



**GREATER CHARLOTTETOWN AREA  
CHAMBER OF COMMERCE**

March 4, 2008

Honourable Carolyn Bertram  
Minister of Community and Cultural Affairs and Labour  
95–105 Rochford Street  
Charlottetown, PEI  
C1A 7N8

Dear Minister Bertram:

The Employer Coalition would like to thank the Minister for taking the time on December 12, 2007 to meet with a number of representatives of the Employer Coalition to review the submission dated September 12, 2007, regarding the Employer Coalition's position with respect to the proposed changes to the *Prince Edward Island Employment Standards Act and Youth Employment Act* (hereafter referred to as the Act). As the Minister is aware, the Employer Coalition represents the employer community and industry associations across Prince Edward Island who have come together to express concern regarding proposed changes to the Act.

At the request of the Minister, the Employer Coalition has again reviewed the proposed changes to the Act, as laid out in the document entitled "*Enhancing Standards in the Island Workplace*", in terms of the impact that these changes would individually and collectively have on employers. The Employer Coalition appreciates the Minister's need to review the Act and submit to the legislature changes that reflect the needs and interests of both the employer community and the community of employees whose terms and conditions of work are established by the Act. It is in recognition of this need for a balanced solution that the Employer Coalition submits this second document representing the Employer Coalition's request to government for consideration as the review process moves forward.

The Employer Coalition requests that the Minister acknowledge the total impact to the employer community of any increase to the minimum wage together with any enhancements to the benefits conferred by the Act.

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Your consideration of the position of the employer community as represented by the Employer Coalition is appreciated. The Employer Coalition would be pleased to meet again on this issue and provide any further explanation of its stated position as may be required.

All best regards,

A handwritten signature in black ink, appearing to read "Don Baker". The signature is fluid and cursive, with the first name "Don" and last name "Baker" clearly distinguishable.

Don Baker  
President  
Greater Charlottetown Area Chamber of Commerce

Cc: Members of the Employer's Coalition

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### **HOURS OF WORK AND OVERTIME**

The Employer Coalition strongly recommends that the hours of work remain at 48 hours per week and not be reduced to 44 hours per week as proposed. The Employer Coalition has had significant feedback from individual employers on this issue who state that a reduction in the standard hours of work will have a significant impact on how they run their businesses and will ultimately negatively affect the employees whom the Act is trying to protect. The net result of a shorter work week will be an increase in the number of part-time employees so employers are not in a position of having to pay overtime. Ultimately this will

lead to less take-home pay for many employees who now rely on the 48-hour work week to maintain their standard of living.

The minimum wage for the province is under review at this same time and indications are that the minimum wage will be significantly increased. If the minimum wage is increased and the standard hours of work are decreased, then this combination will have a very significant and negative impact on a large number of small businesses on Prince Edward Island who can only afford to offer employment based on the minimum standards. These types of businesses are generally run on tight margins and the combined impact of these two changes could in fact influence their decision to be in business and provide employment, or not.

It is the Employer Coalition's position that the hours of work should remain at 48 per week and that any future change contemplated to the standard work week be phased in over a number of years to allow employers to adjust their business operations accordingly.

Additionally we recommend that if the 44-hour work week is phased in over time, it should be an average of 44 hours over a two-week period, with no more than 48 hours in any particular week. This would allow employers to schedule workers for 4, 12-hour shifts one week and 3, 12-hour shifts the following week for an average of 44 hours over the two-week period.

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### MINIMUM WAGE

With respect to minimum wage the Coalition supports the Review Panel's proposed legislative amendment to allow for more than one minimum wage but strongly opposes the elimination of the reference to reasonable return on private investment.

### BANKING OF HOURS

Banking of overtime hours worked, based on an agreement between the employer and the employee, is a current practice that meets the needs of both parties. The Employer Coalition's concern with the proposed banking of hours language is two-fold; that the formula is 1.5 hours banked for 1 hour of overtime worked, and, that any time banked must be used within three months of being earned. The rationale for this concern is well laid out in the original submission. The impact of the proposed banking of hours provision on seasonal businesses such as tourism and construction which operate in a very compressed season, would be financially prohibitive.

**It is the Employer Coalition's position that banking of hours be included in the changes to the Act, however at a rate of 1 hour of banked time for 1 hour of overtime worked, to be used within 12 months of having been earned and paid out upon termination of employment. Any banking of hours would be based on a written agreement between the employer and the employee.**

### PAID HOLIDAYS

The overwhelming employer response to a proposed Thanksgiving holiday was that a new holiday, Remembrance Day, was very recently added to the Act and Thanksgiving would compromise those businesses that are trying to operate in the Tourism shoulder season.

The proposed change to the qualification period for paid holidays would have an impact that far exceeds the addition of a new holiday. A reduction in the qualification period would create an additional entitlement for all six paid holidays presently provided for in the Act.

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**If the government insists on an additional paid holiday, the Employer Coalition strongly recommends that it be named in an off-season month such as February. Additionally, the Coalition strongly opposes any change to the qualifications period which is fair and representative of the other Atlantic province's qualification periods.**

### **VACATION TIME**

**The Employer Coalition's position on the proposed increase to vacation time and pay to employees with eight years of service is that it will be an increased expense to employers but one that most employers will be able to justify and absorb.**

### **TRAINING / ORIENTATION PAY**

While the Employer Coalition does not oppose the intent of the proposed article on training and orientation pay, the language proposed will create problems with respect to its interpretation.

