

# Employment Standards Review 2005

## Submission By:

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I make this submission as a citizen; a middle-class retired professional who is concerned that we as a society are turning our backs on the less fortunate in a number of ways. One aspect of that is that many of us have settled comfortably into secure careers with little regard for the fact that a series of changes has left a large proportion of the workforce without many of the advantages we enjoyed. We are turning our backs on the next generation.

These remarks will focus on “Promoting Compliance” Page 7 : #3 :

My position is that we have failed to act in a timely fashion to changes in the workplace because we have failed to admit there is a problem, failed to recognize the implications for individual workers, and failed to see unfair labour practices for what they really are.

We have kept our heads in the sand. We haven't taken compliance seriously, and are unlikely to do so without a change in thinking.

Even the language used to frame the issue is bit tepid.

“Promoting Compliance”?

Let's not ruffle any feathers with harsh language such as “ENFORCING REGULATIONS”! Unfortunately this is not funny. The language we use to define issues reflects our take on those issues. And the official take on the issue of compliance is that there are “misunderstandings” and mistakes being made, and it's all a minor administrative problem.

It's not. At its worst it is institutionalized fraud, standardized and efficiently carried out by some large corporations. Put in the best light its still constitutes petty theft. And until we see it that way we will not correct the problem

## **Ineffective Responses**

To further illustrate this point, one should examine a 2001 initiative on the part of the government to partner with Manitoba Restaurant Association to create awareness of Employment Standards.

On January 30, 2001 there was a press release entitles "NEW CAMPAIGN LAUNCHED FOR EMPLOYMENT STANDARDS AWARENESS"

This quote caught my attention:

"The campaign is an industry-wide, voluntary promotion. However, under provisions in the code, employers with a history of contravening provincial legislation may be compelled to display the poster in their establishment."

So, what they were saying was that they acknowledge that there are employers who habitually break existing laws, steal from and cheat the poorest and most vulnerable segment of the working population! And this is the government's response? Put up an awareness poster!

The initiative outlined in the press release, though well intended, missed the point. Many workers know their rights - they are simply afraid to insist upon having them. Workers in the service industry can be fired without any hint of due process. When scheduling is done week-by-week, part time workers have no right to expect a set number of hours, let alone a consistent shift schedule. If they displease management they are often simply left of the schedule or have their hours cut. Complaining about not getting one's rights in many workplaces means that you won't be around very long. Employers are doing this - not because they are ill-informed about worker's rights - but because they are GETTING AWAY WITH IT!

The government's response to this complex and difficult situation was sadly inadequate. And when I wrote to explain this to the Minister of Labour it was apparent that she just didn't "get" it.

Why is OK for some segments of a society to routinely break laws and prey upon the vulnerable? Voluntary compliance and information initiatives are not realistic responses to habitual and calculated law-breaking.

### **Why haven't we made more of an effort to enforce current regulation?**

According to the discussion guide we see the problem and we have identified some strategies for fixing it. Basically we recognize that the provisions for penalties for employers are ineffective. But beyond that we need to recognize that the current enforcement strategy seems built on responding to complaints by employees. Contrast this with the manner in which we enforce the rules on our highways. Imagine a system in which the traffic police sat in offices and waited for disgruntled motorists to make complaints, then tried to find offenders and prove a case.

To understand the challenges we face in improving working conditions for the many people who aren't covered by Collective Bargaining units we must examine the current situation.

Although reasonable regulations exist to protect workers we seem to have begun to recognize that many employers are ignoring the regulations. This is most noticeable in the service industry and in workplaces with a young workforce. I believe that the changing nature of the workplace, with the increased proportion of people in part-time and casual jobs, has been accompanied by increased violations of the codes. I believe that the ineffectiveness of well-meaning people in regulatory agencies accompanied by the inattention of those of us in the comfortable middle class has allowed for an erosion of rights once taken for granted.

I think that there are three reasons why we sat idly by while working conditions for large segments of the population have deteriorated.

#### **1. We didn't realize.**

Many of us grew up in a different world, in effect we led a sheltered life. Our summer jobs during our university days were often full-time, nine-to-five situations. Often well above minimum wage. We graduated into careers, often with collective agreements and benefits. When

we did encounter unfair labour practices we moved on – jobs weren't that hard to find. When we did take part-time jobs in the service industry – it was often just for extra income, just temporary.

## 2. We don't understand the implications

As we aged and our children entered the workforce it became apparent that things had changed. With the lengthening of the working day and work week, and the expansion of the service industry, jobs changed. More complicated scheduling and flexible staffing enabled businesses to operate more efficiently and allowed them to provide us with 79 cent hamburgers etc. Some businesses began to develop creative ways to keep staff costs down and in doing so found out that they could often ignore regulations. No one seemed to be watching.

But when we began to hear stories about a boss who didn't want to pay holiday pay or neglected some other obligation, we still didn't understand the implications for employees. We thought that's tough – why don't they get another job or why don't they complain to the Labour Board. Stand up for your rights! We didn't know that it wasn't that simple.

