HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

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Labour Canada
HIGHLIGHTS OF MAJOR DEVELOPMENTS
IN LABOUR LEGISLATION

August 1, 1984, to May 31, 1985

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INTRODUCTION

Between August 1, 1984, and May 31, 1985, relatively important changes were made in the different areas of labour legislation in Canada.

With respect to labour standards legislation, some of the most significant changes to have occurred include: the increasing of the minimum wages in Manitoba, Newfoundland, Prince Edward Island, Nova Scotia, the Yukon and Saskatchewan; the adoption of a new Employment Standards Act in the Yukon; the proclamation of the amendments to Part III of the Canada Labour Code respecting sexual harassment as well as maternity and child care leaves; the amendments to the termination of employment provisions in Newfoundland; and a new law, in Nova Scotia, dealing with the operation of commercial establishments on Sundays and holidays. Among the proposed changes, of special interest are three Bills: first, a federal Bill proposing to extend the coverage of Part III of the Canada Labour Code to certain employees of Parliament Hill; second, an Alberta Bill repealing and replacing the Builders' Lien Act; and the third, in Prince Edward Island, dealing with the weekly day of rest.

In the field of industrial relations, important modifications to the general collective bargaining legislation have been made in Manitoba and proposed in Newfoundland. In British Columbia, Newfoundland and Québec, amendments to the laws covering the public and parapublic sectors have been either presented or adopted, and the federal jurisdiction has introduced a Bill explicitly conferring collective bargaining rights on employees of Parliament. Emergency laws have been passed in British Columbia, Ontario and Québec and, with respect to the construction industry, there have been a number of changes in Alberta, British Columbia and Québec.

Several provinces have also made changes to their occupational health and safety legislation. Among these changes, the Yukon Territory has adopted a comprehensive Occupational Health and Safety Act and Québec has proclaimed into force certain sections of the Act respecting occupational health and safety dealing with safety representatives. Furthermore, new regulatory requirements were introduced at the federal level as well as in Alberta, British Columbia, Manitoba and Prince Edward Island.

In the field of workers' compensation, a number of jurisdictions have increased the level of maximum insurable earnings and have upgraded the benefits paid to disabled workers or their dependants. In addition, Ontario has adopted major reforms to its Workers' Compensation Act and Québec is preparing to adopt a new law which would substantially modify its present system.
I. EMPLOYMENT STANDARDS

Legislation of General Application

The Yukon has adopted a new Employment Standards Act and several regulations pursuant to it.

This Act, which came into force January 1, 1985, repeals and replaces the previous Employment Standards Act, as well as the Wages Recovery Act.

In general, the rights contained in the previous Employment Standards Act are continued, but the new Act also creates several new rights. Important new provisions provide the following: a maternity leave of 17 weeks for pregnant employees with at least 12 consecutive months of service; a leave without pay of up to six weeks in the case of a premature birth or a miscarriage; a notice of individual termination of employment of at least one week for employees credited with at least six months of service; a notice of group termination of employment, which may vary from four to 16 weeks according to the number of workers involved, where 25 employees or more are terminated; a sick leave without pay, in the case of an absence due to illness or injury, consisting of one day of leave per month of employment, less the number of sick days previously spent, to a maximum net entitlement at any one time of six days; and bereavement leave without pay of up to three days in the event of the death of a member of an employee's immediate family.

Moreover, important new provisions establish the Yukon Territory's own minimum wage fixing procedure. Previously, any increase in the Yukon's minimum wage was attached to an increase in the minimum wage rates in the federal jurisdiction.

In addition, a much more extensive wage recovery system than the previous one has come into force. In short, Employment Standards Officers and the Director of Employment Standards have been given the power to hear complaints, to investigate, to determine any amount due to an employee, and to order its payment. That order may be filed in the office of the Clerk of the Court and, when so filed, is equivalent to a judgement of that Court and may be enforced as a judgement of that Court. Unpaid wages set out in a certificate indicating the filing of the order constitutes a lien, charge and secured debt in favour of the employee against all the real and personal property of the employer, including money due or accruing due to the employer from any source. This claim has priority over all claims except those of secured creditors whose claims have been duly secured or registered before the date the wages became due.
It has also become possible to serve third-party demands regarding any amount due or about to become due to an employer. Finally, the directors of a corporation become jointly and severally liable for employees' wages, not exceeding two months wages and not exceeding 12 months vacation pay, earned while they are the directors.

Among the regulations adopted pursuant to this Act, the following are noteworthy: the regulation designating the Minister of Justice as the Executive Council Member for the purposes of the Act; the regulation exempting various categories of workers from all or part of the Act; as well as the Minimum Wage Order. Another regulation revokes various Commissioner's Orders and Orders-in-Council that existed under the preceding legislation.

At the federal level, sections 1 to 16 of Bill C-34, An Act to Amend the Canada Labour Code, have been proclaimed in force, effective March 1, 1985. These sections, which amend Part III of the Code, deal notably with sexual harassment and maternity and child care leaves. These amendments were described in detail in the Supplement to the Highlights of Major Developments in Labour Legislation, 1983-1984.

Also at the federal level, Bill C-45, the Parliamentary Employment and Staff Relations Act, proposes to extend the application of Part III of the Canada Labour Code to certain employees of the House of Commons, the Senate, and the Library of Parliament as well as to the above-named institutions and to Members of Parliament, in their capacity as employers of those employees, and to staff employed to provide research or associated services.

Minimum Wages

The federal government has adopted an order revoking the Prince Edward Island Contracts Fair Wages and Hours of Work Exception Order, with the result that, at present, no such orders remain in force. The Ontario and Nova Scotia Exception Order had been amended before the date it was supposed to end in order to remove Ontario from the exceptions under the Fair Wages and Hours of Labour Act. Nova Scotia was released from the Order at the end of its term, in September 1984.

Manitoba has increased its minimum wage rates. The wage payable to experienced adult workers has been increased from $4.00 to $4.30 per hour and the wage payable to workers under 18 years of age has increased from $3.55 to $3.85 per hour, effective January 1, 1985.

Similarly, Prince Edward Island has announced an increase in its minimum wages, effective October 1, 1985. The rate applicable to adult workers will be increased to $4.00 and the rate applicable to workers under 18 years of age, to $3.25 per hour.

In Nova Scotia, the minimum wage payable to experienced adult workers has been increased from $3.75 to $4.00 per hour and the wage for workers under 18 has gone from $3.40 to $3.55 per hour, effective January 1, 1985.
In Newfoundland, the general minimum wage rate, which applies to workers of 16 years of age or more, has also been increased from $3.75 to $4.00 per hour, while the rate applying to domestic workers employed in a private home was increased from $2.23 to $2.75 per hour, effective January 1, 1985.

As mentioned previously, the Yukon also increased its minimum wage. It has gone from $3.60 to $4.25 per hour, effective January 1, 1985.

