New Employment Standards for Newfoundland and Labrador

Report of The Labour Standards Board

James C. Oakley - Chairperson
Janet Kelly - Board Member
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Table of Contents

1. Introduction

On February 21, 2000, the Minister of Environment and Labour, the Honourable Oliver Langdon, announced the appointment of a Labour Standards Board to undertake a review of the *Labour Standards Act* for the Province of Newfoundland and Labrador. The Minister noted that labour standards were in need of periodic review to ensure they were relevant in today's workplace. The *Labour Standards Act* in its present form was enacted in 1977. There have been some amendments and additions to the Act since that date, but no complete revision of the entire Act. The last review of labour standards by a Labour Standards Board was in 1995.

The members appointed to the Labour Standards Board were James Oakley, Chairperson, Janet Kelly, Employer Representative and Greg Pretty, Employee Representative. A profile of the Board members is set out in Appendix "A". The Board undertook a consultation process to receive input from the public, and in particular from individual employees and employers, organizations of employees and employers and other interested groups. To facilitate the public consultations, the Department of Environment and Labour prepared a Discussion Paper which outlined issues of concern based upon inquiries to the Labour Standards Division of the Department. The issues outlined in the Discussion Paper were hours of work, deductions from wages, exclusions of occupations from the Act, recovery of wages owed, termination of employment, time off in lieu of overtime worked, qualifying for paid public holidays, and the appeal process. The Discussion Paper referred to the appointment of a Labour Standards Board to review the Act and Regulations. The public was invited to comment on any issue related to labour standards legislation without restriction to the issues raised in the Discussion Paper.

The Labour Standards Board conducted hearings for the purpose of receiving representations from the public. The hearings were held as follows:

March 14, 2000	Grand Falls-Windsor
March 15, 2000	Corner Brook
March 16, 2000	Happy Valley-Goose Bay
March 27, 2000	Clarenville
March 28 and 29, 2000	St. John's

The Board also received written representations from organizations and from individual employers and employees. The Board would like to take this opportunity to thank the many organizations and individuals who took their time to meet with the Board and/or to make written submissions to the Board. It was obvious that several of the submissions were the result of many hours of research and preparation. A list of the organizations that made submissions is attached as Appendix "B".

The Board met with the labour standards officers employed by the Department of Environment and Labour. The Board wishes to thank these officers for sharing their insight gained from receiving numerous telephone inquiries concerning labour standards. The Board also wishes to extend its thanks to Ken Clements, Director of Labour Standards, and Rachelle Cochrane, Executive Director of Labour and other Department staff for their support and assistance.

As the Chair of the Labour Standards Board, I would like to thank the Board members, Ms. Janet Kelly and Mr. Greg Pretty, who both shared their extensive knowledge of employment relations. Following review and discussion of the issues by the Board members, the Board was able to reach a consensus as to the recommendations contained in this report. This report is presented to the Minister of Environment and Labour in the spirit of cooperation that existed among the Board members, with the intent that the report may be used to encourage employers and employees to work together cooperatively for better workplaces in Newfoundland and Labrador.

2. Purpose of Employment Standards

The *Labour Standards Act* sets out minimum standards of employment in such areas as minimum wage, hours of work, paid public holidays, and other terms of employment. Minimum standards are legislated to ensure that employees are treated fairly and equitably. Minimum standards also provide protection for employers by ensuring that competitors will not gain an unfair advantage by providing less than the minimum standard to employees. Labour standards also serves the purpose of improving and strengthening the relationship between employees and employers. Adequate labour standards promote a harmonious and productive workplace by ensuring that the rights and obligations of employers and employees are clear and enforceable. Disruption in the workplace can be avoided by providing clear information about labour standards.

When determining the appropriate employment standards for Newfoundland and Labrador, the above principles should be considered. The Board also believes that it is important to consider the changing nature of the workplace and the changing demographics of the workforce and the population.

The Board has taken into consideration employment standards in other jurisdictions in Canada. Comparison with the labour standards in other Provinces and Territories and in the Federal jurisdiction, is relevant to determining appropriate standards. Labour standards in Newfoundland and Labrador should be generally consistent with labour standards in other jurisdictions. There should be no marked differences in labour standards. We have given particular consideration to labour standards in the other Atlantic Provinces, but we have not limited our review to those Provinces. While considering standards in other jurisdictions, the Board has also considered any unique cultural or demographic factors related to this Province. The Board has not considered specific labour standards from outside Canada, however, the labour standards principles adopted in other countries, and labour standards principles that are the basis for the conventions of the International Labour Organization, are useful to consider.

3. Changing Nature of the Workplace

We are experiencing substantial changes in the nature of work. The workplace is changing and there is an increase in home based occupations. The traditional resource based economy, with its emphasis on employment in the fisheries, pulp and paper, mining and construction industries, is being replaced by a more diversified economy that includes greater emphasis on information technology, tourism and the service sector. With the increasing globalization of the economy, our business enterprise has the opportunity to promote its products or services to a world market.

There is an increase in part time employment and a decrease in full time employment. According to Statistics Canada, there is more part time employment in the service sector than in manufacturing and construction. The total number of part time jobs in the province increased from 26,000 in 1989 to 31,900 in 1998. The part time employment rate is higher for women and young people. In 1998 the part time employment rate for women ages 25 and over was 20.5% and for men ages 25 and over was 5.8%. The part time employment rate for both men and women ages 15 to 24 was 41.6%. Part time employees often hold two or more part time jobs.

The percentage of women in the Province ages 25 to 54 in the workforce has increased from 33% in 1980 to 46.1% in 1999. Women are more likely than men to rely upon labour standards legislation, given that in 1999 41.7% of male workers were unionized and 38.2% of female workers were unionized. In 1999 women represented 67.5% of workers in the service sector. The representation of women is even more pronounced in the child care and home support industries where women represent 95% of workers.

Consideration needs to be given to the issue of child care for the children of participants in the workforce. Consideration must be also given to the aging of the population and the needs of workers to care for their aging parents. Employment standards need to be flexible to the extent necessary to accommodate demographic changes in the nature of the workforce.

4. A New Act

The consistent message heard by the Board from employer organizations, from unions, from employers and from employees is that the current *Labour Standards Act* is outdated, confusing and unworkable. The Board notes in this report that there are numerous sections of the Act that require clarification. Extensive changes are needed to the labour standards legislation in the Province. The most efficient way to introduce the extensive changes recommended by the Board is to repeal and replace the current *Labour Standards Act* with a new Act. The new Act should have a new name to eliminate any confusion between the old and new legislation. Many other jurisdictions have legislation using the name "*Employment Standards*" and we recommend a new Act with this name.

Recommendation # 1 - The existing *Labour Standards Act* be repealed and replaced with a new Act, to be called the *Employment Standards Act*.

The Board heard many examples of employers and employees having difficulty understanding the meaning of the current *Labour Standards Act*. The problem in some instances is that the language of the Act or Regulations is not clear and is open to different interpretations. Some sections of the Act cross reference other sections of the Act in a confusing manner. Some of the words used in the Act are used inconsistently. Some words have different meanings in different sections. The new legislation should be drafted in plain English to be as clear and understandable as possible.

Recommendation # 2 - The new *Employment Standards Act* be drafted in plain English so that it is clear and easily understandable to employees and employers.