**The Employer Coalition requests that this article be re-written to clarify:**

- 1. that it applies to training required by the employer;**
- 2. that wages are not considered a "cost" that is to be paid by the employer; and**
- 3. the definition of "costs" that are to be paid by the employer.**

### **MATERNITY, PARENTAL AND ADOPTION LEAVES**

**The Employer Coalition recognizes the need to extend access to maternity, parental and adoption leaves to employees who work on a more seasonal basis and therefore does not object to the change to the entitlement criteria that provides for this. The Employer Coalition also acknowledges the potential need for an "extension" of such leaves for a child with a physical, psychological or emotional condition, however there needs to be some definition of what qualifies as such a condition.**

**The Employer Coalition strongly opposes the proposed language that provides re-employment rights to employees returning from these**

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**leaves in cases where an operation has been discontinued and then resumes within a period of 52 weeks. The Employer Coalition views this as providing an employment right to one employee that far exceeds the rights of any other employee in the situation of business closure.**

### **SICK AND FAMILY LEAVES**

The Act presently provides for three unpaid sick days and three unpaid family days for an employee who has been employed for six months. The sick and family provisions currently provided for in the Act are comparable to and representative of the rights provided by the other Atlantic provinces. The proposed changes to this provision would have a significant financial and administrative impact on most employers on Prince Edward Island

**It is the Employer Coalition's position that the existing sick and family leave provisions in the Act are fair minimum requirements and no further enhancements should be made in this area.**

### **BEREAVEMENT LEAVE**

**The Employer Coalition agrees to the addition of one (1) paid day of bereavement and up to two unpaid days for immediate family, provided a definition of immediate family is spouse, common-law spouse, child, parent, brother or sister.**

### **GENERAL PROVISIONS CONCERNING LEAVES**

**Proposed section 48 (4) should be revised to include a qualification that this right is subject to an "active employee" definition in existing benefit plan contracts between employers and their insurance providers.**

### **NOTICE OF TERMINATION**

The proposed "just cause" protection for employees with ten years or more employment with an employer is of great concern to the employer community. Reasonable notice for termination of employment in the absence of just cause is a long-standing principle of common law. Reasonable notice enables employers to respond to the needs of their business while at the same time recognize the long

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service employee's entitlement to an enhanced notice period. Addition of such language into the *Employment Standards Act* would significantly change the landscape of employment termination on Prince Edward Island to the detriment of every employer, large or small.

**The Employer Coalition's position is that proposed Section 56 must be removed from the proposed changes to the Act.**

The new provision for eight weeks notice in the case of a group termination or layoff would have a very significant impact on all seasonal operations as well as those industries such as construction which are project based. In many instances where an employer in these industries is required to downsize their labour force, it is due to factors outside their control which occur within timeframes of far less than eight weeks. The group termination or layoff provision proposed would place these employers operations in a very precarious position.

**It is the Employer Coalition's preference that the group termination of layoff language proposed be eliminated from consideration. However, if some provision is to be included in the Act for group termination or layoff, then it should be restricted to termination of employment situations and apply only to employees who have been continuously employed for at least one year.**

**Proposed Section 57 (b) must be amended to limit the entitlement to continuation of benefits to apply in the case of "working notice" only, as otherwise it may confer a right that is contrary to employers benefit contracts with insurance providers.**

**The Employer Coalition requests an addition to the Act that specifies the requirement for notice in the case of employee initiated termination be two weeks notice, in writing, to the employer. In the case where an employee does not provide, and/or work, the two week notice period, the employer may deduct any outstanding notice from wages due to that employee.**

### **SALE OF BUSINESS**

**The Employer Coalition is in agreement with the continuity of employment upon a sale of business if it is clarified that this right exists only when the purchaser "chooses" to employ an employee of the seller. If the purchaser chooses not to employ an employee of the business, then no right exists.**

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### **DIRECTORS' LIABILITY**

**The Employer Coalition recognizes the need for accountability for a Board of Directors, however the language proposed for inclusion in the Act is too all-encompassing. The addition of a due diligence provision, and the limitation of exposure to two months pay rather than the six proposed, would make this provision more acceptable to those who offer their services as Directors on Boards.**

### **ENFORCEMENT**

**The Employer Coalition does not take issue with substantive fines being used as a means of enforcement of the Act, however the jump from \$2,000 to \$10,000 is significant. It is recommended that the language provide for fines "up to \$10,000" based on a graduated scale for repeat offences or offenders.**

### **APPLICATION TO COLLECTIVE AGREEMENTS**

**It is the Employer Coalition's position that the Act should maintain the same relationship with employees covered by a collective agreement as presently exists. To try and turn the clock back and convene rights that have been negotiated away through a collective bargaining process for another right, would create havoc with groups of employees who have terms and conditions of work that generally far exceed the minimum standards.**

In summary, the Employer Coalition requests that the Minister consider the collective and cumulative effect of the individual changes discussed in this document, on the small business trying to maintain its viability in a competitive market. When contemplating legislative change, due consideration needs to be given not only to the rights of the individual employee but also to the financial and operational impact on the employer. The changes that have been recommended to the Act are not optional, rather they are the provincial minimum, mandatory standards. This means that regardless of an employer's ability to accommodate this increased cost of doing business, it must in fact find a way to absorb this cost.