Finally, Saskatchewan has recently announced an increase, effective August 1, 1985, of its minimum wage. It will increase to $4.50 per hour from $4.25.

Unpaid Wages

Alberta has recently presented a Bill to amend the Builders' Lien Act, in order to make the recovery of amounts due for the furnishing of materials and the rendering of services on construction projects more effective.

Commercial Establishments' Business Hours

Prince Edward Island is considering a Bill called the Day of Rest Act which would repeal and replace the existing Lord's Day Act. This Bill would make Sunday a universal day of rest and would prohibit, except in designated activities, the operation of commercial establishments on that day. If an employee is required to work in a designated activity on a Sunday, he or she would be entitled to another day of rest within the six following days.

Similarly, Nova Scotia, has recently adopted An Act Respecting a Uniform Closing Day for Retail Businesses which includes Sundays to the following list of holidays: New Year's Day, Good Friday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day and Boxing Day. The operation of a commercial establishment is prohibited on those holidays, except in activities designated by this Act or by municipalities by virtue of the powers conferred to them by this Act.

Termination of Employment

Ontario has adopted an Act to Amend the Employment Standards Act, which amends the termination of employment provisions. This Act provides that, where an employee who is entitled to severance pay under the Employment Standards Act has a right to be recalled for employment under the terms and conditions of employment, the employee may elect to be paid the severance pay forthwith or may elect to maintain the right to be recalled. An employee who elects to take the severance pay is deemed to have abandoned the right to be recalled. Where the employee elects to maintain recall rights or makes no choice, the employer is required to pay the severance pay in trust to the Director of Employment Standards. The money must be paid back to the employer if the employee accepts employment made available under the right of recall and certain other conditions are met, or if, after a period of 12 months from the termination, the employee advises the Director in writing that he or she elects to retain the recall
rights and relinquish the right to severance pay. In any other case than these, the money is to be paid to the employee and, upon payment, the employee is deemed to have abandoned the right to be recalled. The Employment Standards Act is further amended to provide interest on the amounts paid in trust to the Director and on the amounts of a referee's award under the Act. This amendment came into effect June 27, 1984.

Newfoundland has also amended its Labour Standards Act. The provisions dealing with termination of employment were amended retroactively to August 1, 1978, the date at which the Labour Standards Act first came into force. The definition of "temporary layoff" is introduced to provide that a layoff of not more than 13 weeks in any period of 20 consecutive weeks is not deemed to be a termination of employment. The Act continues to provide that, in the case of a group termination or a group layoff for a period of more than one week, notice of eight to 16 weeks is required, depending on the number of employees involved. The amendment provides, in addition, that where a group layoff is temporary, only the individual period of notice of one or two weeks is required (such notice is determined according to the length of service). The Act now makes a distinction between "temporary layoff", "layoff" (of seven days or fewer), and "termination of employment".
II. INDUSTRIAL RELATIONS

A. Legislation of General Application


The legislation contains a large number of changes made to the Labour Relations Act, many of which are of an administrative nature. Among the most significant amendments are provisions which make it an unfair labour practice for management to:

(1) hire or offer to hire replacement workers, or threaten to do so, prior to or during a lockout or legal strike, for any period of time longer than the duration of the work stoppage;

(2) refuse to reinstate an employee when a lockout or legal strike ends without a collective agreement and the work the employee was performing is continued (where there is no agreement concerning reinstatement, it must be done as work becomes available according to the seniority of each employee in the unit at the time the work stoppage began) (this is similar to other provisions applying when a collective agreement has been concluded);

(3) use, or offer or purport to use, a professional strikebreaker, or authorize such action;

(4) engage in strike-related misconduct as defined; and

(5) deny or threaten to deny, without a valid excuse, insurance benefits (such as medical, dental, long-term disability) if the union agrees to continue paying the appropriate premiums during a lockout or legal strike.

The new law also contains a duty of fair representation provision, which requires that, in representing the rights of any employee under the collective agreement, the bargaining agent not act in a manner which is arbitrary, discriminatory, or in bad faith or, in the case of a dismissal, fail to take reasonable care to represent the employee's interests.

The part of the Act which deals with certification has been replaced completely. Among other things, the law requires the Labour Board to grant certification if it is satisfied that at least 55% of the employees in the unit have signed membership cards which have not been revoked prior to the date of application. A vote must be conducted in cases where membership is 45% or more but fewer than 55% and where a union, which has the support of at least 45% of the employees, makes an application to displace another trade union. The Board may hold hearings to determine whether employees are union members and, in cases of intimidation, fraud, coercion, or penalty threat, may dismiss an application or order a vote. Conversely, it has discretion to certify a
union without majority support if it finds that the employer has committed an unfair labour practice as a result of which the employees' true wishes are not likely to be ascertained, and that the union has adequate membership support.

The provisions promoting resolution of interest disputes have been strengthened, notably by giving the Minister of Labour the power to appoint a mediator in any case where bargaining has commenced and the Minister feels it is advisable to do so. Previously, such appointment could only occur at the request of both parties. The legislation also requires that, at the request of either party, a collective agreement contain a provision for ongoing consultation throughout the term of the agreement. Other amendments permit applications to settle a first agreement to be filed directly with the Board and require the parties to seek conciliation before making such an application.

A union-conducted vote of all employees in the unit is required before a legal strike may be declared, and a proposed collective agreement negotiated by the parties must be submitted to the union members in the unit within 30 days of the reaching of agreement. In both situations, reasonable notice must be given prior to the vote, which is by secret ballot.

Many of the amendments are designed to improve the grievance arbitration process and reduce delay in the rendering of awards. They include provisions whose purpose is: to encourage the parties to use the services of grievance mediators; to clarify the procedural and remedial powers of arbitrators or arbitration boards; and to implement a new expedited arbitration procedure.

In addition, amendments give the Labour Board greater independence from the courts in the performance of its duties, as well as lessening the possibility of political interference. Other amendments provide for an increased role for the Board in the settlement of matters before it and augment its remedial powers in cases of unfair labour practice, including the authority to make interim orders.


The Bill provides that, where the Labour Relations Board orders a vote to determine whether the employees in a bargaining unit represented by a bargaining agent wish to continue having the bargaining agent represent them, the Board could not terminate the bargaining rights of the bargaining agent unless a majority of employees in the unit vote in favour of termination.

It also provides that, where parties have negotiated and failed to reach a first collective agreement, if directed to inquire into the dispute by the Minister of Labour on a request made by either party, the Labour Relations Board would have the power to settle the terms and conditions of an agreement which would be binding on the parties for one year unless they agree to modify them.
Furthermore, the proposed legislation contains a clause requiring that, at the request of the bargaining agent, a collective agreement include a provision obliging the employer to deduct an amount equal to regular union dues from the wages of affected employees, whether or not they are members of the union, and remit the amount to the union. This clause would not apply to the construction industry.