Most of the current labour standards are contained in the *Labour Standards Act*, however, there are additional labour standards set out in the *Labour Standards Regulations*. The Regulations are passed by the Lieutenant Governor in Council, (the Provincial Cabinet) under the authority of the Act. For example, the Regulations specify the standard working hours, exemptions from the weekly day of rest, exemptions from rest periods, rates for minimum wages and overtime wages, exemptions from overtime wages, minimum hours of work, and exemptions from notice of termination. Most of the provisions of the Regulations, with the exception of the rate of minimum wages, and exemptions from the standards, should be contained in the Act. It is easier for employers and employees to know their rights and obligations when employment standards are contained within one document rather than two documents. Employees and employers who are provided with a copy of the Act and not a copy of the Regulations would not be aware of some of the important labour standards.

Recommendation # 3 - All employment standards, with the exception of the rate of minimum wage and exemptions from the standards, should be set out in the Act and not in regulations.

The current *Labour Standards Act* is organized into parts I to XII with an additional part VII.1 and VII.2. The Board recommends a slight change in the order of the parts. The first part would address wages, including minimum wage and wage recovery. Given the importance of wages, this part should be first. The following parts would be hours of work, vacations and vacation pay, public holidays, leaves of absence, notice of termination, employment of children, administration and enforcement, and review of labour standards.

Recommendation # 4 - The new *Employment Standards Act* should be organized into parts in the following order: (1) wages, (2) hours of work, (3) vacation and vacation pay, (4) public holidays, (5) leaves of absence, (6) notice of termination, (7) employment of children, (8) administration and enforcement, (9) review of labour standards.

5. Public Education

The Department of Environment and Labour publishes a booklet containing a summary of labour standards and a list of questions and answers. The information in the booklet is also available on the Department web

site. The Board heard comments that the booklets are often out of print and hard to obtain. The Board was informed by the Department that even when booklets are out of print, a photocopy of the information in the booklet is provided on request. The Board has observed that many employees and employers are not aware of the rights and obligations contained in the *Labour Standards Act*. Public education is extremely important to ensure that the minimum terms and conditions of employment are communicated to employees and employers. Public education will be even more important in the event that new legislation is passed. Labour Standards Officers currently provide public education by visiting schools and the workplace. This activity should continue. The Department does not currently have a Labour Standards Office in Labrador which makes public education more difficult in Labrador. The Department should review the organization of the work of Labour Standards Officers and give consideration to appointing a Labour Standards Officer in Labrador. The Department should provide booklets containing a summary of the Act and a copy of the Act to every employee and employer in the Province. Sufficient copies should be available to be provided upon request.

The Board heard from employers and employees on issues that are not addressed in labour standards legislation. For example, concerns were raised about human rights issues that are addressed in the *Human Rights Code*, and about other issues that are addressed in the *Workers' Compensation Act* or the *Occupational Health and Safety Act*. Many employees and employers are not familiar with the various legislation that governs the employment relationship. There is no person within Government who is appointed to advise employees or employers on all of these various issues. If an employee makes an inquiry to a Labour Standards Officer and the officer determines the inquiry raises a human rights issue, then the employee will be referred to the Human Rights Commission. Similarly, other types of inquiries may be referred to other agencies. It would be to the advantage of both employees and employers if there was a single person or agency available to respond to inquiries concerning any employment issue. It would also be advantageous to have such a person available to provide advice or referral, without at the same time having the responsibility to investigate complaints. This concern would be addressed by appointing an employee adviser to advise employees and by appointing an employer adviser to advise employers.

Recommendation # 5 - The Department of Environment and Labour should provide a copy of the *Employment Standards Act* and a booklet containing a summary of the Act to every employee and employer in the Province.

Recommendation # 6 - The Department of Environment and Labour give consideration to appointing a Labour Standards Officer in Labrador.

Recommendation # 7 - The Government give consideration to appointing a worker adviser and an employer adviser to advise workers and employers on all employment legislation including labour standards and other employment legislation dealing with workers compensation, human rights, and occupational health and safety.

6. Contracts of Employment

The relationship between an employee and an employer is governed by a contract of employment. Where the employees are members of a bargaining unit represented by a union as bargaining agent, the terms of employment are governed by a collective agreement. Non-unionized employees are governed by an individual contract of employment. For most employees the individual contract of employment is not in writing and consists of verbal understandings. For most employees the terms and conditions of their employment are the minimum conditions contained in labour standards legislation, together with any additional benefits provided by the employer. Many employees are not aware of their terms of employment. Agreements made between the employer and the employee may not be recorded in writing. When the agreement is not in writing, its contents may be subject to disagreement between the employer and employee. To reduce the occurrence of such disagreements and to improve the relationships between employees and employers, employers should provide employees with a statement of employment upon hiring stating the wages and other basic terms of employment. To facilitate the organization by the employer of such information, and access by employees to the information, employers should also maintain a personal file for each employee containing a copy of the statement of employment. The personal file should also contain any other correspondence or documents relevant to the employment relationship with the employee having a right of access to the personal file. The Act should have an attached schedule containing a sample form to be used by an employer as a statement of employment to be provided to an employee upon hiring. The employer should also be required to provide each employee with a copy of the Act and any summary booklet available from the Department.

Recommendation # 8 - Upon hiring, an employer shall provide to an employee a statement of employment describing wages and other basic terms of employment, and provide to each employee a copy of the *Employment Standards Act* and any summary booklet prepared by the Department. The employer shall post a copy of the Act and booklet in the workplace. The statement of employment provided upon hiring is to be placed in each employee's personal file, and employees shall have a right of access to their personal file. Collective agreements and individual contracts of employment may provide for additional benefits and remuneration that exceeds the minimum standards contained in the *Employment Standards Act*.

7. Excluded Occupations

In the current *Labour Standards Act*, there is a list of professions that are excluded from the application of the Act. The definition of "employee" in the *Labour Standards Act* refers to a person who works under a contract of service. "Contract of service" is defined to exclude a contract entered into by an employee qualified in or training for qualification in the listed professions of accountancy, architecture, law, medicine, pharmacy, professional engineering, surveying, teaching, veterinary science and other professions and occupations that may be prescribed. At present, there are no other prescribed professions and occupations. Inquiries are made to Labour Standards Officers from employees, such as teachers, who find they are excluded from the application of the Act. In other jurisdictions, similar professions are not

excluded from the application of the entire Act, but may be excluded from certain sections of the Act such as hours of work, or public holidays. It is the opinion of the Board that labour standards legislation should apply to all employees within the Province and that exceptions for employees from specific parts of the legislation should be limited to justifiable circumstances.

Recommendation # 9 - The Act should apply to all employees in the Province, subject to exemption from specific provisions for justified reason. The professions currently excluded from the application of the Act by the definition of "contract of service" should no longer be excluded.

8. Wages

Payment

The *Labour Standards Act* currently provides for payment of wages by cash or cheque. The Board has considered a proposal that employers have the option to pay an employee by automatic bank deposit. Some employees object to automatic bank deposits for various reasons, including confidentiality and financial concerns. No change to the current provision is recommended, with the exception that payment may be made by automatic bank deposit where the employee consents.

Recommendation # 10 - Employers may pay employees by either cash or cheque. Employers may pay employees by automatic bank deposit where the employee consents to that method of payment.

The current legislation provides for the collection of wages on behalf of employees and directs payment of wages to employees upon termination of employment. We propose some minor changes with respect to payment of wages that would provide for greater clarification of an employer's obligations. The current section 33(2) of the Act requires payment within one week from the date of termination of the contract of service. In the event that employees are paid every two weeks, then an employer will be required to provide payment to an employee on a date that does not fall on a regular payday for their employees, creating an inconvenience for the employer. The Board agrees that payment on termination be allowed on the next regular pay day which would be no more than one half month following the date of termination. The current language in section 33(1) of the Act is confusing with respect to when regular payments of wages are due. Payments are permitted to be made up to one week after the week that is worked. Payment made within 21 days after the day worked would simplify the requirement. Section 32 provides for payment by cheque on the account of a chartered bank. The Board recommends an amendment to permit the cheque to be drawn on a credit union in addition to a bank.

