

Addressing Workplace Sexual Harassment

A Guide for Employees



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Introduction

Workplace sexual harassment can happen to anyone. This guide provides clear information about workplace sexual harassment, the law, and justice system. This guide is not legal advice, and it does not replace guidance from a lawyer.

If you have questions after reading this guide, or if you would like a free referral to a lawyer, contact the RISE Program. Call or text **902-218-6143** or email **rise@legalinfopei.ca**.

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RISE Program PEI
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Defining Workplace Sexual Harassment

Workplace sexual harassment is unwanted sexual comments or behaviour experienced on the job or at work-related functions.

Some people may be harassed once, and others may be harassed repeatedly.

The harasser can be anyone at your workplace or at a work-related function. They could be your co-worker, a supervisor, a manager, or someone hired by your employer (e.g. a consultant or contractor).

Protection against sexual harassment may also extend to sexual harassment from customers, clients or visitors to the workplace depending on the situation and the workplace's policy.

The harassment can happen in person, privately, or in front of others. It can also happen electronically, such as by instant message or email.

Examples of workplace sexual harassment include:

- Requests to perform sexual acts in exchange for a benefit or reward.
- Being told to wear sexy clothing.
- Being told jokes or comments of a sexual nature.
- Getting unwanted attention about your body or appearance.
- Having your sexuality, sex life, or relationships discussed without your permission.
- Being excluded or treated poorly because of your sex, gender, or sexuality.
- Receiving unwanted sexual advances (e.g. sexually suggestive looks or gestures, or being asked out repeatedly).
- Getting unwanted physical contact (e.g. someone rubbing your shoulders).
- Having sexually suggestive or explicit content shared with you (e.g. pornography).

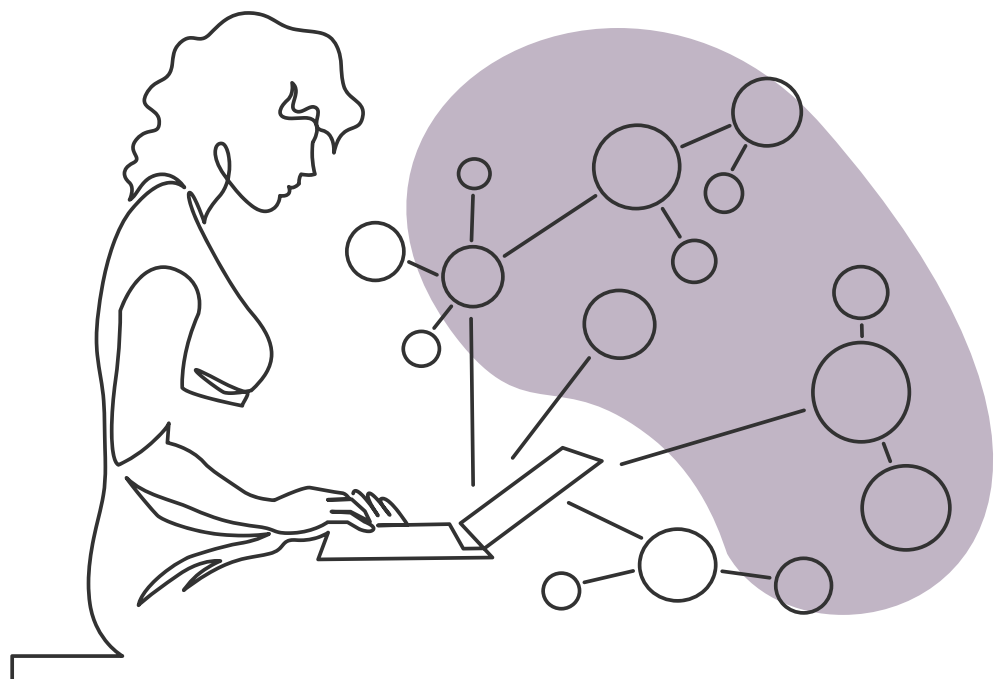


Is it workplace sexual harassment or unprofessional behaviour?

If everyone involved agrees to participate in the sexual conduct, it may not be workplace sexual harassment. In this case, it may be unprofessional behaviour that does not follow workplace rules.

No one can be pressured to agree to do something or go along with sexual activity that makes them uncomfortable.