B. Public and Parapublic Sectors

In British Columbia, amendments to the Compensation Stabilization Act Regulations have been adopted effective November 15, 1984. The amendments have changed the compensation limitations provided for the public sector. It is now suggested that there be no change in compensation, subject to variations ranging from 0% to minus 5% depending on an experience adjustment factor and a special circumstances factor. It is possible for unions to obtain an increase only by demonstrating an improvement in productivity - by staff reduction or longer working hours, for example.

The Compensation Stabilization Commissioner may make these regulations applicable where he has determined that a compensation plan is outside the guidelines issued by the government.

Amendments to the Act itself contained in Bill 32, the Compensation Stabilization Amendment Act, 1985, were introduced by the British Columbia government on April 12, 1985.

The Bill will ensure the confidentiality of the mediation process under the Act and will shorten from 30 to 10 days the period of time within which a compensation plan must be filed with the Compensation Stabilization Commissioner (unless he allows an extension of that period). In addition, it will permit the Commissioner to fix the terms of a compensation plan where the plan that was filed does not comply with the compensation regulations and the parties or an arbitrator are unable to reach or establish a plan that does comply with them.

Also in British Columbia, in January and February 1985, two government orders concerning cooling-off periods of 90 days were issued under the Essential Service Disputes Act. These orders were made in respect of labour disputes involving the Esquimalt Police Union and the Victoria City Police Union.

In Québec, An Act to amend various legislation respecting labour relations took effect on December 21, 1984.

Among other things, the Act contains amendments to the Labour Code. These amendments are designed to improve the internal operations of the Essential Services Council, notably by allowing it to operate through divisions consisting of four of its members. Every decision of a division of the Council must be unanimous, failing which the matter is referred to the Council. It also provides that the parties must attend every meeting to which they are convened by the Council, and ensures that the employer maintains the conditions of employment of employees providing essential services during a strike, unless there is an agreement between the parties on this question.
Also in Québec, Bill 37, An Act respecting the process of negotiation of the collective agreements in the public and para public sectors was introduced in the National Assembly on May 2, 1985.

The Bill provides for the creation of a research institute on remuneration. The institute's board of directors will consist of not more than 19 members, including a president and two vice-presidents appointed by resolution of the National Assembly passed by not fewer than two-thirds of its members. The other members will be appointed by the Government and will come from union and management circles. The institute will be responsible for informing the public on the comparative state and evolution of the total remuneration of employees in the public sector and the private sector. The institute will also carry out any other mandate defined by unanimous consent of its board of directors. A report of its findings will be made public not later than November 30 each year.

With regard to the mode of negotiation, the Bill ensures the decentralization of negotiations in respect of certain matters.

In the education sector, in respect of the teaching staff, and also in the colleges, in respect of the non-teaching professional staff, certain clauses of the collective agreements dealing with matters listed in a schedule to the Act will henceforth be the subject of local or regional negotiation. Once approved, these clauses will continue to have effect, despite the expiry of the collective agreement, until they are amended or repealed by the parties at the local or regional level. In the event of a disagreement on the amendment, repeal or replacement of such a clause, the parties will be able, as proposed in the Bill, to resort to a mediator-arbitrator who will be empowered to rule on the question at the request of the parties, if he or she considers a negotiated settlement to be unlikely. A disagreement will not give rise to a strike or a lockout.

In the social affairs sector and in respect of the support staff of colleges and the non-teaching professional staff and support staff of school boards, the Bill authorizes the negotiation of arrangements at the local or regional level on certain matters (listed in a schedule) that have been negotiated and agreed upon at the provincial level.

In the public and parapublic sectors, the clauses pertaining to salaries and salary scales that are applicable to employees for the first year of a collective agreement will be negotiated and agreed upon in the same manner as other clauses that are subject to negotiation. For each of the subsequent two years of the collective agreement, the determination will be made according to the process that follows.

After the institute has published its annual report on remuneration, the parties will attempt to reach an agreement on the salaries and salary scales for the subsequent year. Following that negotiation, a draft regulation will be prepared, examined in Parliamentary Committee and submitted for approval to the Government during the month of April. Once fixed by regulation, the clauses pertaining to salaries and salary scales for the current year will form part of the collective agreement.
The Bill proposes to set up a new mediation procedure for the settlement of disputes at the provincial level and to subject the exercise of the right to strike or lockout to a prior requirement of mediation and to an additional delay of 20 days from the date of the report of the mediator. In the social affairs sector, the Bill fixes, by class of establishments, a minimum percentage of employees (from 55% to 90%) to be maintained at work in the event of a strike to ensure continued services to the users. Moreover, the approval of the lists or agreements on essential services by the Conseil des services essentiels (Essential Services Council) will henceforth be required for exercising the right to strike.

Finally, the Bill confers on the Essential Services Council a new power to make orders in the event of a conflict in public services or in the public and parapublic sectors.

Where a lockout, a strike, a slowdown or another concerted action contrary to law affects or is likely to affect the provision of a service to which the public is entitled or, where the essential services prescribed in a list or agreement are not provided during a strike, the Council will henceforth be empowered to intervene to make an inquiry, attempt to bring the parties to reach a settlement of the conflict and, if necessary, order the parties to implement the remedial measures required in the circumstances that prevail.

Every order made in that respect will have the same effect as a judgement of the Superior Court once a true copy of it is filed by the Council in the office of the prothonotary of that court.

In Newfoundland, Bill 15, An Act to amend the Public Service (Collective Bargaining) Act, 1973, was recently presented by the government.

The Bill would include in the legislation a list of bargaining units excluded from the essential employees designation process.

The existing obligation for all public service employees to wait one month before presenting a new strike notice, whenever a strike did not occur on the date specified in a previous notice, would only apply to those in the health care sector.

Finally, in the federal jurisdiction, Bill C-45, the Parliamentary Employment and Staff Relations Act, was introduced on April 30, 1985.

The Bill will explicitly confer collective bargaining rights on employees of Parliament except for certain groups such as the staffs of ministers and, in the House of Commons, the staffs of the Leader of the Opposition, of the chief government and opposition whips and of the leader or whip of a recognized party. As well, the staffs of Members of Parliament and the staff employed to provide research or associated
services for the caucus members of a political party will be excluded. Bargaining agents will make certification applications to the Public Service Staff Relations Board. If negotiations are unsuccessful, conciliation will be available to the parties. Disputes will be settled by binding arbitration; there will be no right to strike. In addition, the basis of a grievance process will be provided.

C. Emergency Legislation

In the last year, five emergency laws were adopted.

In Ontario, the Toronto Transit Commission, Gray Coach Lines, Limited and GO Transit Labour Disputes Settlement Act, 1984 was enacted on August 29, 1984.