Recommendation # 11 - Upon termination of employment, the wages due to the employee shall be paid on the next regular pay day. The Act should clarify that payment of wages is to be made no more than 21 days after the day worked. The Act should permit payments by cheque drawn

on an account at a credit union whose deposits are guaranteed by the Credit Union Guarantee Deposit Corporation.

Minimum Wage

The minimum wage is $5.50 per hour, effective October 1, 1999, and is contained in the *Labour Standards Regulations*. The minimum wage applies to employees 16 years of age and over. There is no minimum wage for employees under 16 years of age. Most jurisdictions in Canada do not have an age limit on the minimum wage. A minimum wage that excludes persons younger that a specific age would likely be considered discriminatory and not enforceable by reason of the *Canadian Charter of Rights.* The minimum wage should not discriminate on the basis of age.

The minimum wage of $5.50 per hour is currently the lowest in Canada. Minimum wages in other jurisdictions are as follows:

Nova Scotia	$5.60
New Brunswick	$5.75
Prince Edward Island	$5.60
Quebec	$6.90
Ontario	$6.85
Manitoba	$6.00
Saskatchewan	$6.00
Alberta	$5.90
British Columbia	$7.15
Yukon	$7.20
Northwest Territories	$7.00

The Newfoundland and Labrador Federation of Labour recommended that the minimum wage be immediately increased to $8.24 per hour calculated as 60% of the average industrial wage of $13.74 per hour. The Federation of Labour also recommended that further increases be implemented until the minimum wage has reached the poverty line for a single wage earner. The Federation of Labour pointed to the fact that the minimum wage earner is earning less than the poverty line and suggested that an increase in the minimum wage would address issues such as the fact that Newfoundland and Labrador has the lowest average household income in Canada. The Newfoundland and Labrador Employer's Council submitted that an increase in minimum wage in the foreseeable future was not reasonable. The view of employers is that an increase in minimum wage will cause layoffs, reduce the amount of hiring, reduce hours of work and increase costs to consumers. The Employers' Council pointed out that the minimum wage was increased from $4.75 to $5.50 per hour from 1995 to 1999, an increase of 16%. This increase is significantly more than the wage increase received by most employees. The Employer's Council also submitted that the current minimum wage was consistent with the minimum wage rates for the Atlantic Provinces, which are the appropriate jurisdictions to use for comparison purposes. The Womens' Policy

Office referred to the fact that a higher percentage of women are minimum wage earners. It was noted that 9.1% of the Newfoundland and Labrador workforce worked for the minimum wage, the largest percentage in Canada. There is a correlation between high unemployment rates and the percentage of minimum wage earners in a province. Women comprise a high percentage of workers in restaurant, retail stores, and service industries that traditionally have low levels of unionization and employ more minimum wage earners. The Womens' Policy Office recommended an increase in the minimum wage, but did not specify an amount.

There are no clear and consistent guidelines describing the method of setting the minimum wage. A strict formula based approach may not allow current political and economic considerations to be taken into account. On the other hand, the Board believes that the process of setting the minimum wage and the rationale for the minimum wage should be transparent and fully explained to the public. There are compelling social and economic reasons for an annual review of the minimum wage. Comparison with other jurisdictions in Canada is a relevant factor and the comparison should not be limited to the Atlantic Provinces. The minimum wage should be set as a percentage of the average industrial wage, with the exact percentage to be determined at least annually.

When setting the minimum wage, Government should act upon the advice of an advisory board consisting of representatives of employees and employers and a neutral chairperson. The advisory board may be an Employment Standards Board that also advises Government on other issues of employment standards legislation.

Recommendation # 12 - The minimum wage should be reviewed by Government at least annually and any increase in the minimum wage be based on a report from an advisory committee or an Employment Standards Board that includes representatives of employers, employees and a neutral chairperson. When making recommendations for an increase in the minimum wage, the advisory board shall recommend a minimum wage that is a percentage of the average industrial wage and shall consider other relevant factors. The minimum wage shall be the same regardless of age.

Employers have described problems associated with lack of notice of an increase in the minimum wage. For example, in the tourism industry, the rates for rooms are set in advance of the tourist season and published in tourist guides. It is therefore appropriate that employers be given six months notice of any increase in minimum wage.

Recommendation # 13 - There should be a notice period of six months of any increase in minimum wage.

The Newfoundland and Labrador Building and Construction Trades Council has proposed minimum wages for the construction trades set at the rate of 85% of the negotiated rate set out in the collective agreements for each trade. Such a wage is referred to as a fair wage. The Board believes the issues raised by the

Council relate, in part, to labour relations in the construction industry. It would therefore be appropriate for this issue to be reviewed at the same time as other issues of concern in the construction industry.

Recommendation # 14 - The Government appoint an advisory committee consisting of representatives of employers, employees and a neutral chairperson to review labour relations in the construction industry and to include within the review the issue of fair wages.

Overtime

The overtime rate of wages is currently one and one half times the minimum wage, or $8.25 per hour. For those employees whose regular wage is $8.25 per hour or more, any hours worked by those employees in excess of 40 hours per week are paid at that employee's regular rate of wage in the absence of any other agreement. In all other jurisdictions in Canada with the exception of the Atlantic Provinces, the overtime rate is set at one and one half times the regular rate of pay. It would be appropriate to change the rate to be consistent with most jurisdictions in Canada.

Recommendation # 15 - Overtime pay to be paid at a rate of one and one half times an employee's regular rate of pay in place of one and one half times the minimum wage. Overtime rate of pay would be paid for work in excess of the regular weekly hours of work of 40 hours per week.

The Regulations provide for exemptions from the requirement to pay overtime in certain occupations such as farming. The exemption from paying the overtime rate of pay in agriculture does not apply to greenhouse workers. This is consistent with other jurisdictions in Canada and the Board does not recommend any change. Exemptions may be appropriate for various occupations or undertakings and Regulations should continue to contain exemptions. In other jurisdictions, management employees are exempt from the overtime pay provisions. The Board recommends that managers, as defined in labour relations legislation, be exempt.

Recommendation # 16 - The Regulations may continue to exempt specific occupations, or undertakings from overtime pay requirements. Management employees shall be exempt from overtime pay requirements.

The Act does not currently provide for time off in lieu of payment of overtime. Any hours worked in excess of the standard hours of work are to be paid at the overtime rate of pay. Employees sometimes prefer to have time off in lieu of payment for overtime. In five jurisdictions in Canada the legislation contains general provisions allowing employees to take time off in lieu of payment for overtime. In four of those jurisdictions, time off is taken at 1½ times the time worked. The Board is in favour of such a provision, however, there need to be safeguards to protect employees. Obtaining the consent in writing from the employee would provide a safeguard. The Board recommends permitting an arrangement for time off in lieu of payment for overtime provided the arrangement is made in writing and a copy of the arrangement is signed by both the employer and the employee and placed on the employee's personal file within 30 days of the date the work was performed. Time off should be permitted at 1½ times the time worked. If time off is not taken within 3 months, then overtime shall be paid.

Recommendation # 17 - Employees shall be permitted to take time off in lieu of payment for overtime. The employer and the employee shall agree in writing for each occurrence and the agreement be placed on the employee's personal file within 30 days from the date the work was performed. Time off shall be allowed at 1½ times the time worked. If time off is not taken within 3 months then overtime wages must be paid.