Consent is a voluntary, informed agreement to a sexual activity. Consent is only possible when there is no coercion, threats, or violence. Silence or passivity is not consent. Consent should be clear and unmistakable.



Legislation & Sexual Harassment

On PEI there are laws that prohibit workplace sexual harassment. Each piece of legislation or legal body has its own definition and process:

- [*Canada Labour Code*](#)
- [*Canadian Human Rights Act*](#)
- [*PEI Employment Standards Act*](#)
- [*PEI Occupational Health and Safety Act \(Workplace Harassment Regulations\)*](#)
- [*PEI Human Rights Act*](#)

The *Canada Labour Code* and the *Canadian Human Rights Act* apply to employees in workplaces regulated by the federal government, such as banks, radio, and television companies, or companies that cross borders, like long-haul trucking.

The *PEI Employment Standards Act* and the *PEI Occupational Health and Safety Act (Workplace Harassment Regulations)* apply to all workplaces on PEI. Employers and employees have responsibilities related to workplace sexual harassment under these Acts.

The *PEI Human Rights Act* applies to any person on PEI. It protects people from discrimination in a variety of areas including employment, services available to the public, volunteer work and others. Under this Act, workplace sexual harassment is a form of discrimination.

You can find copies of this legislation online, or you can contact Community Legal Information to get hard copies.

Employer and Employee Responsibilities

Employer Responsibilities

Your employer has a legal duty to provide a workplace free of sexual harassment. This means your employer must make every reasonable effort to address and prevent workplace sexual harassment.

All Island employers are required to develop and enforce a sexual harassment policy. Your employer must explain the policy to all staff and the policy must be readily available to you. The policy must contain certain information and rules like:

- How to make a sexual harassment complaint.
- How sexual harassment complaints are investigated.
- How the people involved (sometimes called parties) will get the investigation results.
- What actions will be taken.

You can find the PEI requirements for a workplace sexual harassment policy in the following legislation:

- [*PEI Occupational Health and Safety Act \(Workplace Harassment Regulations\)*](#)
- [*PEI Employment Standards Act*](#)
- [*Canada Labour Code*](#)

A workplace that has clear policies and procedures about sexual harassment is one step closer to addressing and preventing it.

Employee Responsibilities

Employees are expected to contribute to a safe working environment. Employees are responsible for ensuring their behaviour is respectful and does not cause harm to others.

As an employee, you may experience workplace sexual harassment directly, or indirectly as a witness. If you witness it, you are a bystander. Victims are not legally required to report workplace sexual harassment. However, some workplace policies may call on employees to report harassment.

Reporting harassment could help address the issue for you and others. Bystanders in positions of authority such as supervisors or managers may have an additional duty to report sexual harassment they observe or become aware of.

How to report workplace sexual harassment to your employer will depend on the policies at your workplace. The reporting process must be available to you in writing. This information is usually found in an employee handbook or policy manual.

If you decide to report the harassment, you are expected to make the report “in good faith”. This means that your report is honest and sincere.

After reporting an incident of workplace sexual harassment, you are expected to keep the information private. You may also be required to cooperate in an investigation.

Everyone living in Canada has the legal right to work without being sexually harassed.

The Impacts of Workplace Sexual Harassment

Workplace sexual harassment can have many impacts. Sexual harassment at work can negatively affect your mental and physical health, making it hard to do your job.

After being sexually harassed at work, you may find it hard to handle your thoughts and feelings. It is a good idea to document the facts of what happened. This information can be helpful for your general health and if you decide to file a formal complaint.

Write down:

- What happened?
- Who was involved?
- What was the date? Or dates?
- Where did it happen?
- How were you impacted?
 - Loss of income or employment
 - Expenses related to the harassment (counselling, stress leave, etc.)
 - Stress and health
- Any other related information

Speaking to a trusted friend or family member can also help. Be cautious about discussing what happened if your friend is a co-worker because that person may be a witness in an investigation or could break confidentiality.

Whoever you talk to should not share the details of your conversation with other people. If confidentiality is broken, the investigation could be negatively impacted.

The RISE Program offers confidential services. Our staff will listen and offer resources that may help. To contact RISE, call or text **902-218-6143** or email **rise@legalinfopei.ca**.