The purpose of the Act was to avert strikes by employees of the Toronto Transit Commission represented by three unions. It empowered the Lieutenant Governor in Council, upon the advice of the Minister of Labour, to appoint an arbitrator to decide all matters remaining in dispute between the parties. The basic hourly wages of affected employees were increased by 5% retroactively to the day following the expiry of the applicable agreement, but the final rates were to be determined by the arbitrator. A strike or lockout, or the threat of such action, was prohibited from the coming into force of the Act on August 29, 1984. Fines were provided for contravention of the legislation. For individuals, the maximum fine was $1,000 per day, while for corporations or trade unions, it was set at $10,000 per day.

In addition, the Act fixed certain terms of the collective agreement negotiated between GO Transit (Toronto Area Transit Operating Authority) and Local 1587 of the Amalgamated Transit Union, which were affecting the matters in dispute between the Toronto Transit Commission, Gray Coach Lines, Limited and Local 113, Amalgamated Transit Union.

Also in Ontario, the Colleges of Applied Arts and Technology Labour Dispute Settlement Act, 1984 was assented to and took effect on November 9, 1984. The Act was passed to bring an end to a labour dispute between the Ontario Public Service Employees Union and the Ontario Council of Regents for Colleges of Applied Arts and Technology and the boards of governors of these colleges. It ordered the termination of the strike which had begun on October 17 and provided for the resumption of operations. The expired agreement was extended, and the legislation set out increased salaries and rates of wages for teaching masters and counsellors, instructors, librarians, and partial-load employees, but the final rates were to be determined by an arbitrator. The arbitrator had to examine and decide all matters in dispute other than instructional assignments. In making a binding decision regarding a one-year agreement, the arbitrator was required to consider as a factor the ability of the employers to pay in light of the existing provincial fiscal policy. Fines were provided for cases of contravention of the legislation. For individuals, the maximum fine was $500 per day, while for an employer or the union, it was set at $10,000 per day. Finally, the Act provided for the appointment of a committee, the Instructional Assignment Review Committee, charged with conducting a comprehensive review of all aspects of instructional assignments in the colleges of applied arts and technology.
In British Columbia, the Metro Transit Collective Bargaining Assistance Act was passed on September 13, 1984. The Act was adopted to provide for the settlement of a transit dispute in the Vancouver area and in Victoria and to ensure resumption of the service interrupted for approximately three months. The legislation ordered the calling back to work of the employees of Metro Transit Operating Company involved in the conflict within 72 hours after its coming into force on September 14, 1984, and the resumption of normal operations. The employees were required to resume their duties under the terms and conditions of the last collective agreement between the parties, which could be amended by the Minister of Labour. The agreement was extended until the coming into effect of a contract negotiated by the parties or imposed by the Government. Strikes and lockouts were prohibited during that period of extension. Within three days of the Act's coming into force, the parties were required to continue or commence to bargain in good faith with the assistance of a special mediator appointed by the Minister.

Also in British Columbia, the British Columbia Railway Dispute Settlement Act was passed on May 16, 1985. The Act provided for the settlement of a labour dispute involving B.C. Rail Ltd. and a number of unions representing about 1,800 employees. The declarations of strikes and lockouts were prohibited, and 72 hours after the coming into force of the Act, any strike or lockout, that had started before the legislation had been passed, had to be terminated and normal operations continued. The term of each previous collective agreement between the parties was extended until the coming into effect of a new agreement negotiated by the parties or the imposition of the recommendations of an industrial inquiry commission.

In Québec, An Act respecting the continuation of services by and conditions of employment of ambulance technicians in administrative region 6A (greater Montreal) was assented to on December 20, 1984. The purpose of the Act was to ensure the continuation of ambulance and medical vehicle services in the greater Montreal area. It prohibited the employees from obstructing, by omission or otherwise, the normal operation of the services. In addition, it set the conditions of employment of the ambulance technicians for three years from January 1, 1985. Penalties were provided for contraventions of the Act and they included substantial fines.

D. Construction Industry

In Québec, the Construction Decree under the Act respecting labour relations in the construction industry has been extended until April 30, 1986, and has been amended. Among other things, the amendments provide for an increase in wages of 4.5%, which took effect on May 1, 1985.

In British Columbia, the section of the Labour Code Amendment Act, 1984, that gives the Government the power to designate parts of construction work or related activity as separate "economic development projects", came into force on August 27, 1984. The rest of the legislation had taken effect on June 8, 1984.
In Alberta, the Labour Relations Amendment Act, 1983, which had never been proclaimed into force, was repealed on November 13, 1984. Among others, the purpose of this legislation was to change the procedure regarding the extension by the Labour Relations Board of an existing certification and collective agreement in the case of the creation of spin-off enterprises in the construction industry.
III. OCCUPATIONAL SAFETY AND HEALTH

During the period covered by this report, changes have been made to the occupational health and safety legislation of many jurisdictions.

At the federal level, An Act to Amend the Radiation Emitting Devices Act was assented to on June 28, 1984, and was proclaimed into force September 1, 1984. This Act, among others, broadens the meaning of "radiation emitting device" to include any component of or accessory to such a device. The definition of "radiation" is modified to include electromagnetic waves and acoustical waves of all frequencies. It also provides for regulation of the manner in which radiation emitting devices are labelled, packaged, and advertised. Notification of defects or of non-compliance with prescribed standards must, in certain circumstances, be sent to the Minister of National Health and Welfare. The powers of the inspectors are clarified. They now need a warrant in order to enter a dwelling-house, and are authorized, during the course of an inspection, to take away a sample of a radiation emitting device for further examination. A new provision allows the Minister, in certain circumstances and with the owner's consent, to dispose of such devices in his possession. The Minister is also empowered to designate analysts to examine devices submitted by an inspector. As well, the scope of the regulation-making powers is expanded.

In addition, the Uranium Mines (Ontario) Occupational Health and Safety Regulations were adopted under the Atomic Energy Control Act. The purpose of these regulations is to establish uniformity in the laws governing occupational health and safety in mines, including uranium mines, in the Province of Ontario. They adopt, by reference, the legislation of Ontario with respect to general health and safety of employees at uranium mining facilities. Under the same Act, amendments were made to the Atomic Energy Control Regulations. These amendments require female atomic radiation workers who become pregnant to inform their employer of their pregnancy. The employer must then inform any licensee in respect of whose business the employee is working. The table of maximum permissible radiation doses has been amended to subject female atomic radiation workers to the same limits of exposure as male atomic radiation workers except during a period of pregnancy, for which a lower maximum dose is fixed.

As well, amendments were made to 17 regulations under the Canada Labour Code. These amendments exclude uranium and thorium mines from the application of those regulations which deal with the following subjects: accident investigation and reporting, boiler and pressure vessels, building safety, confined spaces, dangerous substances, electrical safety, elevating devices, fire safety, first-aid, hand tools, machine guarding, handling of materials, noise control, protective clothing and equipment, safe illumination, sanitation, and temporary work structures.