The Act does not provide for employees to change shifts with other employees and to be paid at a rate less than overtime rates for time worked in excess of the standard hours. An employee may be quite willing to waive his or her right to overtime payment when the employee requests a change of shift or an additional shift. Arrangements to change shifts may be to the advantage of both the employee and the employer. The Board recommends that where an employee requests in writing an additional shift or change of shift for the benefit of the employee without payment of the overtime rate of pay, then the employer is not required to pay at the overtime rate of pay.

Recommendation # 18 - An employer is not required to pay the overtime rate of pay when an employee requests in writing an additional shift or change of shift for the benefit of the employee, without payment of the overtime rate of pay.

Deductions From Wages

The Act currently does not permit deductions from wages for uniforms. The Board considered representations from various organizations and individuals on this issue. By permitting deductions from wages for uniforms, there is a possibility of abuse. The Board considers that deductions from wages should be limited to the fullest extent possible.

Recommendation # 19 - Employers shall not be permitted to make deductions from an employee's wages for uniforms.

The current section 36(3) of the *Labour Standards Act* permits deductions from wages of any "sums established at law" to be due by the employee to the employer. Different interpretations of section 36(3) have led to disputes between employers and employees. The Board is of the view that no deductions ought to be allowed except those required by statute, such as deductions for employment insurance, Canada Pension Plan and income tax, by order of the Court, overpayment of wages, group benefit plans or agreed RRSP or other savings plans.

Recommendation # 20 - The permitted deductions from wages shall be restricted to statutory deductions, amounts established by order of the Court, overpayments of wages, group benefit plans or agreed Registered Retirement Savings Plans or other savings plans.

Travel Expenses

The current legislation provides for reimbursement to employees for travel expenses. Additional provisions need to be inserted in the legislation for the protection of employees. Employees should be provided with an advance of funds prior to incurring travel or other expenses on behalf of the employer. Where the employee incurs an expense for the employer, the employee should be reimbursed within two weeks of the claim for payment.

Recommendation # 21 - Where an employee is expected to incur expenses for an employer, the employer shall advance to the employee the amount that it may reasonably be anticipated will be incurred. Employees incurring expenses on behalf of the employer are to be reimbursed by the employer within two weeks of the claim for payment.

Wage Protection

Wage protection is currently provided for employees to the extent that an employee has first priority over the claims of other creditors up to $2,000.00. Wage protection benefits employees in comparison to other creditors. It is important to protect employees in the event that their employer goes out of business or becomes insolvent. The Board supports the initiative currently being undertaken to amend Federal bankruptcy law to provide first priority for employees in the event of bankruptcy. In cases where there is no bankruptcy, protection of the priority of employees falls within Provincial jurisdiction. Employees may be owed amounts that exceed $2,000.00 depending on factors such as the wage rate, overtime or other payments owed, and the length of time employees have worked without being paid. We recommend that this amount be increased. Some jurisdictions provide for three month's wages and other jurisdictions provide for amounts up to $7,500.00. The amount of the priority should be increased to $7,500.00. To provide further protection for employees, any unpaid wages shall be deemed to be held in trust by an employer for an employee. For the purpose of priority, wages would also include amounts owing for benefits such as vacation pay or holiday pay.

Recommendation # 22 - An employee shall have first priority in respect of wages due to the employee in priority to all other creditors to the extent of $7,500.00. Wages due to an employee are deemed to be held in trust by the employer for the employee. Wages shall include benefits owing such as vacation pay, holiday pay or payment in lieu of notice of termination.

There is a need to further protect the rights of employees to collect unpaid wages, in the event that the employer is a limited liability company that is insolvent and there are no assets available to an employee as a creditor of the company. The principle of limited liability means that shareholders and directors of a company are protected from personal liability for the debts of the company. However, legislation provides for personal liability of directors in some instances, for example, the amounts due by the employer for the employer's share of employment insurance and Canada Pension Plan remittances. To underline the importance of wage protection for employees, the personal liability of the directors of a limited liability company should be applied to unpaid wages up to the amount of $7,500.00.

Recommendation # 23 - Company directors shall be personally liable for unpaid wages owing by the company to an employee up to $7,500.00 per employee.

Tips and Gratuities

The current legislation provides that tips or gratuities are the property of the employee to whom they are given. Disagreements may arise between an employee and an employer with respect to whether the tip or any part of the tip is the property of the employer. The Board recommends retaining the current requirement that tips are the property of the employee. In some instances, the employer receives the tip on behalf of the employee, for example when the customer pays by credit card. In such instances the tip should be paid to the employee immediately.

Recommendation # 24 - Employees shall not be required to share any part of a tip with the employer or the employer's designate. Tips received by an employer on behalf of an employee shall be paid to the employee immediately.

9. Hours of Work

The standard hours of work are prescribed by section 5(1) of the Regulations to be 40 hours per week. The Board agrees with a standard work week of 40 hours, which is commonly accepted and consistent with other jurisdictions. The statement of the standard work week should be contained in the Act and not in the Regulations. There should continue to be provision for exemption from the standard hours of work either by regulation or upon application to the Minister of Environment and Labour, for specific undertakings or categories of employees.

Recommendation # 25 - The standard working hours shall be 40 hours per week, subject to exemptions for specific undertakings or categories of employees.

Current labour standards provide for a period of rest of not less than 24 hours during each week of employment. The weekly day of rest should continue subject to exemption upon application to the Minister of Labour. The current section 22(2) of the Act states that the rest period shall be a Sunday "wherever possible". This provision does not mean that employees have the right to refuse to work on Sunday. The phrase "wherever possible" serves no purpose and such language should be removed. The Board heard submissions on behalf of employees that employees ought to have the right to refuse work on Sunday. Many retail store employees were not required to work on Sunday when they were employed in retail stores to which the *Shops Closing Act* prohibition against shopping on Sunday applied. The *Shops Closing Act* was amended in 1997 to permit shopping on Sunday in all stores. Subsequent to the change in the law to permit Sunday shopping, many retail stores have opened on Sunday. The issue of Sunday shopping was raised with the Board, however, the Board was appointed to review labour standards and the issue of Sunday shopping is outside the Board's mandate. It is within the scope of labour standards to review issues related to work on Sunday. The Board has given careful consideration to concerns raised

on behalf of employees. However, the right to refuse work on Sunday may not be appropriate or customary in specific workplaces. It is difficult to justify permitting employees in specific undertakings to have the right to refuse to work on Sunday, while not extending the right to all employees. This issue is one that is more appropriately addressed by agreement between employers and employees or by collective bargaining.

Recommendation # 26 - Employees shall be permitted a rest period of 24 hours within each week of employment, subject to exemption of specific undertakings by the Minister of Labour.

There is currently an exemption from the hours of work provisions for management employees. This means that an employer is not required to provide any day of rest to a management employee. The Board believes this exemption should be removed.

Recommendation # 27 - Management employees shall not be exempted from the requirement of a weekly day of rest.

Currently employees may be required to work a maximum of 14 hours per day, or a maximum of 16 hours per day where the employee works alone. This is based upon the combined effect of the provision for 8 consecutive hours off work in each 24 hour period of employment, and the provision for a break of one hour after every five hours of work. The Board has considered representations that the maximum daily hours of work be reduced to 12 hours from the current 14 or 16 hours. The Board has considered representations on behalf of employees that the length of time at work without a break of one hour be reduced from five hours to three hours. The Board has also considered representations on behalf of employers that exceptions be permitted to the one hour rest breaks. These proposals require further study to consider all the implications. At this time the Board does not recommend any change.

Recommendation # 28 - The current provisions will continue with respect to the maximum number of hours of work per day and the amount of time worked before entitlement to a one hour break.

