e) **“family”**, in relation to a person who provides recruitment services, means
 - (i) a spouse, child, parent, guardian, sibling, grandchild or grandparent, or
 - (ii) any other prescribed person;
- (f) **“foreign national”** means a person who is not a Canadian citizen or permanent resident of Canada;
- (g) **“foreign worker”** means a foreign national who is an employee or seeking employment in the province;
- (h) **“foreign worker recruiter”** means a person who, for a fee or compensation, received directly or indirectly, provides recruitment services;
- (i) **“immigration services”** means services that assist a foreign national in immigrating to the province, including
 - (i) researching and advising on immigration opportunities, laws or processes,
 - (ii) preparing or assisting in the preparation, filing and presentation of the applications and documents related to immigration,
 - (iii) representing a foreign national to or before immigration authorities, and
 - (iv) providing or procuring settlement services;
- (j) **“inspector”** means an inspector appointed under section 3 of the *Employment Standards Act*;
- (k) **“licence”** means a valid licence issued under subsection 7(1) of this Act;

- (l) “**licensee**” means a person who holds a licence;
- (m) “**Minister**” means the Minister responsible for the *Employment Standards Act*;
- (n) “**recruitment services**” means services that assist a foreign national to secure employment in the province or assist an employer to secure employment in the province for a foreign national, including
 - (i) finding or attempting to find employment in the province for a foreign national,
 - (ii) assisting or advising an employer in the hiring of a foreign national,
 - (iii) assisting or advising another person in taking the actions described in subclause (i) or (ii), and
 - (iv) referring a foreign national to another person who takes the actions described in subclause (i) or (ii);
- (o) “**registered employer**” means an employer who holds a certificate of registration;
- (p) “**settlement services**” means services to assist a foreign national in adapting to the province’s society or economy or in obtaining access to social, economic, government or community programs and services.

2. Requirements of this Act cannot be waived

An agreement to waive any of the requirements of this Act and the regulations has no effect.

3. Minister’s responsibility

- (1) The Minister is responsible for the administration of this Act.

Appointment of director

- (2) The Minister may appoint a person as the Director of Labour and Industrial Relations, who shall act under the instructions of the Minister and have general supervision over all matters relating to the administration of this Act.

Powers of inspector

- (3) The Director has the powers of an inspector for the purposes of this Act and the regulations.

PART 2 - LICENCES FOR FOREIGN WORKER RECRUITERS

4. Licence required

- (1) Subject to subsection (2), a person shall not provide recruitment services or act as or purport to be a foreign worker recruiter unless the person holds a licence as a foreign worker recruiter.

Exceptions

- (2) Subsection (1) does not apply to a person who
 - (a) in relation to providing recruitment services, does only the following:
 - (i) recruits or engages in activities to find foreign nationals for employment with the person’s own business or for employment with the person’s employer,
 - (ii) provides recruitment services for a foreign national who is a member of the person’s family,

- (iii) acts on behalf of the University of Prince Edward Island, Holland College or College de l'Ile,
 - (iv) acts on behalf of the government of Canada, the government of a province, the governing body of a first nation or a municipality or the government of a jurisdiction outside Canada; or
- (b) is in a prescribed class of persons.

5. Licensee shall be an individual

Only an individual is eligible to be issued a licence as a foreign worker recruiter.

6. Application for licence

- (1) An applicant for a licence as a foreign worker recruiter shall
- (a) submit to the director, in the form and manner approved by the director, an application that includes
 - (i) the name of the applicant,
 - (ii) if applicable, the business name under which the applicant operates or will operate if issued the licence, and
 - (iii) the business address, telephone number, email address and, if any, fax number of the applicant;
 - (b) as part of the application, and in order to ensure compliance with this Act and the regulations, file security with the director in accordance with the regulations;
 - (c) provide any information or materials the director may reasonably require to assess the application; and
 - (d) meet any application requirements specified in the regulations.

Disclosure of partners

- (2) A foreign worker recruiter shall disclose to the director the names and addresses of all the foreign worker recruiter's partners, affiliates or agents located or operating inside or outside the province
- (a) at the time the foreign worker recruiter applies for a licence; and
 - (b) at any time after the time referred to in clause (a) when there is a material change in the information disclosed.

Inquiries by director

- (3) The director may make inquiries into and conduct investigations of the character, financial history and competence of an applicant for a licence where the director considers it necessary to determine whether the applicant meets the requirements of this Act and the regulations.

7. Issuance or refusal of licence

- (1) On receipt of an application for a licence under section 6, the director may, where satisfied that the applicant has complied with this Act and the regulations, issue a licence to the applicant.

Reasons for refusal

- (2) The director may refuse to issue a licence to the applicant where the director is satisfied of any of the following:
- (a) the applicant has not complied with this Act or the regulations;

- (b) the applicant has provided incomplete, false, misleading or inaccurate information respecting the application;
- (c) the applicant has failed to meet any qualification or satisfy any requirement of this Act or the regulations;
- (d) having regard to the past conduct of the applicant, there are reasonable grounds to believe that the applicant will not act in accordance with the law, or with integrity, honesty or in the public interest, while carrying out the activities for which the licence is required;
- (e) the applicant is carrying on activities that are in contravention of this Act or the regulations or will be in contravention if the licence is granted.

Terms and conditions

- (3) The director may specify in a licence issued under subsection (1) any terms and conditions that the director considers appropriate.

Term of licence

- (4) A licence issued under subsection (1)
 - (a) is valid for a period of up to three years as specified by the director; and
 - (b) is not transferable.

Issuance as soon as practicable

- (5) Where the director decides to issue a licence to an applicant under subsection (1), the director shall, as soon as practicable, issue the licence to the applicant.

Copy of decision to applicant

- (6) Where the director makes a decision under subsection (3), the director shall, as soon as practicable, serve the applicant with a copy of the director's decision that includes the reasons for it.

8. Amendment, suspension or cancellation of licence

- (1) The director may amend, suspend or cancel a licence where
 - (a) the licensee consents; or
 - (b) the director is satisfied that
 - (i) the licensee has not complied with this Act or the regulations,
 - (ii) the licensee has provided the director with false, misleading or inaccurate information or has failed to provide any information the director required to be provided,
 - (iii) the licensee has failed to meet any qualification or satisfy any requirement of this Act or the regulations, or
 - (iv) having regard to the conduct of the licensee, there are reasonable grounds to believe that the licensee is not acting or will not act in accordance with the law, or with integrity, honesty or in the public interest, while carrying out the activities for which the licence is required.

Copy of decision to licensee

- (2) Where the director amends, suspends or cancels a licence under clause (1)(a), the director shall, as soon as practicable, serve the licensee with a copy of the director's decision under clause (1)(a) that includes the reasons for it.

9. Opportunity to be heard respecting actions in relation to licence

- (1) Before the director makes a decision under subsection 7(2) or clause 8(1)(b), the director shall serve the applicant or licensee, as applicable, with
- (a) written notice of the director's intended action and the reasons for that intended action; and
 - (b) an opportunity to make written representations to the director, within a period set by the director, as to why the intended action should not be taken.

Oral hearing not required

- (2) The director is not required to give an oral hearing to any person to whom a notice has been served under subsection (1) or (5).

Copy of decision to applicant

- (3) After considering the representations referred to in clause (1)(b), if any, the director shall, as soon as practicable, serve the applicant or licensee, as applicable, with a copy of the director's decision under subsection 7(2) that includes the reasons for the director's decision.

Action in public interest

- (4) Despite subsection (1) but subject to subsection (5), where the director considers that it is necessary to protect the public interest, the director may immediately amend, suspend or cancel a licence without giving the licensee an opportunity to be heard.

Notice following action

- (5) Where the director amends, suspends or cancels a licence under subsection (4), the director shall
- (a) serve, as soon as practicable, written notice to the licensee that the licence has been amended, suspended or cancelled; and
 - (b) give the licensee an opportunity to make written representations to the director within 20 business days after the date on which the licensee is served notice as to why the action of the director should not have been taken.

Copy of decision to licensee

- (6) After considering the representations referred to in clause (5)(b), if any, the director shall, as soon as practicable, serve the licensee with a copy of the director's decision under clause 8(1)(b) that includes the reasons for the director's decision.

10. Effect of suspension or cancellation of licence

- (1) Where the licensee's licence is suspended or cancelled under this Act, the licensee's rights and privileges under the licence,
- (a) in the case of a suspension, are removed for the period during which the licence is suspended; or
 - (b) in the case of a cancellation, are terminated.

Effect of suspension or cancellation on services provided

- (2) The suspension or cancellation of a licensee's licence does not affect the validity of any services provided by the licensee before the date on which the licensee's licence was suspended or cancelled.