### Example #1

Suppose a teenager who has quit her part time job in a local restaurant and doesn't receive her holiday pay. She calls the Labour Board to check to make sure that she is entitled. They helpfully ask if she would like to file a complaint and seem puzzled when she declines. They don't get it. Her boss is a well-known member of the business community. She thinks that if she angers or embarrasses him she'll never get another job in the community. She may be wrong but she won't take the risk.

### Example #2

A young man takes a casual job with a Janitorial service. The pay is low, the hours are irregular and after a few shifts he finds a better job. He asks about the pay he is owed and is told to meet the boss at a worksite at a certain time. He does this and the boss doesn't show. He tries again and the boss doesn't return his call. He goes to the Labour Board. They contact the employer who complies and the employee has to go to the Labour Board to pick up his cheque. The employee spent considerable time asserting his rights. The Labour Board spent some time. The employer paid no penalty.

### Example #3

One company with offices in at least three locations consistently doesn't pay for statutory holidays unless forced to by employees. This has happened several times to two employees in different offices. The employer can't lose as there is no penalty for consistently forgetting. The employees feel that their jobs are on the line if they complain to Employment Standards and they have no faith because employment standards has nothing to offer.

These are examples of patterns that are readily observable to anyone who is paying attention. They are part of the repertoire of business tactics used by many managers. The process is simple. Don't follow the rules until called on it. When called on it, try stalling. When forced, comply. It's a strategy that works well because many employees don't call them on it. Many give up easily. And may learn the hard way what happens when you cross the boss. The boss however, can't lose. The worst that can happen is that he has to follow the rules once in a while. No real penalty occurs.

The notion that these cases are often misunderstandings is both ridiculous and irrelevant. Ridiculous because, in every case I know of, the boss has been “called” on it and persists. Irrelevant, because I was always taught that ignorance of the law was no excuse.

Current practice seems to be that the onus is on the employee to see that regulations are followed and that they get their due. Complaining to the Labour Board isn’t an option if you want to keep your job especially in small rural businesses, and businesses are well aware that they run little or no risk by ignoring regulation.

### 3. We don’t see it for what it is.

I think that there was a time when we almost admired “sharp” business practices and tended to ignore transgressions as if they were just that employer’s way of getting around “red tape”. And while it may be true that, between equals, hard bargaining is a virtue, the employer-employee relationship is not between equals. When an employer denies an employee some compensation that is due it is not just being tight-fisted, it is theft. When an employer systematically and habitually denies required compensations, such as holiday pay, statutory holidays, overtime, it is fraud. These are crimes and need to be treated as such.

### **How do we promote compliance?**

The current rules and practice are supposed to protect the victim. But in some cases we can’t protect the victim. We can compensate them, but I’ve seen no effort to do that.

What we must do is focus on protecting the future victim by using the regulations to start moving towards changing attitudes about fairness by calling it what it is and reacting appropriately.

Businesses (or any of us) will sometimes be tempted to break the rules when it is in their interest to do so.

Simply put, we must make not worthwhile for them to do so.

One does this by increasing the risk:

1. Increasing penalties – we’ve already thought of that, we just have to do it. Real penalties are the only protection for future whistle-blowers.

2. Increasing the likelihood of being caught.

This is crucial. Right now the system seems to rely on specific employee complaints. As I’ve explained, many employees are unlikely to complain while their jobs are at stake. But they do complain to friends and relatives, and to anyone who is paying attention it is common knowledge that certain companies routinely break the rules. A little investigative or proactive work needs to be done.

3. Make it socially unacceptable by the change the nature of the penalty and the publicity that surrounds the penalty.

## **Why It's Important**

### **The Goal**

One should never lose sight of the real goal, a society in which a large proportion of the workforce has stable well-paid secure employment. That is a difficult goal, but turning our back on it and claiming helplessness is irresponsible. Whatever measures we take should come hand in hand with efforts to offer incentives to employers to offer such jobs.

Failure to act is failure to understand the real implication of the erosion of workers rights.

A worker without some expectation of fairness is a worker who is insecure

### **- What insecurity brings to the labour market and to society.**

Insecurity allows for control and manipulation. The ability to control and manipulate a workforce offers flexibility for business that we justify by our emphasis on staying competitive. The climate of insecurity is short-term thinking.

Security brings stability and productivity, it allows for training and skill enhancement.

We can't always reach the goal but we should at least aim in that direction

### **Dangers Ahead**

We need to recognize that making changes to the laws will not, in itself, change what happens in the field. There will have to be a real change in the way staff do their jobs. To enforce a regulation with commitment one must understand the regulation and see the need for it. This is what has gone wrong with the current regulations.

### **Summary**

We have allowed a deterioration in the workplace environment because we have failed to pay attention to changes in the nature of today's jobs, failed to put ourselves in the shoes of the workers who don't enjoy the rights many of us take for granted, and failed to understand the difference between misunderstanding and manipulation.

We need to correct this situation by reviewing the penalties for transgression and the protection for whistle-blowers, as well as by an increased emphasis on investigation and proactive enforcement. Specifically that means that we can't rely on formal complaints from employees as the sole basis for investigation and action. We do also need publicity surrounding this issue is such a way that we make it clear that although many businesses are run by honorable responsible people, those that do unfairly take advantage of the workforce will not be tolerated.