You can speak with a lawyer or health professional, such as a therapist, doctor or nurse. Lawyers and health professionals have a professional obligation to keep your information confidential.



Options to Address Workplace Sexual Harassment

If you experience workplace sexual harassment, you can address it formally within the legal system or outside of the legal system. You can also choose to take no action.

Legal Options

Addressing your experience in the legal system means a lawyer, a court or tribunal such as the [PEI Human Rights Commission](#), or the police/RCMP, or a combination, will help to settle a disagreement.

1. File a formal complaint with a human rights commission (federal or provincial, depending on your workplace)
2. File a civil lawsuit
3. Report the harassment to police or RCMP*

*Not all workplace sexual harassment falls under the *Criminal Code*. This means that although it is illegal, the harassment may or may not be criminal.

Administrative Options

Addressing your experience outside of the legal system allows you to formally report workplace sexual harassment without involving a lawyer, the police, or a court. If you choose an option outside of the legal system, you can still speak to or hire a lawyer for support.

1. File a report with your employer or union
2. File a complaint with:
 - a. [The Employment Standards Board](#), or the [Labour Relations Board](#)
 - b. The Occupational Health and Safety Division of the [Workers Compensation Board of PEI](#)

Other Options

If you choose to take no legal or formal action, you may wish to address the impacts of the harassment by speaking to the person directly or to a health professional.

1. Address the person directly
2. Speak to a health professional, such as a counsellor, doctor or nurse.

If you have been sexually harassed at work, it could be a good idea to speak with a lawyer. A lawyer can help you understand your legal options.

Getting legal advice does not mean you must take legal action. RISE offers up to 4 hours of free advice from a lawyer. Call or text **902-218-6143 or email **rise@legalinfopei.ca**.**



Legal Options

File a Complaint with a Human Rights Commission

The [PEI Human Rights Commission](#) (PEI HRC) and the [Canadian Human Rights Commission](#) (CHRC) are agencies that investigate and try to resolve complaints about discrimination. Workplace sexual harassment is a type of discrimination under Human Rights legislation.

Employees in workplaces regulated by the federal government should submit their complaints to the CHRC. Contact the CHRC by phone at **1-888-214-1090** or by email at **info.com@chrc-ccdp.gc.ca**.

Otherwise, you should submit your complaint to the PEI HRC in writing, using the PEI HRC form.

You can get the complaint form by calling the PEI HRC at **902-368-4180** or **1-800-237-5031**, by email at **contact@peihumanrights.ca**, or by downloading the [Complaint Form](#) from their website at www.peihumanrights.ca.

You must submit your complaint within one year of the harassment. If you were sexually harassed at work more than once, your complaint must be submitted within one year of your most recent experience.

Your complaint must include an explanation of the **area** of discrimination. For example, in the case of workplace sexual harassment, the area of discrimination is employment. You must also indicate the **grounds** of discrimination, such as age, race, sex, and disability. This is explained in detail on the [Complaint Form](#).

Fill out the form to the best of your ability. If you need guidance, the PEI HRC staff can help you but they do not represent either side of the case and cannot give legal advice.

Once you submit your complaint, a PEI HRC staff person is assigned your file and starts the intake process. They will collect information from you and the person accused of harassing you. The accused is called the **respondent**. In workplace complaints, the respondent is the employer. The person who submits the complaint is called the **complainant**.



Intake Process

The intake process involves gathering basic information about your complaint and aims to help you resolve it. Options could include:

Settlement

A settlement can mean monetary compensation for the complainant, an education session about human rights for the respondent, a reference letter from an employer, or something else that both parties agree upon.

Mediation

A mediation is a discussion between both parties, a trained mediator, and the lawyers representing the parties (if applicable). A mediation can give the parties a chance to talk through the conflict, express how the conflict impacted them, and decide the best way to resolve the conflict.

If your complaint is not resolved during the intake process, your file will be assigned to one of the PEI HRC's lawyers to act as a neutral investigator.

Depending on the decision you get from a human rights commission, you may not be able to take further legal action. You may want to speak with a lawyer to ensure this option is best for you.