PART 3 - CERTIFICATES OF REGISTRATION FOR EMPLOYERS OF FOREIGN NATIONALS

11. Certificate of registration required

- (1) Subject to subsection (2), an employer shall not recruit foreign nationals for employment, either directly or through the services of another person, unless the employer holds a certificate of registration.

Exception

- (2) Subsection (1) does not apply to a person who is in a class of employers specified in the regulations.

12. Application for certificate of registration

An applicant for a certificate of registration shall

- (a) submit to the director, in the form and manner approved by the director, an application that includes
- (i) the business name under which the applicant operates or will operate if issued the certificate of registration, and
 - (ii) the business address, telephone number, email address and, if any, fax number of the applicant;
- (b) provide any information or materials the director may reasonably require to assess the application; and
- (c) meet any application requirements specified in the regulations.

13. Issuance of certificate of registration

- (1) On receipt of an application for a certificate of registration under section 12, the director may, if satisfied that the applicant has complied with this Act and the regulations, issue a certificate of registration to the applicant.

Refusal to issue, reasons

- (2) The director may refuse to issue a certificate of registration to the applicant if the director is satisfied of any of the following:
- (a) the applicant has not complied with this Act or the regulations;
 - (b) the applicant has provided incomplete, false, misleading or inaccurate information respecting the application;
 - (c) the applicant has failed to meet any qualification or satisfy any requirement of this Act or the regulations;
 - (d) the applicant has failed to comply with any terms or conditions set out in an approval given by the Government of Canada for the applicant to recruit foreign workers;
 - (e) the applicant has failed to comply with applicable labour legislation;
 - (f) having regard to the past conduct of the applicant, there are reasonable grounds to believe that the applicant will not act in accordance with the law, or with integrity, honesty or in the public interest, while carrying out the activities for which the certificate of registration is required;
 - (g) the applicant is carrying on activities that are in contravention of this Act or the regulations or will be in contravention if the certificate of registration is issued.

Terms and conditions

- (3) The director may specify in a certificate of registration issued under subsection (1) any terms and conditions that the director considers appropriate.

Term of certificate of registration

- (4) A certificate of registration issued under subsection (1)
- (a) is valid for a period of up to 3 years as specified by the director; and
 - (b) is not transferable.

Issuance as soon as practicable

- (5) Where the director decides to issue a certificate of registration to an applicant under subsection (1), the director shall, as soon as practicable, issue the certificate of registration to the applicant.

Copy of decision to applicant

- (6) Where the director makes a decision under subsection (3), the director shall, as soon as practicable, serve the applicant with a copy of the director's decision that includes the reasons for it.

14. Amendment, suspension or cancellation of certificate of registration

- (1) The director may amend, suspend or cancel a certificate of registration where
- (a) the registered employer consents; or
 - (b) the director is satisfied that
 - (i) the registered employer has not complied with this Act or the regulations,
 - (ii) the registered employer has provided the director with false, misleading or inaccurate information or has failed to provide any information the director required to be provided,
 - (iii) the registered employer has failed to meet any qualification or satisfy any requirement of this Act or the regulations,
 - (iv) the registered employer has failed to comply with any terms or conditions set out in an approval given by the Government of Canada for the registered employer to recruit foreign workers or set out in the certificate of registration,
 - (v) the registered employer has failed to comply with applicable labour legislation, or
 - (vi) having regard to the conduct of the registered employer, there are reasonable grounds to believe that the registered employer is not acting or will not act in accordance with the law, or with integrity, honesty or in the public interest, while carrying out the activities for which the certificate of registration is required.

Copy of decision to registered employer

- (2) Where the director amends, suspends or cancels a certificate of registration under clause (1)(a), the director shall, as soon as practicable, serve the registered employer with a copy of the director's decision under clause (1)(a) that includes the reasons for the director's decision.

15. Opportunity to be heard respecting actions in relation to certificate of registration

- (1) Before the director makes a decision under subsection 13(2) or clause 14(1)(b), the director shall serve the applicant or registered employer, as applicable, with
- (a) written notice of the director's intended action and the reasons for that intended action; and
 - (b) an opportunity to make written representations to the director, within a period set by the director, as to why the intended action should not be taken.

Oral hearing not required

- (2) The director is not required to give an oral hearing to any person to whom a notice has been served under subsection (1) or (5).

Copy of decision to registered employer or applicant

- (3) After considering the representations referred to in clause (1)(b), if any, the director shall, as soon as practicable, serve the applicant or registered employer, as applicable, with a copy of the director's decision under subsection 13(2) or clause 14(1)(b) that includes the reasons for it.

Action in public interest

- (4) Despite subsection (1) but subject to subsection (5), where the director considers that it is necessary to protect the public interest, the director may immediately amend, suspend or cancel a certificate of registration without giving the registered employer an opportunity to be heard.

Notice following action

- (5) Where the director amends, suspends or cancels a certificate of registration under subsection (4), the director shall
- (a) serve, as soon as practicable, written notice to the registered employer that the certificate of registration has been amended, suspended or cancelled; and
 - (b) give the registered employer an opportunity to make written representations to the director within 20 business days after the date on which the registered employer is served notice as to why the action of the director should not have been taken.

Copy of decision to registered employer

- (6) After considering the representations referred to in subsection (5)(b), if any, the director shall, as soon as practicable, serve the registered employer with a copy of the director's decision under clause 14(1)(b) that includes the reasons for it.

16. Effect of suspension or cancellation of certificate of registration

- (1) Where the registered employer's certificate of registration is suspended or cancelled under this Act, the registered employer's rights and privileges under the certificate of registration,
- (a) in the case of a suspension, are removed for the period during which the certificate of registration is suspended; or
 - (b) in the case of a cancellation, are terminated.

Effect of suspension or cancellation on contracts

- (2) The suspension or cancellation of a registered employer's certificate of registration does not affect the validity of any contracts entered into by the registered employer before the date on which the certificate of registration was suspended or cancelled.

PART 4 - RECONSIDERATIONS RESPECTING LICENCES AND CERTIFICATES OF REGISTRATION

17. Definition of “decision”

In this Part and section 72, “**decision**” means a decision by the director under any of the following provisions:

- (a) subsection 7(2) or (3);
- (b) clause 8(1)(b);
- (c) subsection 13(2) or (3);
- (d) clause 14(1)(b).

18. Service shall include information about reconsideration

A copy of a decision served on a person under any of the following provisions shall include notification that the person may request the director to reconsider the decision:

- (a) subsection 7(6);
- (b) subsection 8(2);
- (c) subsection 9(3) or (6);
- (d) subsection 13(6);
- (e) subsection 14(2);
- (f) subsection 15(3) or (6).

19. Initiating reconsideration

- (1) A person who is subject to a decision may request the director to reconsider the decision by filing a written request for reconsideration with the director not more than 30 days after the person is served with a copy of the decision under any of the provisions referred to in section 18.

Extension of time

- (2) The director may extend the time to file a request for reconsideration, whether or not the time to file the request for reconsideration under subsection (1) has expired, where the director is satisfied that
 - (a) special circumstances existed that precluded filing the request for reconsideration within the time required in subsection (1); and
 - (b) an injustice would otherwise result.

Requirements

- (3) A request for reconsideration shall
 - (a) be made in writing;
 - (b) identify the decision for which the reconsideration is requested;
 - (c) state why the decision should be changed;
 - (d) state the outcome requested;
 - (e) include the name, address and telephone number of the person requesting the reconsideration, and, if that person has an agent to act on the person’s behalf in respect of the reconsideration, include the full name of the agent and a telephone number at which the agent may be contacted during normal business hours;

- (f) include a mailing address, email address or fax number for service of any notices and of a copy of the director's decision in respect of the reconsideration; and
- (g) be signed by the person requesting the reconsideration or the person's agent.

20. Decision remains in effect

- (1) Despite the filing of a request for reconsideration under subsection 19(1), the director's decision that is subject to the reconsideration remains in effect until the outcome of the reconsideration.

Reconsideration of decision

- (2) On a reconsideration under this section, the director shall, after considering the information provided by the person requesting the reconsideration,
 - (a) rescind the director's decision;
 - (b) confirm the director's decision; or
 - (c) vary the director's decision.

Copy of decision to person requesting reconsideration

- (3) The director shall, as soon as practicable, serve on the person requesting the reconsideration a copy of the director's decision made under subsection (2) that includes the reasons for it.

Effect of rescission of refusal

- (4) Where the refusal to grant a licence or certificate of registration is rescinded, the director shall, as soon as practicable, issue the licence or certificate of registration.

Effect of rescission of suspension, etc.

