

**PEI HUMAN RIGHTS
COMMISSION**

COMMISSION DES
DROITS DE LA PERSONNE Î.-P.-É.

Navigating Fairness at work Human Rights and Workplace Safety

*BRENDA PICARD -EXECUTIVE DIRECTOR
(SHE/HER)*

Navigating Fairness at Work

- ▶ **Navigating Fairness at Work through the Lens of Human Rights Law and Workplace Safety**
- ▶ Explore the inherent rights shared by all individuals working in PEI.
- ▶ Learn how Human Rights and Workplace Safety intersect.
- ▶ Learn how provincial laws protect workers from discrimination and harassment, shaping a landscape where equality, dignity, and respect form the cornerstone of health and safety in the workplace.



Land Acknowledgement

Topics For Discussion

Overlap
between ESA,
OHSA, HRA

Discrimination

Accommodation

Harassment

Gender Identity

Criminal Records

Navigating Employment Law

- ▶ **Human Rights Act / Canadian Human Rights Act**
- ▶ **Employment Standards Act / Canada Labor Code**
- ▶ **Occupational Health and Safety**
- ▶ **Workers Compensation**
- ▶ **Unions and Labor Arbitration**
- ▶ **Wrongful dismissal and civil lawsuits**
- ▶ **Privacy Rights**

Where do these intersect?

- ▶ **Obligations of Employers**
- ▶ **Rights of Employees**

- ▶ **Maintain safe, healthy, respectful workplaces for everyone**
- ▶ **Meet the needs of the employer and the employee!**

- ▶ **Direct cross over in the legislation**
 - ▶ **Purpose and Harassment are best examples**

Employment Standards Act - Purpose

- ▶ The purposes of this Act are as follows:
- ▶ (a) to ensure that employees receive at least **basic conditions and benefits of employment;**
- ▶ (b) to promote positive relationships and open communications between employers and employees;
- ▶ (c) to foster the development of a productive and efficient labour force that can contribute fully to the prosperity of Prince Edward Island;
- ▶ (d) **to contribute in assisting employees to meet work and family responsibilities;**
- ▶ (e) to provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act

Occupational Health and Safety Act: Purpose

- ▶ The purpose of this Act is to **secure workers and self-employed persons from risks to their safety, health and physical or psychological well-being** arising out of, or in connection with, activities in their workplaces.

Human Rights Act: Preamble

- ▶ **AND WHEREAS** it is recognized in Prince Edward Island as a fundamental principle that **all persons are equal** in dignity and human rights without regard to age, colour, creed, disability, ethnic or national origin, family status, gender expression, gender identity, marital status, political belief, race, religion, sex, sexual orientation, or source of income;
- ▶ **AND WHEREAS** it is deemed desirable to provide for the people of the province a **Human Rights Commission to which complaints relating to discrimination may be made.**

Employment Standards Act - Harassment

- ▶ Every employee is **entitled to employment free of sexual harassment.**
- ▶ Every employer shall make every reasonable effort to ensure that no employee is subjected to sexual harassment.
- ▶ Every employer shall, after consultation with employees or their representatives, if any, issue a policy statement concerning sexual harassment. (details on what police must include)
- ▶ Every employer shall make each person under the employer's direction aware of the policy statement required by subsection (1)
- ▶ Where an employee alleges to an inspector that sexual harassment or discrimination is taking place, the inspector shall advise the employee of the right of **redress through the Human Rights Act.**

Occupational Health and Safety: Harassment

- ▶ **Harassment Regulations (effective July 1, 2020) pursuant to the PEI OHSA requires employers “to implement as a policy...measures to prevent and investigate occurrences of harassment (including bullying) in the workplace.”**

Human Rights Commission: Harassment

- ▶ Act does not mention harassment
- ▶ Case Law tells us harassment connected to a protected ground may be considered discrimination, may depend on the seriousness or frequency of the harassment.

Harassment is not the only type of discrimination covered by the HRA.

Harassment /bullying/discrimination

ESA

Sexual Harassment

OHSA & Regs

Includes (not limited to)

- age
- colour, race, nationality, ancestry or place of origin
- creed, religion
- disability, physical size or weight,
- family status, marital status
- gender identity
- sex, pregnancy
- sexual orientation

HRA (Grounds)

- age
- colour, race, ethnic or national origin
- creed, religion
- disability
- family status, marital status
- gender expression, gender identity
- political belief
- sex (sexual harassment, pregnancy)
- sexual orientation
- source of income
- Criminal record in employment

What Does The PEI Human Rights Commission Do?