In Alberta, the Ventilation Regulation was adopted under the Occupational Health and Safety Act. This regulation, which came into force on January 1, 1985, sets performance standards with respect to ventilation systems in workplaces where it is reasonably possible that a health or safety hazard could result from the production or dissemination of an airborne contaminant or from oxygen deficiency in the air. It indicates
what factors must be taken into account by an employer in the conception, development or modification of a ventilation system. In addition, workers using the system must be trained in its proper use. This regulation does not relieve an employer from any duty under the Chemical Hazards Regulation, the General Safety Regulation, or regulations made under the Uniform Building Standards Act.

In British Columbia, an amendment was made to the Regulation respecting the coverage of the farming industry under the Workers' Compensation Act. This amendment excludes the industrial health and safety regulations from those that apply to the farming industry by virtue of its coverage under the Act. However, it states that these regulations will be used as guidelines for educational and promotional programs in this industry, while other industrial health and safety regulations will be developed for the farming industry with appropriate implementation and adjustment periods.

Manitoba adopted the Regulation respecting workers working alone under the Workplace Safety and Health Act. The object of this regulation is to ensure the safety, health and welfare of workers who work alone under circumstances that may result in injury, health impairment, victimization through criminal violence, or other adverse conditions. For this purpose, the employer must establish and implement a plan in accordance with the regulation and in consultation with the workplace safety and health committee or the worker safety and health representative, if any, and with the worker involved. The plan must be kept on file at the workplace and remain available to safety and health officers upon request. If the plan cannot be mutually agreed upon, the employer, the worker, or both may notify a safety and health officer in order to conduct an investigation into the matter. This regulation is subject to any other regulation that has established work procedures for a worker working alone. It came into force on October 15, 1984.

In Ontario, two regulations were adopted under the Occupational Health and Safety Act, making benzene and acrylonitrile designated substances. They set limits of exposure for workers and, if for specified reasons the maximum exposure of a worker to airborne benzene or acrylonitrile cannot be complied with, the employer must provide respiratory equipment. A worker exposed to airborne benzene or acrylonitrile may request respiratory equipment regardless of the level of exposure, and the employer must provide it. Every employer to whom these regulations apply must cause an assessment to be made of the exposure or likelihood of exposure of a worker to the inhalation, absorption or contact with benzene or acrylonitrile. If there is a likelihood of such exposure and if the health of the worker may be affected thereby, the employer must adopt measures and procedures to control the exposure and must incorporate the same into a benzene or acrylonitrile control program.

In Prince Edward Island, Radiation Safety Regulations were adopted under the Public Health Act. These regulations, which came into force on January 1, 1985, prescribe safety standards for the use of various radiation equipment with the exception of any radioactive source or substance that is licensable under the federal Atomic Energy Control Act, as well as any radiation emitting device that is licensed and categorized as
industrial gauging under the same Act and its regulations. Among the
measures prescribed, the installation of a new, used, or modified radiation
emitting device is subject to prior inspection and ownership registration.
The regulations also set out the qualifications for persons operating a
radiation installation. In the case of a pregnant worker, an assessment
and revision of her employment duties or training activities must be
conducted in order to ensure that the maximum permissible dose for a
pregnant worker is not exceeded. If reassignment is not possible, and if
the pregnant worker wishes to continue working, she must acknowledge in
writing that she has been informed by a radiologist of the risks involved
and has accepted those risks. In addition, there is a prohibition against
denying a woman employment by virtue of the fact that she is pregnant,
unless there is evidence that she has exceeded the maximum permissible dose
for a pregnant worker.

The regulations also impose certain obligations on owners of
radiation emitting devices. Among these obligations, owners must post, in
a prominent place, placards bearing an abstract of the regulations, or an
applicable part thereof, as supplied by the Department of Health and Social
Services. They must also post radiation warning signs or install warning
devices as prescribed by the Department. Radiation safety officers are
empowered to make inspections and tests on the use of radiation emitting
devices. Fines may be imposed for infractions to the regulations.

In Québec, certain sections of the Act respecting occupational
health and safety were proclaimed into force. The sections dealing with
the designation of safety representatives were brought into force on
September 8, 1984. In addition, the Safety representatives in establish-
ments regulation was adopted under the Act. This regulation, which also
came into force on September 8, 1984, determines the categories of
establishments in which a safety representative must be designated, and
fixes, according to the number of workers employed in an establishment,
the minimum amount of time that a safety representative may devote to
exercising some of the assigned functions failing an agreement within the
health and safety committee, as well as for those establishments without a
committee. The regulation also deals with the instruments or apparatus
that a safety representative requires in order to exercise his functions
and with registration, travel and accommodation expenses when such a
representative participates in a training program approved by the
Commission de la santé et de la sécurité du travail (Occupational Health
and Safety Commission).

Under the same Act, as well as under the Workmen's Compensation
Act, the Regulation respecting minimum standards for first-aid and first-

aid services was adopted. This regulation, which came into force on
September 22, 1984, provides for the establishment of first-aid services
with adequate instruments, articles and medication. It replaces the former
Regulation respecting first-aid services. The regulation applies in
principle to all establishments, as defined, as well as to all construction
sites where ten or more workers are employed simultaneously at a given
moment. Among other things, the employer in an establishment and the
principal contractor on a construction site must ensure the presence at all
times during working hours of a minimum number of attendants, depending on
the number of workers assigned to a work shift. An attendent must hold a
valid first-aid certificate from an organization recognized as competent by
the Commission de la santé et de la sécurité du travail (Occupational
Health and Safety Commission) and the nature of the attendants work must
not prevent him or her from responding quickly and efficiently.

In addition, the regulation obliges certain categories of
establishments and construction sites to maintain at their expense and
on-site a male or female nurse on a full-time basis along with a first-aid
room equipped according to set standards. The attendant or the nurse who
has administered first-aid to a worker must make a report and submit it, as
the case may be, to the employer of the establishment or the principal
contractor on a construction site, who in turn must file the report in a
register kept for this purpose.

The Northwest Territories brought into force the Mining Safety
Ordinance on January 1, 1985. It had been assented to on November 25,
1982. It is a complete revision of the former Mining Safety Ordinance,
which it replaces. Among other things, it establishes a Mine Occupational
Health and Safety Board, which advises and makes recommendations to the
Executive Member of the Council of the Northwest Territories responsible
for occupational health and safety in mines. It also provides for the
right of a worker to refuse to work where he or she has reason to believe
that an unusual danger exists or is likely to exist, and it gives
protection against dismissal or disciplinary action for exercising this
right in compliance with the legislation.

In British Columbia, Bill 4, the Workplace Act, was assented to
on May 16, 1985. This Act, which will come into force by proclamation,
will transfer certain responsibilities for workplace inspections, formerly
entrusted to the Department of Labour under the Factory Act, to the
Workers' Compensation Board. A provision allows the Lieutenant Governor in
Council to repeal the Factory Act, by regulation. The Lieutenant Governor
in Council may also make regulations for the protection of the health,
safety, and comfort of persons working in a factory, office or shop, and of
homeworkers.