- (5) Where the suspension or cancellation of a licence or certificate of registration is rescinded, the director shall, as soon as practicable, reinstate and, if necessary, reissue the licence or certificate of registration.

Effect of rescission of term or condition

- (6) Where the imposition of a condition or the amendment of a licence or certificate of registration is rescinded, the director shall, as soon as practicable, reissue the licence or certificate of registration with the condition removed or the amendment reversed.

Variation of director's decision

- (7) Where the director's decision is varied, the director shall, as soon as practicable,
 - (a) reissue the licence or certificate of registration with the varied decision incorporated, if necessary; or
 - (b) take other necessary actions to implement the varied decision.

PART 5 - FOREIGN WORKER RECRUITER AND EMPLOYER OBLIGATIONS

21. Prohibited practices

- (1) A foreign worker recruiter and an employer shall not do any of the following:
 - (a) produce or distribute false or misleading information relating to recruitment services, immigration, immigration services, employment, housing for foreign workers or the laws of the province or Canada;

- (b) take possession of or retain a foreign national's passport or other official documents;
- (c) misrepresent employment opportunities, including respecting a position, duties, length of employment, wages and benefits or other terms of employment;
- (d) threaten deportation or other action for which there is no lawful cause;
- (e) take action against or threaten to take action against a person for participating in an investigation or proceeding by any government or law enforcement agency or for making a complaint or inquiry to any government or law enforcement agency.

“Employer” clarified

- (2) In this section and sections 22, 24 and 27, “employer” includes registered employers and employers of foreign workers who are exempt under subsection 11(2) from the requirement to register under this Act.

22. Prohibition - fees and expenses for recruitment

- (1) A person shall not, directly or indirectly, charge any person other than an employer a fee or expense for recruitment services.

Prohibition - fees and expenses for employment

- (2) A foreign worker recruiter or an employer shall not, directly or indirectly, charge a fee or expense to a foreign worker for employment.

Contract term void

- (3) The term of a contract is void if it requires payment by
 - (a) any person, other than an employer, of a fee or expense referred to in subsection (1); or
 - (b) a foreign worker of a fee or expense referred to in subsection (2).

Recovery of fee or expense

- (4) A fee or expense paid by a person in contravention of subsection (1) or (2) may be recovered by the person in accordance with this Act or in any other manner authorized by law.

Prohibition - reduction in wages, etc.

- (5) An employer shall not reduce the wages of a foreign worker, or vary, reduce or eliminate any other benefit or term or condition of a foreign worker's employment, in order to recover the expense of recruiting the foreign worker.

Agreement void

- (6) Any agreement by the foreign worker to a variation, reduction or elimination as described in subsection (5) is void.

23. Disclosure of referral fee

Where a foreign worker recruiter is receiving a fee or compensation for referring a foreign national to another person, the recruiter shall clearly disclose that fact in writing to the foreign national.

24. Disclosure where foreign worker recruiter also providing immigration services

A foreign worker recruiter who provides recruitment services to an employer and immigration services to a foreign national who will be employed by that employer shall

- (a) disclose to both the employer and the foreign national
 - (i) that the recruiter is acting for both parties, and
 - (ii) the nature of the services the recruiter is providing to each party;
- (b) obtain the written consent of the employer and the foreign national to provide those services to both parties; and
- (c) have a signed contract that meets the requirements of section 27 with
 - (i) the employer, and
 - (ii) the foreign national.

25. Foreign worker recruiters liable for partners, affiliates or agents

A foreign worker recruiter shall ensure that partners, affiliates or agents of the foreign worker recruiter, who in partnership with or on behalf of the foreign worker recruiter provide recruitment services to a foreign worker, comply with this Act and the regulations.

26. Information about rights under this Act

- (1) A foreign worker recruiter shall make available or provide to each foreign national to whom the foreign worker recruiter provides recruitment services, in the form provided or approved by the director, information about the rights of foreign nationals and foreign workers under this Act.

Registered employer shall make information available

- (2) A registered employer shall make available or provide to each foreign worker who is employed by the registered employer, in the form provided or approved by the director,
 - (a) information about the rights of foreign nationals and foreign workers under this Act; and
 - (b) any other information specified in the regulations.

27. Contract requirements

In order to provide recruitment services to a foreign national or an employer, or to provide immigration services to a foreign national in the circumstances set out in section 23, a foreign worker recruiter shall enter into a contract with the foreign national or the employer that

- (a) is in writing;
- (b) is written in clear and unambiguous language;
- (c) states the services to be provided;
- (d) in the case of recruitment services provided to an employer, describes the fees and expenses to be charged to the employer and the services for each fee and expense charged;
- (e) in the case of immigration services provided to a foreign national, describes the fees and expenses to be charged to the foreign national and the services for each fee and expense charged;
- (f) contains any terms and conditions required by the director; and
- (g) contains any terms and conditions specified in the regulations.

28. Records to be retained by licensee, etc.

- (1) A licensee or former licensee shall retain all records relating to the recruitment services provided by the licensee or former licensee to a foreign national, including the following:
- (a) all contracts entered into by the licensee or former licensee with the foreign national;
 - (b) the name of, and each address provided by, the foreign national;
 - (c) a description of the recruitment services provided to the foreign national;
 - (d) the name of each employer to which the licensee or former licensee referred the foreign national and, if applicable, the name of each employer with whom the licensee or former licensee placed the foreign national;
 - (e) the fees and expenses the licensee or former licensee requested or received in relation to the foreign national.

Records to be retained by registered employer, etc.

- (2) A registered employer or former registered employer shall retain all records relating to the recruitment services received from a foreign worker recruiter and to the hiring of a foreign national, including the following:
- (a) all contracts entered into with the foreign worker recruiter;
 - (b) all fees and expenses the registered employer or former registered employer was requested to pay by the foreign worker recruiter or paid to the foreign worker recruiter;
 - (c) the name, address and work location of the foreign national;
 - (d) if applicable, the approval given by the Government of Canada for the registered employer or former registered employer to recruit foreign workers that is associated with the position the foreign national was hired into;
 - (e) all payroll records associated with the foreign national.

Retention period

- (3) Records referred to in subsections (1) and (2) shall
- (a) be retained for a period of at least 36 months after the date on which they were created;
 - (b) be made available for inspection by the director on the request of the director; and
 - (c) in respect of
 - (i) a licensee or registered employer, be kept at the principal place of business in the province of the licensee or registered employer, and
 - (ii) a former licensee or former registered employer, be kept in the province.

PART 6 - REGISTRY AND INFORMATION SHARING

29. Licensed foreign worker recruiter registry and registered employer registry

- (1) The director shall establish and maintain a registry respecting
- (a) foreign worker recruiters licensed under Part 2 that contains, for each licensee,
 - (i) the name of the licensee,
 - (ii) if applicable, the business name under which the licensee operates,
 - (iii) the business address, telephone number, email address and, if any, fax number of the licensee, and

- (iv) any other information specified in the regulations; and
- (b) employers registered under Part 3 that contains, for each registered employer,
 - (i) the business name under which the registered employer operates,
 - (ii) the business address, telephone number, email address and, if any, fax number of the registered employer, and
 - (iii) any other information specified in the regulations.

Publication of information

- (2) The director shall publish the information referred to in clause (1)(a) in any manner that the director considers appropriate to bring the information to the public's attention.

30. Information sharing

For the purposes of administering and enforcing this Act and the regulations, the director may provide information collected and obtained under this Act and the regulations, including personal information as defined in the *Freedom of Information and Protection of Privacy Act* R.S.P.E.I. 1988, Cap. F-15.01, to the following:

- (a) a public body, as defined in the *Freedom of Information and Protection of Privacy Act*;
- (b) a department or agency of the Government of Canada;
- (c) a department or agency of another province or territory of Canada;
- (d) a department or agency of another country or of a state within that country;
- (e) a police service;
- (f) any other person or body that governs or regulates the conduct of individuals who provide recruitment services to foreign nationals entering Canada;
- (g) any other persons or class of persons specified in the regulations.

PART 7 - INVESTIGATIONS, COMPLAINTS AND DETERMINATIONS

31. Definition of "complaint"

In this Part, "**complaint**" means a complaint made under subsection 33(1).

32. Investigations initiated by inspector

An inspector may at any time or for any reason

- (a) conduct an investigation to ensure compliance with this Act and the regulations, whether or not the inspector has received a complaint; and
- (b) stop or postpone the investigation.

33. Complaint and time limit

- (1) A person may complain to an inspector that any person has contravened one or more provisions of this Act.

Complaint in writing

- (2) A complaint shall be in writing and be delivered to an inspector within one year of the date of the alleged contravention.