The provisions with respect to "scheduled" versus "call-in" work and the minimum hours of work for which an employee is to be paid are the source of disputes between employers and employees. Changes are needed to eliminate confusion in the workplace. The current requirement is set out in section 10 of the *Labour Standards Regulations,* which is interpreted by the Department to mean that there is no minimum length of time for which an employee may be scheduled to work. The current interpretation of the Regulations means that an employee may be scheduled to work three separate two hour shifts in the same day and be entitled to be paid for six hours work. An employee scheduled to work a shift of more than three hours is entitled to receive payment for three hours regardless of the time actually worked. The Board is of the view that the current situation is not justifiable and causes unfairness to employees. There should be a clear distinction between scheduled work and call-in work. In the Board's view, "scheduled" work means that an employee has sufficient notice of the time he or she is required to work so that the

employee can plan personal or social events with the work schedule in mind. "Call in" work occurs when an employee has short notice of the need to work and is likely to suffer inconvenience. This was one of the issues raised in the Discussion Paper and the Board heard many submissions on this issue. In some workplaces the employer posts a schedule on a bulletin board and the schedule has the effect of giving notice to employees when they are required to work. In other workplaces a posted schedule is not customary or practical.

The Board recommends that a practical way to define "scheduled" work is by the length of notice given to the employee as to when the employee is required to work. The notice should be in writing to avoid dispute, and may be given by a posted schedule. In the Board's view, 48 hours notice is sufficient notice for the work to be considered "scheduled" work. Where the notice given is less than 48 hours, the work shall be considered "call in" work. The Board believes that the length of a shift that is scheduled should be no less than three hours. The minimum length of a shift is three hours, whether call-in or scheduled, in six jurisdictions in Canada. One jurisdiction has a minimum shift of four hours. The minimum length of shift is three hours for call-in work in four jurisdictions in Canada. Two jurisdictions have a minimum length of shift of four hours for call in work. The Board believes that employees called in to work on less than the required 48 hours notice for scheduled work, should be entitled to a longer minimum shift to recognize the greater inconvenience to the employee. The Board recommends that four hours be the minimum length of a shift for call in work. Employees should be paid at their regular rate of pay for the appropriate time. Employees who are scheduled or called in to work and are not assigned work are entitled to be paid for the minimum shift from the time they report to work.

Recommendation # 29 - An employee shall be scheduled to work and shall be paid for not less than three hours in a shift. Scheduled work means that an employee has received notice in writing at least 48 hours prior to the start of the shift. The notice shall be by posted schedule wherever reasonably practical. An employee called in to work on less than 48 hours written notice shall be paid for a minimum four hour shift. The minimum amounts shall be paid at the employee's regular rate of pay. Upon reporting to work an employee is entitled to be paid for the minimum shift whether or not the employee is assigned work.

10. Vacations and Vacation Pay

The current labour standards legislation provides for vacation pay at the rate of 4%, with the rate for employees with 15 years of continuous employment increasing to 6%. Five jurisdictions in Canada including the other Atlantic Provinces provide for a rate of vacation pay of 4% without any further increase based on length of employment. Other jurisdictions provide for an increase to 6% after five or six years or some other period of employment. The current provisions in Newfoundland are not inconsistent with other jurisdictions and the Board does not recommend any change. Qualification for vacation leave is currently based on working 90% of the normal working hours in a continuous 12 month period. The use of the phrase "90% of the normal working hours" is confusing and difficult to enforce. A provision that would provide greater clarity and be more easily interpreted would be to provide for a qualification that

an employee be employed for a continuous 12 month period. An issue related to bereavement leave was brought to the Board's attention. In those instances where

bereavement leave entitlement occurs during vacation leave, the employee shall be permitted to take time off for bereavement leave at the end of the vacation leave.

Recommendation # 30 - An employee shall qualify for vacation leave who has been employed for a continuous 12 month period. There is no recommendation to change the current rate of vacation pay. Where bereavement leave entitlement occurs during vacation leave, the employee shall be permitted to take time off for bereavement leave at the end of the vacation leave.

The Board was informed that there are occasions where an employer has cancelled an employee's vacation leave where the vacation was previously approved by the employer. An employee may have booked airline flights, hotels or travel packages, and will incur significant expenses in the event that the employer cancels the vacation leave. There is currently no provision requiring an employer to compensate the employee in the event of cancellation of vacation leave. In the Board's view, an employer should be required to pay the actual expenses of an employee in the event that vacation leave is cancelled.

Recommendation # 31 - In the event that the employer cancels a vacation leave previously approved in writing, the employer should reimburse to the employee expenses incurred as a result of the cancellation.

The amount of vacation pay that has accumulated should be communicated to the employee and shown on the employee's pay stub. In the event of termination of employment, the current Act requires payment of vacation pay within one week. In many cases employers have payroll systems that create administrative difficulties to make a payment of vacation pay on a day other than the normal payday. The Board agrees with the recommendation of the Employer's Council to permit payment of vacation pay, in the event of termination of employment, on the next regular pay day. This is similar to the recommendation made by the Board with respect to payment of wages on termination of employment.

Recommendation # 32 -The amount of accumulated vacation pay should be shown on an employee's pay stub. Employers shall be required to pay vacation pay, upon termination of employment, on the next regular pay day.

11. Public Holidays

To qualify for payment for a public holiday, an employee is currently required to work 15 of 30 days prior to the holiday and also to work the shift prior to the holiday and the shift following the holiday. The current provisions are not clear and are the source of confusion and dispute in the workplace. The Board has considered various alternatives to provide for clarity to employers and employees and to provide for fairness to employees. The Board has also considered that the traditional five day 40 hour work week is being replaced by other work arrangements, such as full time employees working 12 hour shifts, and the increase in part time employment. In addition, the requirement for an employee to work on the day preceding the holiday and the day following the holiday may be the subject of dispute between an employer

and an employee as to which days are required to be worked. An employee may not be entitled under the current legislation if an employer lays off an employee prior to the holiday and then subsequently rehires the employee some time after the holiday. The Board holds the view that an employee is entitled to be paid for the public holiday when he or she has worked for the employer for a meaningful length of time during the 30 days prior to the holiday. The current requirement to work 15 of 30 days prior to the holiday may operate unfairly to exclude some employees. The Board suggests replacing 15 days with a number of hours of work, and recommends 40 hours as reasonable. An employee will also be entitled where he or she has worked at some time during the 30 days following the holiday. The amount of holiday pay to be paid to the employee should be based on the hours the employee usually works. This will be calculated based on the average daily hours worked by the employee during the 30 calendar days prior to the holiday.

Recommendation # 33 - An employee qualifies for a paid public holiday where the employee has worked 40 hours during the 30 calendar days prior to the holiday and at any time within 30 calendar days following the holiday. Holiday pay should be calculated based upon the average daily hours worked by the employee in the 30 days prior to the public holiday.

The Board has considered the number of public holidays. There are currently five paid public holidays, namely New Years Day, Good Friday, Memorial Day, Labour Day, and Christmas Day. The provision of five paid public holidays is the lowest in Canada. Prince Edward Island also provides for five paid public holidays. New Brunswick and Nova Scotia provide for six paid public holidays. The other jurisdictions provide for seven or more paid public holidays. The number of paid public holidays should be increased to six to be more consistent with other jurisdictions. The Board has also considered which public holidays are most commonly granted in other jurisdictions. Victoria Day is a public holiday in nine jurisdictions in Canada and the Board recommends this day be added to the list of public holidays.

Recommendation # 34 - The number of public holidays be increased from five days to six days and Victoria Day be added as a public holiday.