- ▶ We investigate and determine whether there has been discrimination under the HRA if we receive a complaint (within a year).
- ▶ We present information to the public, **businesses**, schools and others about human rights issues.
- ▶ We advise government about human rights issues.

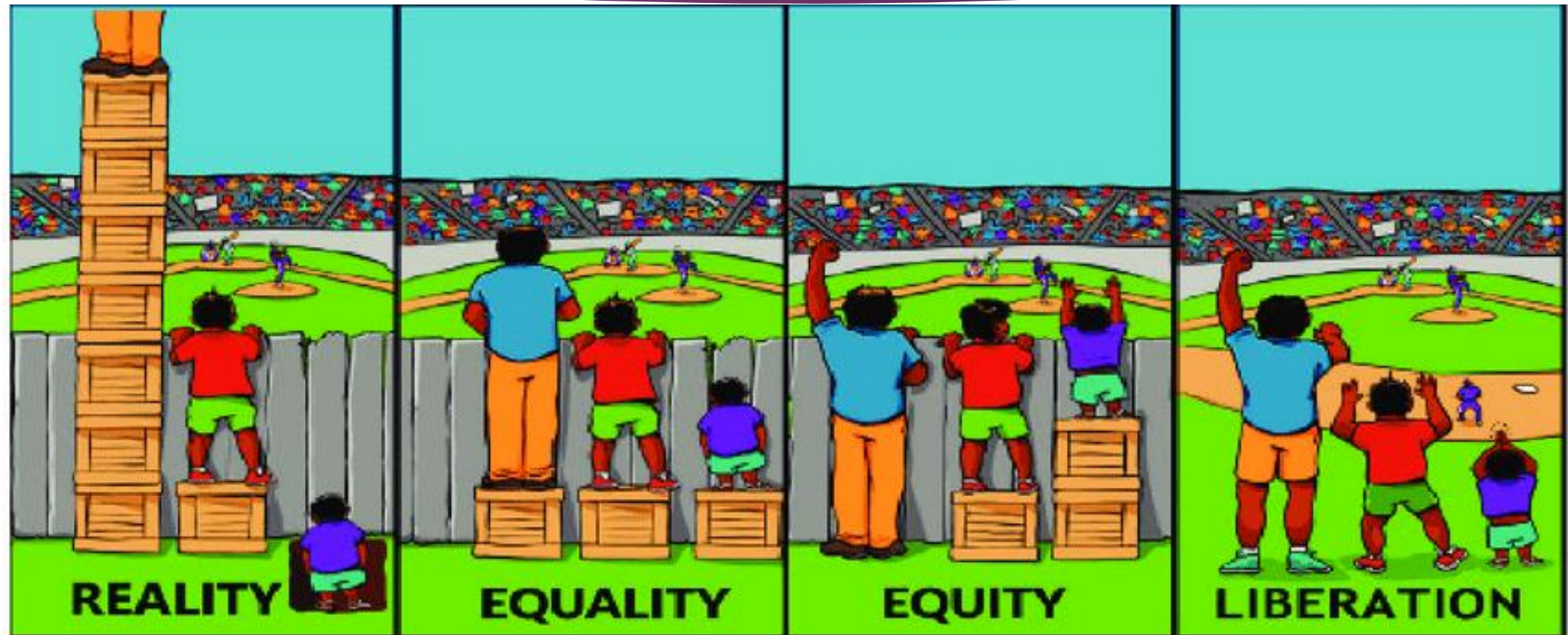
What is discrimination?

- **Treating someone differently or badly.**
- **Treating everyone the same when they need different things.**
- **Intent: a person may discriminate even if they do not mean to.**

How do we decide if there is discrimination?

1. Does the person have a **characteristic** listed *in the Act*?
2. Did they experience something **negative**; and
3. Was the protected characteristic **a factor** in what happened to them.

Treating everyone equitably (fairly) does not always mean treating everyone equally (the same).



Accommodation

- ▶ **WHY?** Everyone should have **access** to the same places and **opportunities**, no matter what their individual characteristic.
- ▶ **WHAT?** Employers must accommodate the needs of individuals protected by the *Human Rights Act*.
Not perfect or ideal but meets needs of person AND employer.
Ongoing shared responsibility.
- ▶ **Limitation:** Up to the point of undue hardship.