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.

Application

- (2) Subsection (1) applies despite any provision of the *Freedom of Information and Protection of Privacy Act* other than subsection 53(3) of that Act.

35. Investigations initiated by complaint

- (1) Subject to subsection (2), an inspector shall investigate a complaint.

Authority to refuse, etc.

- (2) An inspector may refuse to investigate a complaint or may stop or postpone investigating a complaint where the inspector has reasonable grounds to believe that
 - (a) the complaint was not made within the time limit specified in subsection 33(2);
 - (b) this Act does not apply to the complaint;
 - (c) the complaint is frivolous, vexatious or trivial or is not made in good faith;
 - (d) there is not enough evidence to prove the complaint;
 - (e) a proceeding relating to the subject matter of the complaint has been commenced before a court, a tribunal, an arbitrator or a mediator; or
 - (f) a court, a tribunal or an arbitrator has made a decision or an award relating to the subject matter of the complaint.

36. Opportunity to respond

- (1) Where an investigation is conducted, an inspector shall make reasonable efforts to give a person under investigation an opportunity to respond.

Oral hearing not required

- (2) An inspector is not required to give an oral hearing to
 - (a) any person the inspector investigates under section 32 or 35; or
 - (b) any person in respect of whom the inspector issues an order or makes a determination.

37. Notice of contravention

Where an inspector is satisfied that a person has contravened a requirement of this Act or the regulations, the inspector may provide to the person a notice of contravention, in accordance with the regulations, that informs the person of the nature of the contravention, any action required to remedy the contravention and the amount of the administrative penalty the person may be required to pay.

38. Orders and determinations

- (1) Where satisfied that a person has contravened a requirement of this Act or the regulations, an inspector may order the person to do one or more of the following:
 - (a) comply with the requirement;

- (b) remedy or cease doing an act;
- (c) post notice, in a form and location specified by the inspector, respecting
 - (i) a determination, or
 - (ii) a requirement of, or information about, this Act or the regulations;
- (d) pay to the inspector in trust a fee or expense paid by or recovered from the person in contravention of this Act;
- (e) pay any costs incurred by the inspector in connection with inspections under section 45 related to investigation of the contravention;
- (f) pay an administrative penalty in accordance with the regulations.

Terms and conditions of order

- (2) The inspector may make an order under subsection (1) subject to any terms and conditions that the inspector considers appropriate.

Compliance required

- (3) A person on whom the inspector imposes an order under this section shall comply with that order.

Amount is debt due to Government

- (4) Where an inspector orders a person to pay costs referred to in clause (1)(e) or an administrative penalty, the amount ordered to be paid is a debt due to the Government and may be collected under this Act by the inspector.

Payment required

- (5) A person who is required to pay an amount owing under this section shall pay the amount whether or not the person
 - (a) has been convicted of an offence under this Act; or
 - (b) is also liable to pay a fine for an offence under section 75.

Dismissal where no contravention

- (6) Where, with respect to a complaint, the inspector is satisfied that the requirements of this Act and the regulations have not been contravened or a contravention has been remedied, the inspector shall dismiss the complaint.

39. Notification of determination or order

On making a determination or order under this Act, the inspector shall serve any person named in the determination or order with a copy of it that includes the following:

- (a) where a person is required by the order to pay fees, expenses, wages, compensation, interest, an administrative penalty or another amount, the amount to be paid and how it was calculated;
- (b) where a person is required by the order to pay an administrative penalty, the nature of the contravention and the date by which the administrative penalty shall be paid;
- (c) the time limit and process for appealing the order or determination to the board;
- (d) written reasons for the inspector's determination or order;
- (e) any requirements imposed under subsection 38(1) or (2), including any terms and conditions imposed under subsection 38(3).

40. No other proceedings

Once an order is made requiring payment of an amount, a person may commence another proceeding to recover the amount only if

- (a) the inspector has consented in writing; or
- (b) the inspector or the board has cancelled the determination.

41. Foreign worker recruiter shall not discriminate, etc.

(1) A foreign worker recruiter shall not

- (a) discriminate against or threaten to discriminate against a person with respect to recruitment services; or
- (b) intimidate or coerce a person to pay or provide a monetary or other penalty, or impose or threaten to impose a monetary or other penalty on a person,

because a complaint or investigation may be or has been made under this Act, an appeal or other action may be or has been taken under this Act or information may be or has been supplied under this Act.

Employer shall not refuse to employ, etc.

(2) An employer shall not

- (a) refuse to employ or refuse to continue to employ a person;
- (b) threaten to dismiss or otherwise threaten a person;
- (c) discriminate against or threaten to discriminate against a person with respect to employment or a condition of employment; or
- (d) intimidate or coerce a person to pay or provide a monetary or other penalty, or impose or threaten to impose a monetary or other penalty on a person,

because a complaint or investigation may be or has been made under this Act, an appeal or other action may be or has been taken under this Act or information may be or has been supplied under this Act.

“Employer” clarified

(3) In subsection (2), “employer” includes registered employers and employers of foreign workers who are exempt under subsection 11(2) from the requirement to register under this Act.

42. Power to compel persons to answer questions and order disclosure

(1) For the purposes of this Act, an inspector may make an order requiring a person to do either or both of the following:

- (a) attend, in person or by electronic means, before the inspector to answer questions on oath or affirmation, or in any other manner;
- (b) produce for the inspector a record or thing in the person's possession or control.

Court order for compliance

(2) The inspector may apply to the Supreme Court for an order

- (a) directing a person to comply with an order made under subsection (1); or
- (b) directing any officers and governing members of a person to cause the person to comply with an order made under subsection (1).

43. Contempt proceeding for uncooperative person

- (1) The failure or refusal of a person subject to an order under section 42 to do any of the following makes the person, on application by the inspector to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the court:
- (a) attend before the inspector;
 - (b) take an oath or make an affirmation;
 - (c) answer questions;
 - (d) produce records or things in the person's possession or control.

Consequences of failure to comply

- (2) The failure or refusal of a person subject to an order or direction under section 42 to comply with the order or direction makes the person, on application to the Supreme Court by the inspector, liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

No limitation on authority of court

- (3) Subsections (1) and (2) do not limit the conduct for which a finding of contempt may be made by the Supreme Court.

44. Protection from liability

- (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against an inspector, or a person acting on behalf of or under the direction of an inspector, because of anything done or omitted
- (a) in the performance or intended performance of any duty under this Act; or
 - (b) in the exercise or intended exercise of any power under this Act.

Protection does not apply to bad faith

- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted by that person in bad faith.

45. Entry and inspection powers

- (1) For the purposes of ensuring compliance with this Act and the regulations, an inspector may do one or more of the following:
- (a) enter during regular working hours any place, including any means of conveyance or transport, where
 - (i) work is or has been done or started by foreign workers,
 - (ii) an employer or a foreign worker recruiter carries on business or stores assets relating to that business,
 - (iii) a record required for the purposes of this Act is kept, or
 - (iv) anything to which this Act applies is taking place or has taken place;
 - (b) inspect, and question a person about, any work, material, appliance, machinery, equipment or other thing in the place;
 - (c) inspect any records that may be relevant to an investigation under this Part;
 - (d) on giving a receipt for a record inspected under clause (c), remove the record to make copies or extracts;

- (e) require a person to disclose, either orally or in writing, a matter required under this Act and require that the disclosure be under oath or affirmation;
- (f) require a person to produce, or to deliver to a place specified by the inspector, any records for inspection under clause (c).

Entry to private residence restricted

- (2) Despite subsection (1), an inspector may enter a place occupied as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 70.

“Employer” clarified

- (3) In subclause (1)(a)(ii), “employer” includes registered employers and employers of foreign workers who are exempt under subsection 11(2) from the requirement to register under this Act.

PART 8 - ENFORCEMENT

46. Lien for amounts owing under an order

- (1) Despite any other Act, an amount owing under an order made under clause 38(1)(d), or under an order of the board made in relation to an order under clause 38(1)(d), constitutes a lien, charge and secured debt in favour of the inspector in trust, dating from the date, as identified in the order, of the contravention that is the subject of the order, against all the real and personal property of the person named in the order, including money due or accruing due to the person from any source.

Priority

- (2) Despite any other Act, the amount of a lien, charge and secured debt referred to in subsection (1) is payable and enforceable in priority over all liens, judgments, charges and security interests or any other claims or rights, including the following:
 - (a) any claim or right of the Government, including, but not limited to, the claims and rights of the Workers Compensation Board;
 - (b) any claim or right arising through contract, account receivable, insurance claim or sale of goods;
 - (c) any security interest within the meaning of the *Personal Property Security Act*.