12. Leaves of Absence

Pregnancy, Adoption and Parental Leave

The current permitted length of leave for pregnancy, adoption and parental leave is less than the lengths of leave in Federal Employment Insurance Guidelines due to become effective on January 1, 2001. As well, the qualifying period in the Federal Guidelines will be reduced. The length of leave and qualifying period should be amended to be consistent with the revised Federal Guidelines. The Board does not recommend any change in the requirement of two weeks notice of leave and two weeks notice to return from leave. The legislation currently prohibits an employer from dismissing an employee by reason of pregnancy, adoption or parental leave. The Act does not provide for a mechanism to enforce this provision. It is recommended that the provision be enforced by determination of the Director of Labour Standards or a labour standards officer. The Board has also considered the desirability of allowing for pregnancy,

adoption and parental leave periods to be included for the purpose of calculating entitlement to labour standards benefits, such as higher rate of vacation pay, and a longer period of notice of termination.

Recommendation # 35 - The length of leave and qualifying period for pregnancy, adoption and parental leave shall be amended to correspond to revised Federal Employment Insurance Guidelines. Dismissal of an employee in violation of the protection of employees on pregnancy, adoption or parental leave may be enforced by determination of the Director of Labour Standards or a labour standards officer. Time absent on pregnancy, adoption or parental leave shall be included for the purpose of calculating entitlement to rate of vacation pay and length of notice of termination.

Bereavement Leave

The bereavement leave provisions currently provide for two days unpaid leave and one day paid leave in the event of death of family members. The Board recommends that "son-in-law" and "daughter-in-law" be added to the categories of family members listed for reasons of consistency. Qualification for bereavement leave is stated to be employment for a continuous period of at least one month. The Board has considered the qualification period and is of the view that there should be no qualification for unpaid bereavement leave and the qualification for paid bereavement leave shall be 30 calendar days. Pay for bereavement leave purposes shall be calculated in the same manner as pay for public holidays.

Recommendation # 36 - Bereavement leave entitlement shall be permitted in the event of death of a son-in-law or daughter-in-law in addition to the categories of family members provided in the current legislation. Pay for bereavement leave shall be calculated in the same manner as pay for public holidays, i.e. the average daily hours of work in the preceding 30 days. All employees are entitled to two days unpaid bereavement leave. An employee who has worked for an employer for 30 calendar days is also entitled to one day paid bereavement leave.

Sick Leave and Family Responsibility Leave

Employees are currently entitled to five days unpaid sick leave upon being employed for a continuous period of six months and upon providing a medical certificate. The Board does not believe that a medical certificate should be required for every absence. In fact, requiring a medical certificate may result in further absence from work for the purpose of obtaining the certificate. However, sick leave that extends beyond two consecutive days should be subject to verification by a medical certificate.

The Board has also given consideration to the changing nature of the workplace, the increasing participation of women in the workforce, the trend towards both parents working, and the trend towards employees with the added responsibility to care for aging parents. Employees should be permitted unpaid family responsibility leave to attend to the needs of their family. Employees should not be required to give an explanation to their employer of the reason for family responsibility leave except in cases where the leave exceeds two consecutive days, in which event a written explanation should be provided. To permit greater

flexibility for employees and employers, employees should be provided with unpaid sick leave or family responsibility leave up to 12 days per year with the type of leave to be at the employee's option. This provides greater flexibility than providing for a separate number of days of sick leave and a separate number of days of family responsibility leave. The qualification period for both types of leave shall be 30 calendar days, which is consistent with other leave provisions.

Recommendation # 37 - Following employment for 30 calendar days, employees shall be entitled to12 days unpaid leave per year for reasons of sickness or family responsibility. An employee shall provide the employer with a medical certificate for sick leave of three or more consecutive days. An employee shall provide the employer with a written explanation for family responsibility leave of three or more consecutive days.

13. Notice of Termination

Current labour standards provide for both individual notice of termination and group notice of termination. The requirement for individual notice of termination is currently one week for employees employed less than two years and two weeks for employees employed for two years or more. Most other jurisdictions in Canada provide for longer periods of notice of termination for employees with greater lengths of service. For example, in the Province of Nova Scotia, employees with five years service are entitled to four weeks notice and employees with ten years service are entitled to eight weeks notice. Similar provisions are found in other jurisdictions and the Board believes that the notice provision should be changed to be more consistent with other jurisdictions.

Recommendation # 38 - Employees shall be entitled to notice of termination of one week for employees employed for less than two years, two weeks for employees employed for two to five years, four weeks for employees employed for five to ten years and eight weeks for employees employed for ten years or more. An employee is required to give the same notice as an employer.

There is no requirement at present that notice of termination be in writing in the event that the employee waives written notice. The requirement for written notice provides certainty in the workplace and the Board does not agree that there should be any waiver. The current provisions for temporary layoff are confusing and should be removed. The reasons for which an employee may dismiss without notice for a justified reason should be replaced with the reason of "just cause". This is a concept that is familiar to the Courts and administrative tribunals.

Recommendation # 39 - Notice of termination shall be in writing and written notice may not be waived by the employee. The provisions for temporary layoff should be removed from the legislation. An employer may terminate without notice for just cause.

The group layoff provisions of the legislation provide for longer periods of notice but do not provide for

payment of wages in lieu of notice. The provisions also do not provide for enforcement by determination of the Director. There should be provision for payment of wages in lieu of notice and enforcement by determination. Where the employer is a company, there shall be personal liability of the directors.

Recommendation # 40 - In the event of a group layoff, employees shall be entitled to payment of wages in lieu of notice. Directors shall be personally liable for payment of wages in lieu of notice. The payment may be enforced by determination of the Director of Labour Standards.

14. Administration and Enforcement

Employees who wish to complain of a violation of labour standards are currently required to file a complaint within six months of the occurrence of the event. The current interpretation of this provision is that, in the event an employee is terminated from employment, the employee is required to file a complaint within six months of the termination, and regardless of the date of filing the complaint, there can be no claim for moneys owing six months prior to the date of the complaint. In some cases, this is unfair to the employee. The limitation period for most civil claims arising from contract is two years. Employers are currently required by the Act to keep records for four years. The Board agrees that complaints should be filed within six months of termination of employment. However, the subject of the complaint may be any event during the period of two years prior to the complaint. Employees may file a complaint against their current employer at any time within two years of the event of the complaint.

Recommendation # 41 - In the event an employee is terminated from employment, a complaint must be filed within six months of the date of termination. The subject of a complaint may be an event that occurred within two years prior to the date of the complaint. Employees may file a complaint against their current employer at any time within two years of the event of the complaint.

There are specific penalty sections in the current legislation but there is no general offence or penalty section. The current amount of fine and imprisonment for violation of some provisions of the Act is extremely low. For example, the current section 63(4) provides for a fine of not less than $50. and not more than $500. for failure to keep records. The amount of the penalty should be consistent with the general offence sections in other Provincial legislation.

Recommendation # 42 - The legislation should include a general offence and penalty section, with the amounts of fine or imprisonment to be consistent with other Provincial offences.

The current provisions for enforcement of labour standards is extremely cumbersome and lengthy. In the event that a complaint is not resolved through a mediation process, then the Director of Labour Standards or a labour standards officer will make a determination, where appropriate. In the event of a determination that the employer pay an amount of money to an employee, and in the event that the employer does not pay the amount owing, there is difficulty collecting the amount. The determination is enforced by charging the employer with a violation of the *Labour Standards Act* and

then seeking a conviction and order in the Provincial Court. It is the view of the Board that this procedure ought to be replaced with a provision allowing for the determination to be filed in any court of competent jurisdiction and then be enforced in the same manner as any other Court Order. Execution proceedings could then proceed immediately and direction could be given to the Sheriff of Newfoundland to collect the amount owing. To give greater effect to certain provisions of the Act, determination orders may provide redress in different ways, in addition to the payment of money. For example, the Act prohibits an employer from terminating an employee by reason of maternity leave. To enforce such a provision, the Director or officer should be permitted to make a determination ordering that the employee be reinstated in employment.

