

Green Party of New Brunswick Policy Proposal: Employment Standards for Trainees
(items in GREEN exist in current policies)

Policy Proposal from the Fredericton South RDA

Context

Section 1 of the New Brunswick *Employment Standards Act* (hereinafter "the Act") reads, in part, as follows:

"employee" means a person who performs work for or supplies services to an employer for wages, but does not include an independent contractor...

As benefits-conferring legislation, the Act legally must be interpreted in a manner generous to workers. Under the above provision, therefore, an individual being trained for a specific job, even if the training is only instructional, should be recognized as "a person who performs work for or supplies services to an employer."

Certainly, an employer stands to benefit from having a well-trained worker, and implements training precisely for that reason. Hence, on the required generous interpretation of the Act, any job-specific training is a type of work or service for an employer, entitling the trainee to pay and other employee protections. Unfortunately, the Employment Standards Branch of the Department of Post-Secondary Education, Training and Labour has interpreted the Act less generously, leaving a whole group of trainees vulnerable to exploitation by employers.

Dependent contractors and trainees are two vulnerable groups which should both be included in the definition of the employment relationship. Other provinces have legislative protections for trainees:

Prince Edward Island *Employment Standards Act* -

"employee" means a person who performs any work for or supplies any services to an employer for pay, and includes... (ii) a person who is being trained by an employer to perform work for or supply services to the employer...

Ontario *Employment Standards Act, 2000* -

"employee" includes... (c) a person who receives training from a person who is an employer, if the skill in which the person is being trained is a skill used by the employer's employees...

The Saskatchewan Employment Act -

"employee" includes... (iii) a person being trained by an employer for the employer's business...
"train" means to give information and explanation to a worker with respect to a particular subject-matter and to require a practical demonstration that the worker has acquired knowledge or skill related to the subject-matter...

Issue

With the implicit endorsement of the New Brunswick Labour and Employment Board, the Employment Standards Branch has interpreted the above provision to mean that a trainee is not an "employee" until she has begun performing work or services, such as office or field tasks, of direct value for an employer. Consequently, trainees giving up their time to receive purely instructional training required by an employer – which is to say, job trainees simply as such – are denied protection on the basis that they are not providing "work" or "services."

Drawing upon the above examples from other jurisdictions, the New Brunswick *Employment Standards Act* could be amended to state something like the following:

"employee" means a person, other than an independent contractor, hired to perform work for or supply services to an employer for wages, and includes a person who receives training from or as required by an employer for the employer's business...

"training" includes giving information or explanation to a worker with respect to a particular subject-matter, or requiring a demonstration that the worker has acquired knowledge or skill related to the subject-matter...

Action Plan

A Green government would broaden the definition of the employment relationship to include dependent contractors and trainees.