Priority not dependent on perfection, etc.

- (3) Subsection (2) applies regardless of when the lien, judgment, charge, security interest, claim or right was perfected within the meaning of the *Personal Property Security Act*, or was created or made.

Effect on mortgage, etc.

- (4) The lien, charge and secured debt referred to in subsection (1) has priority over a mortgage of, or debenture charging, land that was registered in a land title office before registration against that land of a certificate of judgment obtained on the filing, under section 50, of an order of an inspector or an order of the board, but only with respect to money advanced under the mortgage or debenture after the certificate of judgment was registered.

47. Payment of interest

- (1) Where a person owes an amount under an order of an inspector or an order of the board to another person, the person owing the amount shall pay interest at the prescribed rate on the amount owed from the date a complaint about the amount owed is delivered to an inspector to the date of payment.

Interest-free period

- (2) No interest accumulates under subsection (1) from the date an order is made under section 38 requiring payment of an amount until 38 days after that date.

Recovery of interest

- (3) This Part applies to the recovery of interest payable under subsection (1).

Period during which interest accrues

- (4) An amount collected under this Part, or deposited under section 64, earns interest at the prescribed rate, payable by the Minister charged with the administration of the *Financial Administration Act* R.S.P.E.I. 1988, Cap. F-9, from the date the amount is deposited in a savings institution to the date of payment to the person entitled.

Exception

- (5) Subsection (4) does not apply to a security filed under clause 6(1)(b) or a security provided under section 57.

48. Demand on third party

- (1) Where an inspector has reason to believe that a person is or is likely to become indebted to another who is required to pay money under an order of the inspector or an order of the board, the inspector may demand in writing that the person pay to the inspector, on account of the other's liability under the specified order, all or part of the money otherwise payable to the other person.

Requirement to pay

- (2) A person on whom a demand is made under this section shall, if indebted to the other person, pay to the inspector or to someone specified by the inspector the amount demanded, within 15 days after the later of
- (a) the date the demand is served; and
 - (b) the date the person named in the demand becomes indebted to the other person.

Receipt for money paid, effect

- (3) The inspector's receipt for money paid by a person in response to a demand is proof that the person's liability to the person required to pay under the specified order is discharged to the extent of the amount stated in the receipt.

Application to savings institution

- (4) For the purposes of this section, a savings institution is indebted to a person required to pay under an order of an inspector or an order of the board for money or a beneficial interest in money in the savings institution
- (a) on deposit to the credit of that person when a demand is served;
 - (b) held in trust by a depositor for that person when a demand is served; or
 - (c) deposited to the credit of that person after a demand is served.

Demand continues until satisfied, canceled

- (5) A demand made under this section continues in effect until it is satisfied or until it is cancelled by the inspector.

49. Failure to comply with demand

- (1) Where a person on whom a demand is made under section 48 does not comply with the demand,
- (a) the inspector may enforce recovery of the amount stated in the demand as if it were an amount owing under an order; and
 - (b) this Part applies to the recovery of that amount.

Requirement to produce information

- (2) Where a person on whom a demand is made under section 48 denies indebtedness to anyone required to pay under an order of the inspector or an order of the board, the inspector may require that person to produce information the inspector considers necessary to establish that there is no indebtedness.

50. Order may be filed

- (1) An inspector may at any time file in a Supreme Court registry an order of the inspector or an order of the board.

Filed inspector's order may be enforced as judgment

- (2) Unless varied, cancelled or suspended under section 65, 66 or 67, a filed order of an inspector is enforceable in the same manner as a judgment of the Supreme Court in favour of the inspector for the recovery of a debt in the amount stated in the order.

Filed order of board may be enforced as judgment

- (3) Unless varied or cancelled by the board under section 67, a filed order of the board is enforceable in the same manner as a judgment of the Supreme Court in favour of the inspector for the recovery of a debt in the amount stated in the order.

Withdrawal of order

- (4) Where an order filed under this section is varied, cancelled or suspended, the inspector shall promptly withdraw the order from filing in the Supreme Court registry.

51. Seizure of assets

- (1) Where a person is required to pay an amount under an order of an inspector or order of the board, an inspector may seize as much of the assets owned or possessed by the person, or used in or incidental to the person's business, as is necessary to satisfy
- (a) the amount stated in the order; and
 - (b) the costs of seizure.

Safekeeping of assets

- (2) The inspector shall safely keep the assets under seizure until the earlier of the following, as applicable:
- (a) the order of the inspector or the board is filed in court under section 50 and a writ of seizure and sale has been executed;
 - (b) the order is cancelled under section 66 or 67.

52. Release of assets

The inspector shall release an asset seized under section 51 where satisfied that the asset is owned by someone other than a person required to pay under an order of the inspector or an order of the board.

53. Wrongful removal of seized assets

- (1) A person shall not remove, damage or dispose of assets seized under section 51 except in accordance with this Act, a writ of seizure and sale or a court order.

Additional liability for contravention

- (2) In addition to any other penalty, a person who contravenes subsection (1) is liable for the amount owed by the person required to pay under the order of the inspector or order of the board.

Application of Part

- (3) This Part applies to the recovery of an amount a person is liable for under subsection (2).

54. Associated employers

Where an inspector considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,

- (a) the inspector may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one employer for the purposes of this Act; and
- (b) where the inspector does so, they are jointly and separately liable for payment of the amount stated in an order of the inspector or an order of the board, and this Part applies to the recovery of that amount from any or all of them.

55. Corporate officer's liability for fees, expenses

- (1) A person who was a director or officer of a corporation at the time the corporation contravened a requirement for which an order was made under clause 38(1)(d) is personally liable for the payment required by the director to be made by the corporation in relation to the contravention.

Application of Part

- (2) This Part applies to the recovery of an amount a person is liable for under subsection (1).

Definition, "director or officer of a corporation"

- (3) In this section, "**director or officer of a corporation**" includes a director or officer of a corporation, firm, syndicate or association that the director treats as one employer under section 54.

56. Where money is paid to inspector

- (1) The inspector shall pay to the Minister charged with the administration of the *Financial Administration Act* all money received by the inspector under this Act, including money to be held in trust for the persons named in an order of the inspector or an order of the board.

Attribution of money paid

- (2) Money received by the Minister of Finance in respect of an order of an inspector or an order of the board shall be attributed
- (a) first, to the amount required to be paid for which an order was made under clause 38(1)(d);
 - (b) second, to any other amount, other than interest or an administrative penalty, required to be paid by the order;
 - (c) third, to interest required to be paid by the order; and
 - (d) fourth, to an administrative penalty required to be paid by the order.

Payment of money received in trust

- (3) The Minister of Finance shall pay, according to the direction of the inspector, to the persons named in an order of the inspector or an order of the board, money received in trust for those persons.

Proportional attribution

- (4) Money attributed under clause (2)(a) shall be attributed proportionally among the persons to whom money is owing under the order according to the amount owing as shown on the order.

Priority of payment

- (5) The money attributed to a person under subsection (4) shall then be paid according to the following priority:
- (a) to a person who was assigned all or part of the attributed money by the person to whom the money was attributed;
 - (b) to the person to whom the money was attributed or, if deceased,
 - (i) to that person's estate, or
 - (ii) under the *Probate Act* R.S.P.E.I. 1988, Cap. P-21.

Proportional payment

- (6) Where there is not enough money to pay all the persons entitled under a clause of subsection (5), the money available under that clause shall be divided among them in proportion to the amount each of them is entitled to.

Application to payment of interest

- (7) Subsections (4) to (6) apply also to interest required to be paid on an amount owed to a person by an order of an inspector or an order of the board.

Money received may be applied to other claims

- (8) Despite subsections (5) and (7), where money is received for an amount owing to a person who owes money under another order of an inspector or under an order of the board, the inspector may direct that the amount received be used to pay the claims of anyone entitled to payment under that other order.

57. Security to ensure compliance

- (1) To ensure compliance with this Act or the regulations, the director may require a foreign worker recruiter or a registered employer who has at any time contravened section 22 to provide an irrevocable letter of credit or other security satisfactory to the director.

Application of requirement

- (2) Subsection (1) applies
- (a) in the case of a foreign worker recruiter, whether or not the foreign worker recruiter
 - (i) has filed a financial security under clause 6(1)(b),
 - (ii) is or was required to pay an administrative penalty, or
 - (iii) has been convicted of an offence under this Act; and
 - (b) in the case of an employer, whether or not the employer
 - (i) is or was required to pay an administrative penalty, or
 - (ii) has been convicted of an offence under this Act.

58. Compiling violators' names

- (1) The director may compile information relating to contraventions of this Act or the regulations, including information identifying the persons who, according to an order of an inspector or an order of the board, committed the contraventions.