Investigation

A PEI HRC lawyer will gather information and make a decision. They may conduct interviews, gather evidence, or research legal issues to produce an Investigation Report about their understanding of what happened. If so, the parties are given 30 days to review the Investigation Report and correct any information. After this, the lawyer will decide to dismiss or send your complaint to a hearing.

a. Your complaint is dismissed

If your complaint is dismissed, you will get a written decision explaining the reason(s) why. Reasons could include:

- There is not enough evidence that what happened was discrimination.
- Your complaint was not made within the one year limitation period.
- You did not accept a reasonable settlement.

b. Your complaint is sent to a hearing

Human Rights Commissioner(s) hear from both sides and decide if there was discrimination, and possible remedies.

To learn more about your rights under the Human Rights Act:

- Call 902-368-4180 or 1-800-237-5031
- Visit www.peihumanrights.ca

File a Civil Lawsuit

Civil law is based on the idea of recovering losses or getting compensation. Currently there is no specific lawsuit available for sexual harassment. Instead, you may be able to sue the other party and/or the employer for the impacts of the harassment.

Some of the potential legal actions relate to physical injury or assault, mental distress, or when your employment is impacted. Wrongful and constructive dismissal are examples of impacts to your employment.

Wrongful dismissal is when you are fired for making a complaint about sexual harassment or for another reason directly related to experiencing sexual harassment.

Constructive dismissal is when you quit your job because the sexual harassment made your workplace intolerable.

To learn more about possible civil lawsuits related to workplace sexual harassment you should speak with a lawyer. They will ask questions about your experience to assess your options. It may be difficult to share details of what happened. You can bring a support person with you when you meet with the lawyer.

If you file a civil lawsuit, you may be required to go to court. In court, you will be required to share details of your experience. This can be re-traumatizing. It is important to consider emotional supports and services. You can find information about public services and resources on the [PEI Helping Tree](#).

Report the Harassment to Police or RCMP

In some cases, sexual harassment is a criminal offence. This is usually when sexual harassment involves physical contact. However, physical contact is not the only reason sexual harassment may be a criminal offence.

A lawyer can help you determine if your experiences were criminal.

If you decide to report the harassment to police or RCMP, they will review the case and decide whether charges will be laid. The police or RCMP will charge the accused if they have enough evidence.

If the police do not lay charges, that does not mean they think you were lying or that the harassment did not happen.

To report a criminal offence of workplace sexual harassment, call:

Police Departments

Charlottetown	902-629-4172
Summerside	902-432-1201
Kensington	902-836-4499

RCMP Detachments

Charlottetown RCMP	902-368-9300
Charlottetown RCMP (after hours)	902-566-1112
Summerside RCMP	902-436-9300
Alberton RCMP	902-853-9300
Montague RCMP	902-838-9300
Souris RCMP	902-687-9300

If you are in immediate danger, dial 911.

If you need help navigating the criminal justice system, you can contact [Victim Services](#). Victim Services assists victims of crime even when a charge has not been laid.

Victim Services

Charlottetown

- 902-368-4582
- victimservicescharlottetown@gov.pe.ca

Summerside

- 902-888-8218
- victimservicessummerside@gov.pe.ca

It is your choice who you speak with first. You may wish to speak to a lawyer or to [Victim Services](#) before speaking with the police. Or, you may wish to speak to the police before speaking to a lawyer or Victim Services.

Administrative Options

File a Report with your Employer or Union

Your employer has a legal obligation to provide you with a workplace free of sexual harassment. This means that your employer must make every reasonable effort to address and prevent workplace sexual harassment.

The process to file a report will depend on your workplace. Your employer must have a policy explaining the process, including:

- How to make a sexual harassment complaint.
- How sexual harassment complaints are investigated.
- How the people involved (sometimes called ‘parties’) will be told about the investigation results.
- What actions will be taken.

This information is often found in an employee handbook or policy manual. If you can’t find it, speak to your supervisor, union representative, or the person responsible for human resources.

File a Complaint with the Appropriate Board

An experience of workplace sexual harassment may be due in part to ways your employer is not meeting their responsibility to protect you as an employee.

In these situations, you can take the matter to the [Employment Standards Board](#) (ESB), [Labour Relations Board](#) (LRB) or the Occupational Health and Safety (OHS) Division of the [Workers Compensation Board \(WCB\) of PEI](#).

All three boards strongly recommend that you report an experience of workplace sexual harassment to your employer first before filing a report with them.