What might it look like?

- ▶ allowing a flexible work schedule,
- ▶ changing job duties,
- ▶ changing workplace policies, (*Ex. # of sick days*)
- ▶ making changes to the building (for example, installing ramps, hand rails, automatic door openers, wider doorways, etc.),
- ▶ modifying work / study stations (making ergonomic changes, supplying a specialized chair, back support, etc.),
- ▶ providing specialized adaptation or assistive devices for computers, accessible technology,
- ▶ Providing access for service animals

Harassment

- ▶ Any conduct that demeans, humiliates, or embarrasses a person, and that a reasonable person knows or should know would be unwelcome.
- ▶ Actions, comments, displays.
- ▶ One single incident or multiple incidents that continue over time.

Harassment connected to a prohibited ground is discrimination.



Examples of Harassment

Verbal

jokes or remarks

asking about someone's
sexual practices

intentional mis-
gendering

vulgar, sexual language

putting someone down,
spreading rumours

Visual

pictures, drawings,
cartoons

screensavers,
calendars, memes

e-mails,

Text messages

Physical

assault

blocking movement

unwelcome invasion of
personal space (e.g.,
touching, crowding,
leaning over, leering)

stalking (e.g., unwanted
physical or electronic
intrusion into your
personal life)

REMEMBER

- ▶ **It is not about what you intend – it is about how it impacts the other person.**

Gender Identity

- ▶ **All employees have the right to identify their gender no matter what sex was assigned to them at birth.**

They do not need to go through a legal or medical transition to have their identity respected.

Gender Expression

- ▶ **All employees have the right to express their gender.**
- ▶ **Gender expression is everything one does that communicates gender such as clothing, hairstyle, mannerisms, way of speaking, role we take in interactions, name, pronouns, etc.**

NAMES

- ▶ **For various reasons, many trans people have not changed their legal name.**
- ▶ **This should not stop trans employees from being able to use a different name from their legal name.**

Who needs to know what?

- ▶ **Might need legal name for tax and some legal purposes but only person responsible for that should “NEED TO KNOW”**
- ▶ **Look at your forms.**
- ▶ **What is your name?**
- ▶ **What pronouns to you use?**

<https://www.peersalliance.ca/>



2SLGBTQ+ Media Resources

Interested in learning more about the 2SLGBTQ+ community or want to find more movies/shows/social media accounts to follow? We have a list of 2SLGBTQ+ media resources that includes videos, podcasts, social media handles, downloadable apps, etc.

[Click here for the Media Resource List](#)



2SLGBTQ+ Recommended Book List

Created for teachers looking to expand their classroom books or just to learn more, this book list has something for everyone!

[Click here for the 2SLGBTQ+ book list](#)



Creating Safer Workplaces for Trans Employees

This resource is a starting point for employers and is intended to be used by anyone supporting gender identity and transition in the workplace.

[Click here for the resource](#)

Criminal Records (1)

HRA section 6(1)(b)

No person shall refuse to employ or to continue to employ any individual

...

(b) because the individual has been convicted of a criminal or summary conviction offence **that is unrelated to the employment or intended employment of the individual.**

- ▶ Blanket Policies that you will never hire anyone with a criminal record are likely discriminatory. Pardon requirements are also not necessary in PEI.**

Criminal Records (2)

- ▶ (1) Does the behaviour for which the charge was laid, if repeated, pose any threat to the employer's ability to carry on its business safely and efficiently?
- ▶ (2) What were the circumstances of the charge and the particulars of the offence involved, e.g. how old was the individual when the events in question occurred, were there any extenuating circumstances?
- ▶ (3) How much time has elapsed between the charge and the employment decision? What has the individual done during that period of time? Has the person shown any tendencies to repeat the kind of behaviour for which they were charged? Has the individual shown a firm intention to rehabilitate themselves?

Any Questions??

How to contact us!

- ▶ Website: www.peihumanrights.ca
- ▶ Address: 9 Pownal Street, Charlottetown
- ▶ Phone: 902-368-4180
- ▶ Hours: 8am-4pm (Monday-Friday)
- ▶ Makeityourbusinesspei.ca (sexual harassment)