Publication of violators' names

- (2) The director may
- (a) publish information compiled under subsection (1); and
 - (b) make that information available for public inspection during regular business hours at the office of the director.

59. Searching of records

On the written request and payment of the prescribed fee by a person, the director may

- (a) conduct a search of records maintained by the director for information, in respect of a person named in the request, related to contraventions of this Act or the regulations or complaints or investigations under this Act; and
- (b) provide that information to the person who made the request.

PART 9 - EMPLOYMENT STANDARDS BOARD

60. Application of the *Employment Standards Act*

Section 4 of the *Employment Standards Act* applies to the board acting under this Act.

61. Other powers of board

In addition to its powers under Part 10, the board may, respecting an appeal or reconsideration of the board, do one or more of the following:

- (a) extend the time period for requesting an appeal or applying for reconsideration even though the period has expired;
- (b) inspect any records that may be relevant to an appeal or a reconsideration;
- (c) on giving a receipt for a record examined under clause (b), remove the record to make copies or extracts;
- (d) require a person to disclose, either orally or in writing, a matter required under this Act and require the disclosure to be made under oath or affirmation;

- (e) order a person to produce, or to deliver to a place specified by the board, any records for inspection under clause (b).

62. Exclusive jurisdiction of board

- (1) The board has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal or reconsideration under Parts 9 and 10 and to make any order permitted to be made.

Decision, order final and conclusive, etc.

- (2) A decision or order of the board on a matter in respect of which the board has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

PART 10 - APPEALS**63. Grounds of appeal**

- (1) Subject to this section, a person served with an order or a determination of an inspector issued under section 38 may appeal the order or determination to the board on one or more of the following grounds:
 - (a) the inspector erred in law;
 - (b) the inspector failed to observe the principles of natural justice in making the order or determination;
 - (c) evidence has become available that was not available at the time the order or determination was being made.

Appeal of inspector's order or determination

- (2) A person who wishes to appeal, under subsection (1), an inspector's order or determination to the board shall, within the appeal period established under subsection (3),
 - (a) deliver to the office of the board
 - (i) a written request specifying the grounds on which the appeal under subsection (1) is based,
 - (ii) a copy of the inspector's order or determination, as applicable, and
 - (iii) a copy of the inspector's written reasons for the order or determination; and
 - (b) deliver a copy of the request under subclause (a)(i) to the inspector.

Appeal period

- (3) The appeal period referred to in subsection (2) is the period that starts on the date the order or determination was served under section 72 and ends 30 days after that date.

Provision of record to board

- (4) On receiving a copy of the request under clause (2)(b), the inspector shall provide the board with the record that was before the inspector at the time the order or determination was made, including any witness statement or other document considered by the inspector.

Inspector is party

- (5) The inspector is a party to an appeal under this section.

Filing does not prevent appeal

- (6) The filing of an order under section 50 does not prevent the order being appealed.

64. Request to suspend inspector's order

- (1) A person who appeals an inspector's order may request the board to suspend the effect of the order.

Board may suspend order

- (2) The board may suspend the inspector's order for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either
- (a) the total amount, if any, required to be paid under the order; or
 - (b) a smaller amount that the board considers adequate in the circumstances of the appeal.

65. Powers of board after appeal is filed

- (1) At any time after an appeal is filed, and without a hearing of any kind, the board may dismiss all or part of the appeal if the board determines that any of the following apply:
- (a) the appeal is not within the jurisdiction of the board;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the board;
 - (f) there is no reasonable prospect that the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 63 have not been met.

Additional powers

- (2) Before considering an appeal, the board may
- (a) refer the matter back to the inspector for further investigation; or
 - (b) recommend that an attempt be made to settle the matter.

Written decision, reasons

- (3) Where the board dismisses all or part of an appeal under subsection (1), the board shall inform the parties of its decision in writing and give reasons for that decision.

66. Board's orders

After considering whether the grounds for appeal have been met, the board may, by order,

- (a) confirm, vary or cancel the order or determination under appeal; or
- (b) refer the matter back to the inspector.

67. Reconsideration of orders and decisions

- (1) On application under subsection (2) or on its own motion, the board may
- (a) reconsider any order or decision of the board; and

- (b) confirm, vary or cancel the order or decision or refer the matter back to the original panel or another panel.

Application for reconsideration

- (2) The inspector or a person served with an order or a decision of the board may make an application under this section.

Time limit for application

- (3) The application shall not be made more than 30 days after the date of the order or decision.

Time limit applicable to board

- (4) The board may not reconsider an order or decision on the board's own motion more than 30 days after the date of the decision or order.

One application permitted

- (5) An application may be made only once with respect to the same order or decision.

Parties

- (6) The inspector and a person served with an order or a decision of the board are parties to a reconsideration of the order or decision.

PART 11 - GENERAL PROVISIONS

68. Director's power to delegate

- (1) The director may delegate to any person any of the director's functions, duties or powers under this Act, except the power to delegate under this section.

Delegation may be canceled, etc.

- (2) A delegation under this section
 - (a) may be cancelled by the director; and
 - (b) may be made subject to the terms that the director considers appropriate.

Continuation

- (3) Where the director ceases to hold office, a delegation under this section continues in effect
 - (a) as long as the delegate continues in office; or
 - (b) until cancelled by a succeeding director.

Evidence to be produced on request

- (4) A person who claims to be carrying out a function, duty or power delegated by the director under this section shall, on request, produce evidence of the delegation.

69. Right to sue preserved

Subject to section 40, nothing in this Act or the regulations affects a person's right to commence and maintain an action that, but for this Act, the person would have had the right to commence and maintain.

70. Warrant to carry out inspection powers

Where satisfied by evidence given under oath or affirmation that there is reason to believe there are in a private residence records or other things that are relevant for the purposes of an investigation or appeal under this Act, a justice may issue a warrant authorizing the person named in the warrant to enter the private residence in accordance with the warrant in order to exercise the powers referred to in section 45.

71. Director cannot be required to give evidence in other proceedings

- (1) Except for a prosecution under this Act or an appeal to the board, the director and an inspector shall not be required by a court, board, tribunal or person to give evidence or produce records relating to information obtained for the purposes of this Act.

Immunity from liability

- (2) No legal proceeding for damages lies or may be commenced or maintained against the director because of anything done or omitted in good faith in the performance or intended performance of the director's duties, or the exercise or intended exercise of the director's powers, under this Act.

72. Service of notices, decisions, orders, determinations or demands

- (1) A notice, decision, order, determination or demand that is required to be served on a person under this Act is deemed to have been served if

- (a) served on the person;
- (b) sent by ordinary mail or registered mail to the person's last known business address according to the records of the director;
- (c) transmitted by email to the person's last known email address according to the records of the director;
- (d) transmitted by fax to the person's last known fax number according to the records of the director; or
- (e) sent, transmitted or delivered by any other prescribed method of service.

Deemed service, ordinary or registered mail

- (2) Where service is by ordinary mail or registered mail, the notice, decision, order, determination or demand is deemed to be served 8 days after it is mailed.

Deemed service, email or fax

- (3) Where service is by email or by fax, the notice, decision, order, determination or demand is deemed to be served 3 days after it is transmitted.

73. Irregularities

A technical irregularity does not invalidate a proceeding under this Act.

74. Limitation period

No proceeding for an offence under this Act may be commenced in any court more than two years after the facts on which the proceeding is based first come to the director's knowledge.

75. Offences

- (1) A person is guilty of an offence if the person
 - (a) contravenes a provision of this Act or the regulations;
 - (b) makes a false or misleading statement to the director or an inspector;
 - (c) destroys documents required to be made or retained under this Act; or
 - (d) hinders, obstructs or interferes with the director acting under the authority of this Act.

Penalties

- (2) A person who contravenes a provision of this Act or the regulations is guilty of an offence and is liable on summary conviction
 - (a) in the case of an individual, to a fine of not less than \$200 and not more than \$5,000 or imprisonment for a term of not more than one year, or both; and
 - (b) in the case of a corporation, to a fine of not less than \$1,000 and not more than \$25,000.

76. Evidence and burden of proof

- (1) The production of a cheque, bill of exchange or order to pay on which is marked “Pursuant to clearing rules, this item shall not be cleared again unless certified”, or other words signifying that payment was not made by a savings institution, is evidence that payment was not made.

Effect of certification

- (2) A copy of a document issued under this Act by the director or an inspector, and certified by the director as a true copy, is, without proof of the director’s appointment or signature,
 - (a) evidence of the document; and
 - (b) evidence that the person issuing the document was authorized to do so.