Recommendation # 43 - Determination orders by the Director of Labour Standards or labour standards officers may be filed in any court of competent jurisdiction in the event of noncompliance and enforced as an order of the court by the Sheriff of Newfoundland. Determination orders may include orders for reinstatement of employees where the Act permits.

An employer may appeal a determination order upon payment of the amount in dispute. The appeals are heard by an adjudicator selected from a panel of adjudicators. The current time limit to file an appeal is 15 days from the date of a determination . Following the receipt of many submissions on this issue, the Board considers it appropriate to increase the time limit for the filing of an appeal to 30 days. It is appropriate that the amount of money in dispute be remitted. For the purpose of consistency and administrative efficiency, the Board is of the view that appeals ought to be heard by the Labour Relations Board, which has expertise in employment disputes. Further, there would be no automatic right to a hearing of an appeal. The Labour Relations Board would be entitled to make decisions without a hearing on the basis of written representations where appropriate.

Recommendation # 44 - Determinations may be appealed within 30 days of the date of the determination and upon remitting the amount of money in dispute. Appeals will be decided by the Labour Relations Board and may be determined on the basis of written representation or following a hearing where a hearing is ordered by the Board.

15. Review of Employment Standards

The continuous review of employment standards is essential in the interest of maintaining good employment relations in the province. It is recommended that employment standards be reviewed on a periodic basis at least every three years. Labour standards should be reviewed by a Board having a structure composed of representatives of employers, representatives of employees and a neutral chairperson. The Board should receive representations and meet with interested parties in a consultation process.

Recommendation # 45 - Employment standards in the Province should be reviewed on a regular basis at least every three years. The review should be conducted by a Board having

representatives of employees and employers and a neutral chairperson.

16. Conclusion

Employment standards legislation is necessary to ensure that employees are treated fairly and to protect employers from unfair competition. Legislation is needed that will describe new employment standards in plain language that is easily understood by employers and employees. We are recommending changes in the legislation we believe will provide clarity in areas where there is currently confusion. For example, our recommendations for qualification for public holidays and hours of work are intended to bring more certainty to the workplace.

The workplace will be more harmonious and productive if information about employment standards is made readily available. One of our recommendations in this area is that booklets explaining employment standards be provided to employers and employees in the province.

Reform of existing labour standards is needed in light of changes in the workforce and the nature of work. To accommodate working parents, we are recommending that family responsibility leave be provided. We are also recommending that flexibility in work scheduling be accommodated.

We have recommended several administrative changes to make the legislation more easily enforceable. Legal procedures need to be more efficient. We believe the result will be an Act that will better serve employers and employees.

Respectfully submitted by the Labour Standards Board.

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James C. Oakley
Chairperson

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Janet Kelly
Board Member

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Greg Pretty
Board Member

Appendix "A"

Members of the Labour Standards Board

James C. Oakley, Chairperson

James C. Oakley has extensive experience in employment and labour law. He is a member of the Law Society of Newfoundland and has practised law in the province for twenty years. Mr. Oakley obtained his Bachelor of Arts degree from the University of Alberta, Bachelor of Education degree from Memorial University of Newfoundland and Bachelor of Laws degree from the University of Western Ontario. He is frequently selected by unions and employers as an arbitrator of grievance disputes under collective agreements. He is an arbitrator of fish price disputes in the Newfoundland fishing industry. Mr. Oakley is a member of the National Academy of Arbitrators. He is designated as a Chartered Arbitrator by the Arbitration and Mediation Institute of Canada. He has mediated employment and labour disputes. He has given presentations on labour law and arbitration procedure to the Canadian Industrial Relations Association. His article as part of a ten nation study on "Duty of Loyalty" was recently published in the Comparative Labour Law and Policy Journal. He currently serves as Vice Chairperson of the Labour Relations Board.

Janet Kelly, Employer Representative

Janet Kelly has been the owner and operator of a small business since 1977. She has been actively involved in numerous organizations related to entrepreneurship and small business, such as the Funding Committee of The Y Enterprise Centre, Chair of the Business Development Centre of The North East Avalon Community Futures, Director of the Enterprise Store, Member of the investment committee of Mount Pearl CCIP Inc. She was the recipient of the 1992 Entrepreneur of the Year Award presented by the Gardiner Institute of Memorial University of Newfoundland. She is an enthusiastic promoter of fair business practices and positive employee relations and frequently speaks both within and outside the province on this topic. She is known for promoting educational opportunities for employees both on and off the job. She manages a staff of 40-50 full time employees on a daily basis. She has had a lifelong interest in basic labour standards and welcomed the opportunity to have input into revising the present Labour Standards Legislation.

Greg Pretty, Employee Representative

Greg Pretty is a Staff Representative of the Fish Food and Allied Workers/Canadian Auto Workers (FFAW/CAW). The FFAW/CAW represents over 20,000 workers in the Province of Newfoundland and Labrador. In addition to the fishing industry, the FFAW/CAW represents workers in a wide range of occupations in this province. Mr. Pretty attended Memorial University of Newfoundland from 1974-1978 and has worked with the Union since 1979. He has over twenty years of labour relations experience. As a Staff Representative, Mr. Pretty services and is responsible for negotiating a wide range of collective agreements in the fishing industry, manufacturing, steel fabrication and the service industry. Currently, Mr. Pretty is a Board Member, Employee Representative, for Metro Business Opportunities, St. John's and is a member of the Labour Standards Committee of the Newfoundland and Labrador Federation of Labour.

Appendix "B"

Organizations Making Submissions
to the Labour Standards Board

1. Newfoundland and Labrador Employers' Council
2. Canadian Restaurant and Food Services Association
3. Canadian Federation of Independent Business
4. Canadian Retail Hardware Association
5. Newfoundland and Labrador Federation of Labour
6. Newfoundland and Labrador Building Construction Trades Council
7. Retail Wholesale Canada, CAW
8. Fish, Food and Allied Workers (FFAW/CAW)
9. Womens' Policy Office, Government of Newfoundland and Labrador
10. Women in Resource Development Committee
11. Womens' Health Network Newfoundland and Labrador
12. New Democratic Party of Newfoundland and Labrador

Appendix "C"

List of Recommendations

Recommendation # 1 - The existing *Labour Standards Act* be repealed and replaced with a new Act, to be called the *Employment Standards Act*.

Recommendation # 2 - The new *Employment Standards Act* be drafted in plain English so that it is clear and easily understandable to employees and employers.

Recommendation # 3 - All employment standards, with the exception of the rate of minimum wage and exemptions from the standards, should be set out in the Act and not in regulations.

Recommendation # 4 - The new *Employment Standards Act* should be organized into parts in the following order: (1) wages, (2) hours of work, (3) vacation and vacation pay, (4) public holidays, (5) leaves of absence, (6) notice of termination, (7) employment of children, (8) administration and enforcement, (9) review of labour standards.

Recommendation # 5 - The Department of Environment and Labour should provide a copy of the *Employment Standards Act* and a booklet containing a summary of the Act to every employee and employer in the Province.

Recommendation # 6 - The Department of Environment and Labour give consideration to appointing a Labour Standards Officer in Labrador.

Recommendation # 7 - The Government give consideration to appointing a worker adviser and an employer adviser to advise workers and employers on all employment legislation including labour standards and other employment legislation dealing with workers compensation, human rights, and occupational health and safety.