In the Yukon Territory, the Occupational Health and Safety Act
was assented to on November 29, 1984. This Act, which will come into force
by proclamation, introduces a comprehensive framework to deal with occupa-
tional health and safety in the workplace. It will replace the Mining
Safety Act and the Blasting Act.

The Act applies to and in respect of employment upon or in
connection with the operation of any work, undertaking, or business that is
not under the exclusive jurisdiction of the Government of Canada. It also
applies to the Government of the Yukon Territory.

Certain duties are imposed on both employers and workers with
respect to health and safety in the workplace. In general, an employer
must ensure, to a reasonable extent, that the working environment is safe
with respect to machinery, equipment, and processes and must adopt work
techniques and procedures aimed at reducing the risk of occupational
illness and injury, including the necessary instruction and training for
workers. The worker's "right to know" is provided for by obliging an
employer to inform workers of the hazards involved in the handling, storage, use, disposal and transportation of a biological, chemical, or physical agent. In addition, the employer must ensure that workers are informed of their rights, responsibilities and duties under the Act. As well, there are special provisions dealing with the construction industry.

The Act also imposes duties on workers by obliging them to take all the necessary precautions to ensure their own health and safety and that of any other person in the workplace. Similar duties are imposed on self-employed persons who are engaged in an occupation but are not in the service of an employer.

The establishment of a health and safety committee will be mandatory in a workplace where 20 or more workers are regularly employed for a period exceeding one month. Such a committee will not be required if the Chief Industrial Safety Officer or the Chief Mines Safety Officer is satisfied that a safety program, in which the workers participate, is maintained at the workplace and that it provides the same or better protection. A provision lists the factors that the Chief Officer must take into consideration when deciding to allow the establishment of a committee or to require an occupational health and safety program. An employer will have to initiate and maintain such a program at a workplace where 20 or more workers are regularly employed, which is classified under the regulations in one of two categories of hazard.

A joint health and safety committee must be composed of a minimum of four and a maximum of 12 persons, of whom at least half must be workers. They are selected by the workers or by a trade union, if there is one. The committees will have two co-chairmen, one each chosen by and from its employer and worker members. The workers must also select at least one health and safety representative from its members on the committee.

Where no committee has been established in a workplace, or where the number of workers at a construction project does not regularly exceed twenty, the Chief Industrial Safety Officer or the Chief Mines Safety Officer may order the selection by the workers of one or more health and safety representatives and may specify their qualifications.

The functions and powers of committees are set out in a provision of the Act. Among others, they will have the power to investigate and deal with complaints relating to health and safety, to make recommendations to the employer and to participate in accident investigations. The health and safety representative identifies workplace hazards, conducts periodic inspections and tests, and may accompany a safety officer during an investigation of the place of an accident that has resulted in a fatal or critical injury. The representative has the right to appeal to the Chief Industrial Safety Officer or the Chief Mines Safety Officer for a final decision on any difference of opinion with the employer concerning health and safety matters.
A worker will have the right to refuse to work when he or she has reason to believe that the use or operation of a machine, device, or thing or that a condition existing in the workplace constitutes an undue hazard. No worker may exercise this right if it puts the life, health, safety or physical well-being of another person in immediate danger or if the conditions of work are ordinary for that kind of work.

The worker who refuses to work must inform the employer or supervisor, who must then investigate the situation in the presence of the worker and a health and safety committee, a health and safety representative, or another worker, as the case may be. After the investigation and any action taken to remove the hazard, the worker may continue to refuse to work if he or she has reasonable cause to believe that the undue hazard still exists. The worker informs the employer or supervisor, who then reports the matter to a safety officer. The safety officer conducts an investigation to determine whether there is undue hazard. The safety officer's decision is subject to a final appeal within seven days to the Occupational Health and Safety Board, established under the Act. Pending the outcome of the investigation, no other worker may be assigned to the task unless the worker has been advised of the refusal and the reasons for it. The worker who exercised the right to refuse hazardous work must remain available for work during normal working hours, and the employer may, subject to the provisions of a collective agreement, assign the worker to reasonable alternative work. The worker incurs no loss of pay during the investigation.

An employer or a trade union is prohibited from imposing disciplinary measures on a worker who has acted in compliance with the Act and its regulations or has sought their enforcement in good faith. In the case of the right to refuse hazardous work, the employer is entitled to impose such measures if the final decision indicates that the worker has abused this right. Upon conviction the court may order, among other things, the reinstatement of the worker to his or her employment.

The Act also provides for the establishment of an Occupational Health and Safety Board. The Board will be composed of five members, appointed by the Executive Council Member administering the Act, consisting of one chairperson and of two representatives each from employers and employees. They are appointed for a term not exceeding three years. The Board has jurisdiction to hear appeals to decisions made by the Director of Occupational Health and Safety, a Chief Officer or a safety officer. The appeal must be exercised within 14 days after the date of the decision. The Board may deny or allow the appeal in whole or in part and may render any decision that it considers ought to have been made. A decision of the Board is final and binding, but it may, on its own motion, reconsider any decision it has made within 14 days. The Board also functions as an advisory body for the Executive Council Member.

Under the new Act, safety officers are empowered to make inspections and inquiries and to carry out such tests as are necessary to ensure compliance with the Act and regulations. A safety officer is also empowered to order that certain measures be taken to protect workers from any source of imminent danger. Medical examinations of workers may be ordered by a Chief Officer in cases where conditions in the workplace may have caused an occupational illness.
A person who contravenes the Act or its regulations is liable, upon summary conviction for a first offence, to a fine of up to $15,000 and a maximum of $1,500 for each day during which the offence continues or to imprisonment for as long as six months or to both. In the case of a second or subsequent offence, the penalties increase to $30,000, $2,500 and 12 months respectively. Stiffer penalties are provided for cases where there is failure to comply with an order made under the Act or its regulations. The Director of Occupational Health and Safety may have recourse to an injunction to end any conduct that is in contravention of the Act or its regulations.

When a biological, chemical or physical agent, or combination thereof, used or intended for use in a workplace is likely to endanger the health of a worker or other person, the Director may give written notice to the employer stopping, limiting, or restricting such use under specific conditions. The employer must provide a copy of the order to the health and safety committee, the health and safety representative, and the trade union, as the case may be. The employer must also post the order conspicuously in the workplace. The manufacture, distribution or supply of any new biological or chemical agent, or combination thereof, for commercial or industrial use in a workplace is forbidden, except for research and development, unless the Director is notified in writing. The Director may order that an assessment be made by an expert to determine the impact on health and safety such agents may have in the workplace. As well, the Commissioner in Executive Council may make regulations prescribing any biological, chemical or physical agent, or combination thereof, as a designated substance and regulating the handling of, exposure to, or the use and disposal of any such designated substance.