Application to document issued by board

- (3) Subsection (2) applies also in respect of a copy of a document issued under this Act by the board and certified by the secretary of the board as a true copy.

77. Regulations

The Lieutenant Governor in Council may make regulations

- (a) respecting applications for licences, renewal of licences or certificates of registration;
- (b) respecting the filing of financial security and providing for different amounts of security for different classes of persons or different circumstances;
- (c) prescribing information that shall be contained in a registry established and maintained under section 29, which may be different for licensees and registered employers, for different classes of licensees and for different classes of registered employers;
- (d) specifying requirements of the regulations contravention of which may be the subject of an order under section 38;
- (e) prescribing interest rates for the purposes of section 47 and providing for different rates for different purposes;
- (f) respecting fees, including regulations
 - (i) prescribing fees for licences issued under this Act,
 - (ii) prescribing fees for registering as an employer under this Act,

- (iii) prescribing fees to be paid in respect of services provided by the Government under this Act, and
- (iv) specifying the time, manner and method for payment of prescribed fees payable under this Act;
- (g) prescribing methods of service for the purposes of clause 72(1)(e), including time periods within which documents sent, transmitted or delivered by a prescribed method of service are deemed to have been served, which may be different for different methods of service;
- (h) respecting administrative penalties or schedules of administrative penalties for orders in respect of contraventions of a requirement of this Act, which may
 - (i) vary according to the nature or frequency of the contraventions or the number of persons affected by any contravention, and
 - (ii) provide for greater penalties for a second contravention and for third and subsequent contraventions in a 3-year period or any other period that may be prescribed;
- (i) respecting any other matter for which regulations of the Lieutenant Governor in Council are contemplated by this Act.

PART 12 – TRANSITIONAL PROVISIONS, CONSEQUENTIAL AMENDMENTS AND COMMENCEMENT

78. Transitional regulations

- (1) The Lieutenant Governor in Council may make regulations considered necessary or advisable for the purpose of more effectively bringing into operation the provisions of this Act and to obviate any transitional difficulties encountered in doing so.

Repeal

- (2) Unless earlier repealed, a regulation made under this section is repealed one year after it is enacted.

Consequential Amendments

79. Employment Standards Act

- (1) **Subsection 3(1) of the *Employment Standards Act* R.S.P.E.I. 1988, Cap. E-6.2, is amended**
 - (a) **by the addition of the words “or the *Temporary Foreign Worker Protection Act* R.S.P.E.I. 1988, Cap. T-??,” after the words “purposes of this Act”; and**
 - (b) **by the deletion of the words “under this Act” and the substitution of the words “under either Act”.**
- (2) **Subsection 3(2) of the Act is amended by the deletion of the words “of this Act and the regulations” and the substitution of the words “of this Act or the *Temporary Foreign Worker Protection Act* and their respective regulations”.**

- (3) **Subsections 3(3) and (4) of the Act are amended by the deletion of the words “under this Act” and the substitution of the words “under this Act or the *Temporary Foreign Worker Protection Act*”.**

Commencement

80. Commencement

This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

EXPLANATORY NOTES

SECTION 1 establishes definitions for the purposes of the Act.

SECTION 2 provides that an agreement to waive any of the requirements of the Act is not valid.

SECTION 3 provides that the Minister is responsible for the administration of the Act, and authorizes the Minister to appoint a person as the Director of Labour and Industrial Relations, to act under the Minister's instructions and have general supervision of matters under the Act.

SECTION 4 prohibits any person from providing recruitment services or purporting to be a foreign worker recruiter unless the person holds a license, with the specified exceptions.

SECTION 5 provides that only an individual is eligible to be issued a license as a foreign worker recruiter.

SECTION 6 sets out the application requirements for a foreign worker recruiter license. The section also requires an applicant to disclose the names of partners, affiliates or agents at the time of the application and on an ongoing basis where there is a material change in the information, and authorizes the director to make inquiries as the director considers necessary to determine whether the applicant meets the requirements of the Act and regulations.

SECTION 7 authorizes the director to issue a license to an applicant who meets the requirements of the Act and regulations, and specifies grounds on which the director may refuse to issue the license. The section also authorizes the director to specify in the license any terms and conditions the director considers appropriate, and requires the director to provide reasons for that decision to the applicant. A license is valid for a period of up to three years, as specified by the director, and is not transferable.

SECTION 8 authorizes the director to amend, suspend or cancel a license as specified.

SECTION 9 requires the director, before refusing to issue a license or amending, suspending or canceling a license, to serve the applicant or licensee with notice of the intended action and the reasons for it and to provide an opportunity for the applicant or licensee to make written representations to the director as to why the intended action should not be taken. The director's decision must be served on the applicant or licensee, as the case may be. Where immediate action is necessary in the public interest, the director may immediately amend, suspend or cancel a license without first giving the licensee an opportunity to be heard, but the director must serve notice of the action on the licensee as soon as practicable and provide an opportunity for the licensee to make written representations to the director within 20 business days.

SECTION 10 sets out the effect of a suspension or cancellation of a licensee's license.

SECTION 11 requires an employer to hold a certificate of registration in order to recruit foreign nationals for employment, whether directly or through the services of another person. The regulations may specify classes of employers who are exempt from the requirement.

SECTION 12 sets out the process for applying for a certificate of registration.

SECTION 13 authorizes the director to issue a certificate of registration to an applicant and specifies grounds on which the director may refuse to issue the license. The section also authorizes the director to specify in the certificate of registration any terms and conditions the director considers appropriate, and requires the director to provide reasons for that decision to the applicant. A certificate of registration is valid for a period of up to three years, as specified by the director, and is not transferable.

SECTION 14 authorizes the director to amend, suspend or cancel a certificate of registration as specified.

SECTION 15 requires the director, before refusing to issue or amending, suspending or canceling a certificate of registration, to serve the applicant or registered employer with notice of the intended action and the reasons for it and to provide an opportunity for the applicant or registered employer to make written representations to the director as to why the intended action should not be taken. The director's decision must be served on the applicant or registered employer, as the case may be. Where immediate action is necessary in the public interest, the director may immediately amend, suspend or cancel a certificate of registration without first giving the registered employer an opportunity to be heard, but the director must serve notice of the action on the registered employer as soon as practicable and provide an opportunity for the registered employer to make written representations to the director within 20 business days.

SECTION 16 sets out the effect of a suspension or cancellation of a registered employer's certificate of registration.

SECTION 17 defines "decision" as a decision of the director under the specified provisions for the purposes of sections 18 to 20.

SECTION 18 requires a copy of a decision served on a person under the specified provisions to include notification that the person may request the director to reconsider the decision.

SECTION 19 authorizes a person to request reconsideration by filing a written request, containing the specified information, with the director not more than 30 days after the person was served with the copy of the decision. The director may extend the time period, as specified.

SECTION 20 provides that the decision under reconsideration remains in force until the outcome of the process. The director may rescind, confirm or vary the decision, and must give the person who requested the reconsideration a copy of the decision that includes the reasons for it. The section also sets out the effects of a rescission or variation of the decision.

SECTION 21 prohibits the specified practices by foreign worker recruiters and both registered and non-registered employers.

SECTION 22 prohibits any person from charging a person, other than an employer, a fee or expense for recruitment services, and prohibits a foreign worker recruiter and both registered and non-registered employers from charging a fee or expense to a foreign worker for employment. The section also provides that a fee or expense paid by a person in contravention of the section may be recovered by the person in accordance with the Act or in any other manner authorized by law. A term of a contract that requires payment in contravention of the section is void. An employer is prohibited from reducing a foreign worker's wages or varying, reducing or eliminating other benefits of employment in order to recover the expense of recruiting the foreign worker, and an agreement by the foreign worker to that variation, reduction or elimination is also void.

SECTION 23 requires a foreign worker recruiter to disclose to a foreign national any fee or compensation received for referring the foreign national to another person.

SECTION 24 requires a foreign worker recruiter who provides recruitment services to an employer and immigration services to a foreign national for employment with that employer to disclose those facts to both of them, obtain their written consent and have a signed contract with each of them that meets the requirements of section 27.

SECTION 25 requires a foreign worker recruiter to ensure that partners, affiliates and agents who in partnership with or on behalf of the foreign worker recruiter also comply with the Act and regulations.

SECTION 26 requires a foreign worker recruiter to make available to each foreign national to whom the foreign worker recruiter provides recruitment services information about the rights of foreign nationals and foreign workers under the Act. The section also requires each employer of foreign workers to make that information available to them, and also any other information specified in the regulations.

SECTION 27 requires a foreign worker recruiter to enter into a contract that meets the specified requirements with a foreign national or an employer in order to provide the specified services.