Recommendation # 8 - Upon hiring, an employer shall provide to an employee a statement of employment describing wages and other basic terms of employment, and provide to each employee a copy of the *Employment Standards Act* and any summary booklet prepared by the Department. The employer shall post a copy of the Act and booklet in the workplace. The statement of employment provided upon hiring is to be placed in each employee's personal file, and employees shall have a right of access to their personal file. Collective agreements and individual contracts of employment may provide for additional benefits and remuneration that exceeds the minimum standards contained in the *Employment Standards Act*.

Recommendation # 9 - The Act should apply to all employees in the Province, subject to exemption from specific provisions for justified reason. The professions currently excluded from the application of the Act

by the definition of "contract of service" should no longer be excluded.

Recommendation # 10 - Employers may pay employees by either cash or cheque. Employers may pay employees by automatic bank deposit where the employee consents to that method of payment.
Recommendation # 11 - Upon termination of employment, the wages due to the employee shall be paid on the next regular pay day. The Act should clarify that payment of wages is to be made no more than 21 days after the day worked. The Act should permit payments by cheque drawn on an account at a credit union whose deposits are guaranteed by the Credit Union Guarantee Deposit Corporation.

Recommendation # 12 - The minimum wage should be reviewed by Government at least annually and any increase in the minimum wage be based on a report from an advisory committee or an Employment Standards Board that includes representatives of employers, employees and a neutral chairperson. When making recommendations for an increase in the minimum wage, the advisory board shall recommend a minimum wage that is a percentage of the average industrial wage and shall consider other relevant factors. The minimum wage shall be the same regardless of age.

Recommendation # 13 - There should be a notice period of six months of any increase in minimum wage.

Recommendation # 14 - The Government appoint an advisory committee consisting of representatives of employers, employees and a neutral chairperson to review labour relations in the construction industry and to include within the review the issue of fair wages.

Recommendation # 15 - Overtime pay to be paid at a rate of one and one half times an employee's regular rate of pay in place of one and one half times the minimum wage. Overtime rate of pay would be paid for work in excess of the regular weekly hours of work of 40 hours per week.

Recommendation # 16 - The Regulations may continue to exempt specific occupations, or undertakings from overtime pay requirements. Management employees shall be exempt from overtime pay requirements.

Recommendation # 17 - Employees shall be permitted to take time off in lieu of payment for overtime. The employer and the employee shall agree in writing for each occurrence and the agreement be placed on the employee's personal file within 30 days from the date the work was performed. Time off shall be allowed at 1½ times the time worked. If time off is not taken within 3 months then overtime wages must be paid.

Recommendation # 18 - An employer is not required to pay the overtime rate of pay when an employee requests in writing an additional shift or change of shift for the benefit of the employee, without payment of the overtime rate of pay.

Recommendation # 19 - Employers shall not be permitted to make deductions from an employee's wages for uniforms.

Recommendation # 20 - The permitted deductions from wages shall be restricted to statutory deductions, amounts established by order of the Court, overpayments of wages, group benefit plans or agreed

Registered Retirement Savings Plans or other savings plans.

Recommendation # 21 - Where an employee is expected to incur expenses for an employer, the employer shall advance to the employee the amount that it may reasonably be anticipated will be incurred. Employees incurring expenses on behalf of the employer are to be reimbursed by the employer within two weeks of the claim for payment.

Recommendation # 22 - An employee shall have first priority in respect of wages due to the employee in priority to all other creditors to the extent of $7,500.00. Wages due to an employee are deemed to be held in trust by the employer for the employee. Wages shall include benefits owing such as vacation pay, holiday pay or payment in lieu of notice of termination.

Recommendation # 23 - Company directors shall be personally liable for unpaid wages owing by the company to an employee up to $7,500.00 per employee.

Recommendation # 24 - Employees shall not be required to share any part of a tip with the employer or the employer's designate. Tips received by an employer on behalf of an employee shall be paid to the employee immediately.

Recommendation # 25 - The standard working hours shall be 40 hours per week, subject to exemptions for specific undertakings or categories of employees.

Recommendation # 26 - Employees shall be permitted a rest period of 24 hours within each week of employment, subject to exemption of specific undertakings by the Minister of Labour.

Recommendation # 27 - Management employees shall not be exempted from the requirement of a weekly day of rest.

Recommendation # 28 - The current provisions will continue with respect to the maximum number of hours of work per day and the amount of time worked before entitlement to a one hour break.

Recommendation # 29 - An employee shall be scheduled to work and shall be paid for not less than three hours in a shift. Scheduled work means that an employee has received notice in writing at least 48 hours prior to the start of the shift. The notice shall be by posted schedule wherever reasonably practical. An employee called in to work on less than 48 hours written notice shall be paid for a minimum four hour shift. The minimum amounts shall be paid at the employee's regular rate of pay. Upon reporting to work an employee is entitled to be paid for the minimum shift whether or not the employee is assigned work.

Recommendation # 30 - An employee shall qualify for vacation leave who has been employed for a continuous 12 month period. There is no recommendation to change the current rate of vacation pay. Where bereavement leave entitlement occurs during vacation leave, the employee shall be permitted to take time off for bereavement leave at the end of the vacation leave.

Recommendation # 31 - In the event that the employer cancels a vacation leave previously approved in

writing, the employer should reimburse to the employee expenses incurred as a result of the cancellation.

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Recommendation # 34 - The number of public holidays be increased from five days to six days and Victoria Day be added as a public holiday.

Recommendation # 35 - The length of leave and qualifying period for pregnancy, adoption and parental leave shall be amended to correspond to revised Federal Employment Insurance Guidelines. Dismissal of an employee in violation of the protection of employees on pregnancy, adoption or parental leave may be enforced by determination of the Director of Labour Standards or a labour standards officer. Time absent on pregnancy, adoption or parental leave shall be included for the purpose of calculating entitlement to rate of vacation pay and length of notice of termination.

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Recommendation # 38 - Employees shall be entitled to notice of termination of one week for employees employed for less than two years, two weeks for employees employed for two to five years, four weeks for employees employed for five to ten years and eight weeks for employees employed for ten years or more. An employee is required to give the same notice as an employer.

Recommendation # 39 - Notice of termination shall be in writing and written notice may not be waived by the employee. The provisions for temporary layoff should be removed from the legislation. An employer may terminate without notice for just cause.

Recommendation # 40 - In the event of a group layoff, employees shall be entitled to payment of wages in lieu of notice. Directors shall be personally liable for payment of wages in lieu of notice. The payment may be enforced by determination of the Director of Labour Standards.

Recommendation # 41 - In the event an employee is terminated from employment, a complaint must be filed within six months of the date of termination. The subject of a complaint may be an event that occurred within two years prior to the date of the complaint. Employees may file a complaint against their current employer at any time within two years of the event of the complaint.

Recommendation # 42 - The legislation should include a general offence and penalty section, with the amounts of fine or imprisonment to be consistent with other Provincial offences.

Recommendation # 43 - Determination orders by the Director of Labour Standards or labour standards officers may be filed in any court of competent jurisdiction in the event of noncompliance and enforced as an order of the court by the Sheriff of Newfoundland. Determination orders may include orders for reinstatement of employees where the Act permits.

Recommendation # 44 - Determinations may be appealed within 30 days of the date of the determination and upon remitting the amount of money in dispute. Appeals will be decided by the Labour Relations Board and may be determined on the basis of written representation or following a hearing where a hearing is ordered by the Board.

Recommendation # 45 - Employment standards in the Province should be reviewed on a regular basis at least every three years. The review should be conducted by a Board having representatives of employees and employers and a neutral chairperson.