In addition, the Executive Council Member may approve and issue codes of practice to provide practical guidance with respect to the requirements of any provisions of the regulations. These codes will not have the force of law but will be admissible as evidence in a prosecution for the violation of a provision of the regulations.

**Upcoming Legislation**

At the federal level, Bill C-45, the Parliamentary Employment and Staff Relations Act, introduced on April 30, 1985, includes a provision that would extend the application of Part IV of the Canada Labour Code to employees of the Senate, the House of Commons, the Library of Parliament and Members of Parliament who, in that capacity, engage the services of any person or have direction and control of staff providing research or associated services to the caucus members of a political party.

On April 11, 1985, Prince Edward Island introduced and gave first reading to Bill 42, the Occupational Health and Safety Act. This legislation proposes to ensure the health and safety of workers as well as self-employed persons. It will be of general application and will encompass the provincial public service as well as any provincial agency, board, commission or corporation. Certain workplaces may be exempted by regulation from the application of the Act.

The existing Occupational Health and Safety Council would be continued under the proposed legislation.
An Occupational Health and Safety Division would be established to administer the proposed Act and its regulations. The Division would be responsible for the inspection and surveillance of workplaces and the maintenance of reasonable standards for the protection of the health and safety of employees and self-employed persons. A Director would be appointed to head the Division as well as occupational health and safety officers for the purpose of carrying out the necessary enforcement measures to ensure compliance. The officers would have powers of inspection similar to those existing in the other provinces, including the use of stop-work orders and the recourse to injunction proceedings if an order is contravened.

The establishment of joint health and safety committees would be by agreement or mandatory if the Minister requires it following a recommendation by the Director. Employees or employers would be entitled to request the Director to recommend that a committee be established. At least half of the members of the committee would have to be employees at the workplace who do not exercise management functions. They would be selected by the employees. The functions of the committee would be similar to those of existing committees in other provinces. In workplaces where no committee is established, the Minister would be entitled to require, upon the recommendation of the Director, that an employee health and safety representative be chosen by and from the employees. The representative would have the same functions as a committee.

An employee would have the right to refuse to work if he or she has reasonable grounds for believing that an act is likely to endanger his or her health or safety or that of any other employee. The employee would then have to inform the supervisor, who must promptly investigate the situation. The employee would have a right of appeal to a committee, a health and safety representative, or a safety officer, as the case may be. In cases where a committee or representative reviews a supervisor's decision, the employee will have a right of appeal to a safety officer. The employer will have a duty to advise the other employees of the refusal and the reasons thereof; and the employee who refused to work could be temporarily reassigned to other work, subject to the provisions of a collective agreement, without loss of wages unless it is determined that the refusal was for frivolous reasons.

Employers and unions would be forbidden from taking or threatening disciplinary action against an employee who has sought the enforcement or acted in compliance with the Act or its regulations or an order made thereunder. An employee subjected to disciplinary action would be entitled to file a complaint with the Minister, and the matter would be settled through arbitration. The arbitrator could, among other things, order the reinstatement of an employee.

Employers would have to prepare and maintain a list of all biological, chemical or physical agents used, handled, produced or otherwise present in the workplace which may be hazardous to the health and safety of employees.

A provision would allow a Director to arrange medical examinations of employees, with their consent, in order to determine whether they
are suffering from an occupational disease. Fines would be imposed if the Act or its regulations are infringed. The Occupational Health and Safety Council Act and the Construction Safety Act would be repealed when the proposed legislation is adopted and proclaimed into force.

On April 30, 1985, Nova Scotia introduced and gave first reading to Bill 77, the Occupational Health and Safety Act. This legislation is intended to promote health and safety in the workplace. It will be of general application and will encompass all provincial Crown employees. A provision would affirm the primacy of the Act and its regulations over any other general or special Act whenever there would be a conflict. Exemptions from the Act's application may be enacted by regulation.

An Occupational Health and Safety Division would be established within the Department of Labour and Manpower to administer the proposed Act and its regulations. The Division would be concerned mainly with the maintenance of reasonable standards for the protection of the health and safety of employees and self-employed persons. An Executive Director would be appointed to head the Division, as well as officers and inspectors to administer and enforce the Act and its regulations. Their powers of inspection would be similar to those existing in the other jurisdictions, including the use of stop-work orders. The Division would carry out the functions of other divisions related to occupational health and safety, including mining safety and accident prevention.

The Bill provides for the establishment of an Occupational Health and Safety Advisory Council with equal representation from employers and employees. Their task would be to advise the Minister of Labour and Manpower on the administration of the proposed Act and on matters relating to occupational health and safety.

The establishment of joint occupational health and safety committees would be mandatory at every workplace where 20 or more persons are regularly employed. In workplaces where fewer than 20 persons are regularly employed, the Minister could require that such a committee be formed. At least half of the members of the committee would have to be employees at the workplace who do not exercise management functions. The functions of the committee would be similar to those of existing committees in the other jurisdictions.

An employee would have the right to refuse to work if he or she has reasonable grounds for believing that an act is likely to endanger his or her health or safety or that of any other employee. The employee would then have to inform the supervisor and the committee, if any. The right to refuse work could not be exercised if it puts the life, health or safety of another person directly in danger or if the danger complained of is inherent in the employee's work. The employee would have the right of appeal to a committee or to an officer of the Division, as the case may be. Where there is a committee, a further right of appeal to an officer exists. The employer would have the duty to advise the other employees of the refusal and the reasons for it. The employee who refused to work could be temporarily reassigned to other work, subject to the provisions of a collective agreement, without loss of wages unless the refusal is not upheld.
Employers and unions would be forbidden from taking or threatening disciplinary action against an employee who has sought the enforcement of or acted in compliance with the Act or its regulations or an order made thereunder. The disciplinary action taken could be justified if the employer establishes that it was solely motivated by legitimate business reasons. Any alleged contravention would be dealt with by final and binding arbitration pursuant to a collective agreement, if any, or by the filing of a complaint with the adjudication committee established under the regulations. The adjudication committee could, among other things, order the reinstatement of an employee.

Employers would have to prepare and maintain a list of all chemical substances regularly used, handled, produced or otherwise present at the workplace which may constitute a hazard to the health or safety of the employees. Fines would be imposed if the Act or regulations are infringed. The Construction Safety Act and the Industrial Safety Act would be repealed when the proposed legislation is adopted and proclaimed into force.
IV. WORKERS' COMPENSATION

During the period covered by this report, several jurisdictions have amended their workers' compensation legislation.

New Legislation

In Ontario, Bill 101, the Workers' Compensation Amendment Act, 1984, was assented to on December 14, 1984.

This Act introduces a new award scheme for dependants of deceased workers. A lump sum payment of between $20,000 and $60,000, depending on the circumstances, will be paid to the spouse or children or both. Periodic payments, up to a maximum of 90% of the deceased worker's net average earnings at the time of the injury, will also be payable to these dependants, depending on the circumstances.