SECTION 28 specifies the records to be retained by a licensee or former licensee and by a registered employer for the specified retention period.

SECTION 29 requires the director to establish and maintain a registry of foreign worker recruiters and registered employers, containing the specified information. The director is required to publish the information relating to foreign worker recruiters in any manner the director considers appropriate to bring it to the public's attention.

SECTION 30 authorizes the director to provide information collected and obtained under the Act and regulations, including personal information, with the specified entities, for the purposes of administering and enforcing the Act and regulations.

SECTION 31 defines "complaint" for the purposes of Part 7 of the Act.

SECTION 32 authorizes an investigator to conduct investigations to ensure compliance with the Act and regulations at any time, whether a complaint has been received or not, and to stop or postpone an investigation.

SECTION 33 authorizes any person to make a complaint, which must be in writing and delivered to an inspector within one year of the date of the alleged contravention.

SECTION 34 prohibits an inspector from disclosing identifying information about a complainant who has requested confidentiality, with specified exceptions.

SECTION 35 requires an inspector to investigate a complaint, except where one of the specified grounds for refusal applies.

SECTION 36 requires an inspector to make reasonable efforts to give a person under investigation an opportunity to respond. The inspector is not required to give an oral hearing to a person under investigation or a person to whom an order or determination is issued.

SECTION 37 authorizes an inspector to issue a notice of contravention to a person, as specified, where the inspector is satisfied that the person has contravened a requirement of the Act or regulations.

SECTION 38 authorizes an inspector to make determinations in respect of or issue various orders to a person, as specified, where satisfied that the person has contravened a requirement of the Act or regulations, including ordering the person to pay costs of an investigation or an administrative penalty in accordance with the regulations. An order may be subject to terms and conditions that the inspector considers appropriate and the person to whom it is directed is required to comply with it. Where the person is ordered to pay costs or an administrative penalty, the amount is a debt due to the

Government and may be collected by the inspector. Where the inspector is satisfied that the Act and regulations have not been contravened, the inspector is required to dismiss the complaint.

SECTION 39 requires the inspector to serve a copy of an order or determination on any person named in it, including the specified information.

SECTION 40 provides that where a an order requires payment of an amount, a person may only commence another proceeding to recover that amount with the inspector's written consent or where the inspector or the board has cancelled the determination.

SECTION 41 prohibits discrimination, intimidation or coercion by a foreign worker recruiter or an employer as retaliation for a specified action. The section also prohibits an employer from refusing to employ or continue to employ a person, or threaten to dismiss or otherwise threaten a person, for the same reason.

SECTION 42 provides that an inspector may order a person to attend to answer questions, as specified, and to produce records or things in the person's possession or under the person's control. The inspector may also apply to the Supreme Court for an order directing a person to comply with an order under the section.

SECTION 43 provides that a person's failure or refusal to comply with an order under section 42 makes the person, on application by the inspector to the Supreme Court, liable to be committed for contempt as if in breach of an order or judgment of the court.

SECTION 44 provides protection from liability for an inspector, or a person acting on behalf of or under the direction of an inspector, for actions or omissions done in good faith in the performance or intended performance of a duty or the exercise or intended exercise of a power under the Act.

SECTION 45 specifies the powers of an inspector to enter and inspect as specified for the purpose of ensuring compliance with the Act and regulations.

SECTION 46 provides that an amount owing under an order as specified constitutes a lien in favour of the inspector, in trust, that takes priority over any of the specified claims or interests.

SECTION 47 requires a person who owes an amount under an order as specified to pay interest on the amount at the prescribed rate.

SECTION 48 authorizes an inspector, in the specified circumstances, to recover all or part of the money owed by a person who is required to pay money under an order, as specified, from another person who is or is likely to become indebted to the first person.

SECTION 49 sets out the consequences of a person's failure to comply with a demand of an inspector under section 48.

SECTION 50 authorizes an inspector to file an order of the inspector or the board in the Supreme Court registry, after which the filed order may be enforced in the same manner as a judgment of the court in favour of the inspector for the recovery of a debt in the amount stated.

SECTION 51 authorizes an inspector to seize specified assets of a person who is required to pay an amount under an order of the inspector or order of the board, in order to satisfy the amount of the debt and the costs of the seizure. The inspector is required to keep the assets under seizure safe until the order is filed in court under section 50 and a writ of seizure and sale has been executed or the order is cancelled under section 66 or 67.

SECTION 52 authorizes an inspector to release an asset seized under section 51 where satisfied that it is owned by a person other than the person required to pay under the order.

SECTION 53 prohibits any person from wrongfully removing, damaging or disposing of an asset seized under section 51.

SECTION 54 authorizes an inspector to treat corporations, individuals, firms, syndicates or associations, or combinations of them, as one employer in the specified circumstances, and in that case they are jointly and severally liable for payment of the amount stated in an order of the inspector or order of the board.

SECTION 55 provides that a person who was a director or officer of a corporation when the corporation was issued an order under clause 38(1)(d) is personally liable for the payment of the amount of the order. This includes a director or officer of a corporation, firm, syndicate or association that the inspector treats as one employer under section 54.

SECTION 56 requires an inspector to pay money received by the inspector under the Act to the Minister of Finance, and specifies how the money shall be attributed by the Minister.

SECTION 57 authorizes the director to require a foreign worker recruiter or a registered employer who has at any time contravened section 22 to provide an irrevocable letter of credit or other security satisfactory to the director, as specified.

SECTION 58 authorizes the director to compile information relating to contraventions of the Act or regulations, including information that identifies the persons who, according to an order of an inspector or order of the board, committed them, to publish that information and to make it available for public inspection at the director's office.

SECTION 59 provides that on a written request and payment of a prescribed fee by a person, the director may conduct a search of the director's records for information related to contraventions of the Act or regulations, or complaints or investigations, and provide the information to the person who made the request.

SECTION 60 provides that section 4 of the *Employment Standards Act* applies to the board when it is acting under the Act.

SECTION 61 provides additional specified powers to the board in relation to an appeal or reconsideration.

SECTION 62 provides that the board has exclusive jurisdiction to inquire into, hear and determine all matters and questions of fact, law and discretion arising under Parts 9 and 10 of the Act, and make any order permitted. A decision or order of the board in its area of exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

SECTION 63 sets out the appeal process and specifies the grounds on which an order or determination may be appealed to the board.

SECTION 64 permits a person who appeals an order to request the board to suspend the effect of the order pending the outcome, and authorizes the board to deal with the request.

SECTION 65 sets out the powers of the board to deal with a matter appealed to it, including dismissing the appeal in the specified circumstances, and requires the board, on dismissing all or part of an appeal, to inform the parties in writing and give its reasons for that decision.

SECTION 66 authorizes the board to confirm, vary or cancel the order or determination under appeal, or to refer the matter back to the inspector.

SECTION 67 authorizes the board to reconsider its orders and decisions, as specified, on application or on its own motion.

SECTION 68 authorizes the director to delegate any of the director's functions, duties or powers to any person, except the power to delegate, and provides for the cancellation of the delegation, the imposition of terms or conditions by the director, its continuation, and the requirement for the person exercising the delegated authority to provide proof of the delegation on request.

SECTION 69 provides that, subject to section 40, the Act and regulations do not affect a person's right to commence and maintain an action that would be available to the person but for the Act.

SECTION 70 authorizes a justice to issue a warrant in the specified circumstances for an inspector to enter a private residence for the purposes of section 45.

SECTION 71 provides that the director and an inspector cannot be compelled to give evidence or produce records relating to information obtained for the purposes of the Act, except for a prosecution under the Act or an appeal to the board. The section also provides protection from liability for the director, or the director's delegate, for actions or omissions done in good faith in the performance or intended performance of the director's duties or the exercise or intended exercise of the director's powers under the Act.

SECTION 72 specifies the requirements for service of the specified documents under the Act.

SECTION 73 provides that a technical irregularity does not invalidate a proceeding under the Act.

SECTION 74 provides that no proceeding for an offence under the Act may be commenced in court more than two years after the facts on which it is based first come to the director's knowledge.

SECTION 75 specifies the actions of a person that constitute offences under the Act and the penalties for an offence by an individual and a corporation.

SECTION 76 states the evidentiary effect of the specified documents.

SECTION 77 authorizes the Lieutenant Governor in Council to make regulations, as specified.

SECTION 78 authorizes the Lieutenant Governor in Council to make transitional regulations, as specified. A transitional regulation is repealed one year after it is made, unless repealed earlier.

SECTION 79 makes consequential amendments to the *Employment Standards Act*.

SECTION 80 provides for the commencement of the Act.