Employment Standards Board (ESB) or the Labour Relations Board (LRB)

The [Employment Standards Board](#) is responsible for administering some parts of the [PEI Employment Standards Act](#). Workplace sexual harassment is prohibited under this *Act*.

Filing a complaint with the Employment Standards Branch or Employment Standards Board alerts them that your employer may have violated the *Employment Standards Act*. This option is available for non-unionized employees.

By law, an employer cannot punish or discriminate against employees for reporting workplace sexual harassment in good faith.

Unionized employees must follow the process of their collective agreement and go through the [Labour Relations Board](#). Speak to your union representative for information and assistance.

Include all documentation and information that is relevant to your complaint.

Once you file the complaint, an inspector will contact you. They may ask questions to help clarify the details of your complaint.

To submit a formal complaint, you can complete the Employment Standards Complaint Form [online](#), or download and complete the [Employment Standards Complaint form](#).

During an investigation, you and your employer will have the opportunity to present the facts of the case. If the inspector finds your employer has violated employment standards, the inspector will talk to them about the problem and how to correct it.

Occupational Health and Safety (OHS) Division of the Workers Compensation Board (WCB)

The OHS division of the WCB enforces the rules in the [*Occupational Health and Safety Act*](#) and the *Workplace Harassment Regulations*. The *OHS Act* and its regulations determine the minimum standard of occupational health and safety on PEI and safety principles for Island workplaces. Workplace sexual harassment is prohibited.

Filing a complaint with the OHS division alerts them that your employer may have violated its occupational health and safety standards.

To submit a health and safety complaint about workplace sexual harassment, contact the OHS division of the WCB by phone at **902-368-5680**, **1-800-237-5049** or **902-628-7513** (after hours) or by email at **ohs@wcb.ca**.

Once your complaint is filed, an OHS officer may investigate. If the department finds that your employer is not meeting their responsibilities, they can issue an order directing your employer to comply with the *OHS Act*.

Employment Standards Board, Labour Relations Board, and Occupational Health and Safety investigations do not determine if sexual harassment occurred. They determine if your employer failed to comply with regulations about workplace sexual harassment.

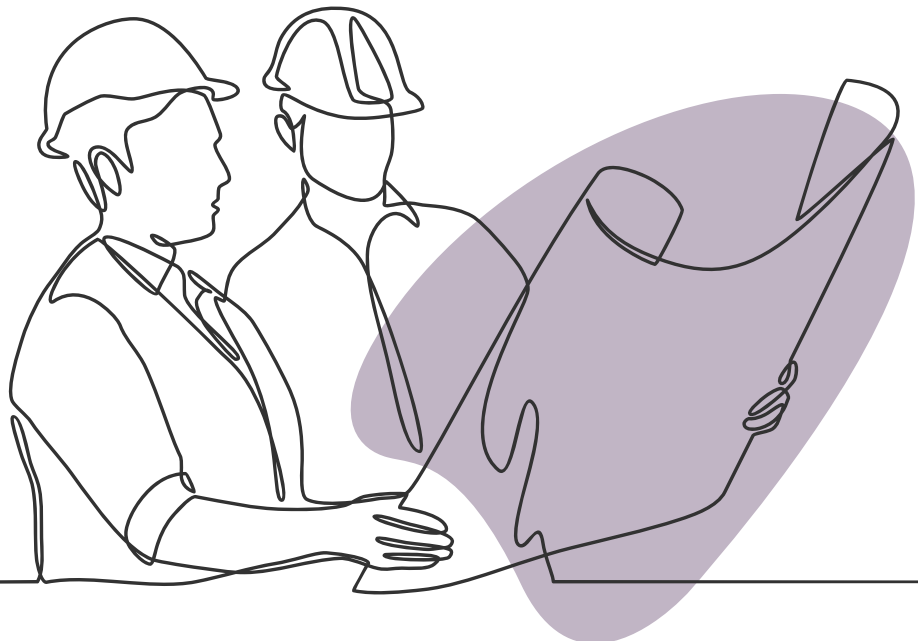
Other Options

Address the Person Directly

You may wish to discuss your concerns directly with the person who sexually harassed you, possibly with support from your workplace such as a supervisor or human resources representative. You could meet in person or you could communicate in writing.

Communicating with the person who sexually harassed you may provide closure and healing, but this is not always the case.

