



GREATER CHARLOTTETOWN AREA
CHAMBER OF COMMERCE

To: Alan McIsaac, Chair, Standing Committee on Education and Economic Development
From: Penny Walsh-McGuire, CEO, Greater Charlottetown Area Chamber of Commerce
Date: March 22, 2019
Re: Feedback on Bill 100: An Act to Amend the Employment Standards Act

On behalf of our 1000 members who employ close to 20,000 Islanders, thank you for the opportunity to share the Greater Charlottetown Area Chamber of Commerce's views on Bill 100, An Act to Amend the Employment Standards Act.

The Chamber supports the principle of effective whistleblower legislation that protects the interests of both employees and employers.

The Chamber calls to attention the following considerations:

1. The proposed bill goes somewhat further than the existing non-reprisal provisions of s. 425.1 of the Criminal Code, which applies across the country to every employer. S. 425 provides that no employer can take reprisals against an employee who has, or will, provide information to law enforcement personnel regarding an offence that "has been or is being committed".
2. The reporting of "an activity that is or is likely to result in an offence" under provincial or federal law, versus the Criminal Code's language relating to reporting of "an offence the employee believes has been or is being committed" under provincial or federal law. The proposed bill relates to the reporting of an activity that is "likely" to result in an offence, as compared to one which the employee believes has been or is being committed. It seems that this imports a certain level of judgment or discretion on the part of the employee that is not present under the Criminal Code. It requires the employee to engage in a weighing of the law: is the activity "likely" to result in an offence.

3. The proposed bill makes supervisors, whether directly or indirectly supervising the employee, “lawful authorities”. Under the Criminal Code, the employee is only protected when he or she reports the offence to law enforcement personnel. This may create a liability risk for managers in businesses of all sizes, since under the proposed bill they will be a “lawful authority” even if they only indirectly supervise the employee. Supervisors, even indirect ones, would now be saddled with statutory obligations to address these matters, lest they, or the employer they represent, have committed an offence under the Act. The supervisor, who is not trained in law or law enforcement, thus has to make judgment calls about whether the report relates to activity which is “likely” to result in an offence.

4. We question if there is a gap with the use of the words “frivolous and vexatious”. The concern is that they may be at the far end of the spectrum of “bad faith”. In other words, it may not be that easy to say that the employer was within its rights to reprimand because the complaint was frivolous or vexatious. The gap may create the pendulum to swing in favour of an employee. Perhaps language such as “not bona fide/good faith” would be more appropriate.

The Chamber presents this feedback noting that the legislation would apply equally to small family owned businesses as well as larger operations with varying levels of human resources support.

We thank you for considering our viewpoints.

Sincerely,

Penny Walsh-McGuire
CEO