Even if your workplace harassment policy asks that you address concerns directly with the person, you do not have to if you do not feel comfortable. Before you speak with the person who sexually harassed you, make sure it is safe to do so.



If you decide it would be helpful to speak with the person, here are some suggestions:

- Tell the person you would like to speak with them.
- Describe what happened during the incident(s), using only the facts.
- Ask the person how they remember what happened.
- Share how the experience impacted you negatively.
- Tell them what you hope will happen next. This may be an apology, a promise it will not happen again to you or to anyone else, or another action.

You have no legal or moral obligation to talk to the person who harassed you.

Speak to a Health Professional

You may wish to discuss your experience of workplace sexual harassment with a health care professional.

Healthcare professionals have an obligation to keep your information confidential unless your personal safety is at immediate risk.

If you have a family doctor, you can make an appointment with them. If you do not have a family doctor, you can visit a walk-in clinic. For walk-in clinic locations and hours visit www.princeedwardisland.ca.

Mental Health Walk-in Clinics

- **Montague**
Community Mental Health: 902-838-0960
- **Charlottetown**
Richmond Centre: 902-368-4430
McGill Centre: 902-368-4911
- **Summerside**
Prince County Hospital: 902-888-8180
- **Lennox Island**
Lennox Island Health Centre: 902-831-2711
- **O’Leary**
O’Leary Health Centre: 902-853-8670

If you need to speak to someone sooner, there are other support services available to you:

The Island Helpline (24/7)

1-800-218-2885 - English/French

CMHA PEI Mental Health Resource Line

1-800-682-1648

PEI Rape and Sexual Assault Centre

- **Main Office**
902-566-1864 or 1-866-566-1864
- **Counselling Request Line**
902-368-8055 or 1-888-368-8055

Family Services PEI

902-892-2441 or 1-866-892-2441

Information for Bystanders

A **bystander** is someone who witnesses an event but is not directly involved. Witnessing sexual harassment can be upsetting, confusing, and stressful. You may feel scared or unsure about reporting.

Bystanders can make a difference in workplace safety and can help by:

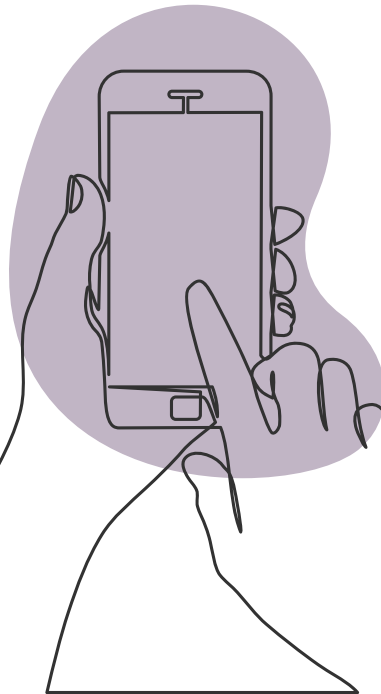
- **Distracting:** Interrupt the situation by asking a question or starting a different conversation.
- **Reporting:** Report the situation to a supervisor or manager, allowing them to intervene.
- **Documenting:** Take notes about the date, time, details of the harassment and what witnesses were there. If you can, include screenshots, videos, or photos.
- **Checking-In:** Meet with the victim later in a safe, private place to offer support.
- **Speaking-Up:** As the harassment is happening, firmly ask the harasser to stop. Respectfully state you do not agree with their behaviour.

Going Forward

Deciding how and when to address an experience of workplace sexual harassment is personal. There are many factors to think about.

The RISE Program offers legal resources to victims of workplace sexual harassment and sexual violence. We offer free confidential services and legal information to help you learn about your options safely. RISE also provides victims free access to a trauma-informed lawyer.

To speak with a lawyer for free about workplace sexual harassment, call or text **902-218-6143** or email **rise@legalinfopei.ca**.





Community Legal Information is a charitable organization that receives funding from Justice Canada, the PEI Department of Justice and Public Safety, the Law Foundation of PEI, the Law Society of PEI, and other sources. Community Legal Information provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information on other legal topics, visit our website at www.legalinfopei.ca, email us at info@legalinfopei.ca, or telephone us at **902-892-0853** or **1-800-240-9798**. You can also find us on social media.

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