Compensation for temporary disability resulting from accidents occurring after the Act comes into force will be based on 90% of the worker's net average earnings calculated on a maximum average earnings ceiling of $31,500 per year. In addition, an injured worker will be entitled to receive full wages for the day of the accident. Compensation for permanent disability will be awarded on the same basis as previously but will be calculated in proportion to 90% of the worker's net average earnings. In addition, where the impairment of the earning capacity of the worker is significantly greater than is usual for the nature and degree of the injury, the Workers' Compensation Board will be able to supplement the amount awarded for permanent partial disability for such period as it may fix depending on the circumstances. The Board will also be authorized, for similar reasons, to supplement the amount awarded to an older worker for permanent partial disability until the worker is eligible for old age security benefits or returns to work, but this supplement will not exceed the level of such benefits the worker is eligible to receive. As well, provision is made in the Bill for the integration of Canada Pension Plan benefits to dependants and disability benefits with those payable under the Act. The former basis on which benefits were paid is continued with respect to injuries and industrial diseases that occurred before the Act came into force.

The exemption from civil liability that applied to employers and employees has been extended to include executive officers and directors of employers. A new provision stipulates that any doubts in determining any claim under the Act should be resolved in favour of the claimant. The definition of "common-law wife" has been repealed and a definition of "spouse" has been enacted which includes, to the extent provided, the common-law relationship. A provision allows access to the Board's records upon request by the claimants. The employer will have limited access to these records and, if it involves medical records, the Board is required to give the claimant an opportunity to object to such access. Another amendment brings domestics within the scope of the Act.

The Act institutes an independent tripartite appeals tribunal, the Workers' Compensation Appeals Tribunal, which will have exclusive jurisdiction over appeals concerning, among other things, entitlement to
compensation or benefits and appeals respecting assessments and penalties. The structure of the Board will also be affected. The present commissioners will be replaced by a board of directors which will include part-time members representing employers, workers, professional persons, and the public. The Act also provides for the establishment of the Industrial Disease Standards Panel, the Office of the Worker Adviser, and the Office of the Employer Adviser, all of which will be independent of the Board.

Existing provisions relating to medical examinations will be replaced. The Board will have the power to require medical examinations, and the Appeals Tribunal will have the power to obtain the assistance of independent medical practitioners. The protection from employment discrimination granted under the Human Rights Code will be extended to cover employees who are victims of an injury or disability for which benefits could be claimed or received under the Act.

This Act was proclaimed into force on April 1, 1985, with the exception of the provisions dealing with, among others, medical examinations, the board of directors, access to records and the Workers' Compensation Appeals Tribunal.

In Alberta, Bill 75, the Workers' Compensation Amendment Act, 1984, was assented to on November 13, 1984.

Among the noteworthy amendments to the Act, the definitions of "employer", "proprietor", and "worker" have been clarified. As well, an employer in an industry exempted under the regulations may apply to the Workers' Compensation Board to be covered by the Act notwithstanding the exemption. In addition, a trust is deemed to be held by the employer for the Board equal to the employer's assessment contribution or the amount of any unpaid penalty imposed under the Act. Such a trust is also deemed to be held in the event of any liquidation, receivership, winding-up, assignment, or bankruptcy of the employer. Any assignment of property or creation of a charge by an employer who has defaulted in the payment of an amount owed to the Board is void to the extent of the amount in question. This Act came into force on January 1, 1985, with the exception of the section dealing with deemed trusts for assessments and unpaid penalties, which will come into force by proclamation.

Earnings Ceiling

The maximum insurable earnings have been increased in certain jurisdictions as follows:

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Annual Maximum Wage Rate</th>
<th>Date of Coming into Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>British Columbia</td>
<td>from $30 200 to $32 400</td>
<td>01-01-85</td>
</tr>
<tr>
<td>Manitoba</td>
<td>from $28 000 to $29 000</td>
<td>01-01-85</td>
</tr>
<tr>
<td>Québec</td>
<td>from $31 500 to $33 000</td>
<td>01-01-85</td>
</tr>
<tr>
<td>Ontario</td>
<td>from $26 800 to $31 500</td>
<td>01-04-85</td>
</tr>
<tr>
<td>New Brunswick</td>
<td>from $27 500 to $29 400</td>
<td>01-01-85</td>
</tr>
<tr>
<td>Nova Scotia</td>
<td>from $19 000 to $24 000</td>
<td>01-01-85</td>
</tr>
<tr>
<td>Yukon Territory</td>
<td>from $27 000 to $28 500</td>
<td>01-01-85</td>
</tr>
<tr>
<td>Northwest Territories</td>
<td>from $26 400 to $30 400</td>
<td>01-07-85</td>
</tr>
</tbody>
</table>
Benefits to Dependents

Ontario has adopted legislation that increases benefits payable in respect of dependent spouses and children.

In New Brunswick, Nova Scotia, Québec, Saskatchewan, and the Yukon Territory, benefits provided for dependants are upgraded in relation to the increase in average wages or the Consumer Price Index; in most cases, this is effective January 1 of each year. The same applies to British Columbia, where there is a raise on January 1 and on July 1.

Disability Benefits

British Columbia, Saskatchewan, and Ontario have increased the minimum compensation for total disability.

Upcoming Legislation

In Québec, Bill 42, An Act respecting industrial accidents and occupational diseases, was given second reading on November 14, 1984.

The object of this Bill is to institute a new compensation scheme for employment injuries to replace those under the Workmen's Compensation Act and the Act respecting indemnities for victims of asbestosis and silicosis in mines and quarries. It introduces the concept of "employment injury" and sets out, in a schedule, a list of occupational diseases. This new scheme will apply to all workers who suffer employment injury, with certain exceptions.

It also entitles a worker who suffers an employment injury to certain benefits. A worker no longer able to carry on his or her employment due to an employment injury will be entitled to an income replacement indemnity equal to 90% of his or her weighted net annual income from employment. For the purposes of computing this indemnity, the gross annual employment income cannot be less than the gross annual income determined on the basis of the minimum wage then in force nor greater than the set maximum yearly insurable earnings. If the worker remains unable to carry on his or her employment but becomes able to carry on suitable employment, the income replacement indemnity will be reduced by the net income that he or she could earn from that employment. Two years after the date the employee becomes able to carry on full-time suitable employment, the Commission will review the indemnity if it sees that the income he or she is earning from employment is higher than the amount so far deducted from his or her indemnity. Three years after this review and every five years thereafter, the Commission will review the indemnity in the same way. The income replacement indemnity will cease on the first of the following events: when the worker becomes able to carry on his or her employment again, when he or she dies, or when the employee reaches his or her sixty-eighth birthday. In the last case, during the final three payment years, the income replacement indemnity will be reduced by 25, 50 and 75%.
A worker who sustains permanent physical or mental impairment will be entitled to receive compensation for bodily injury. The indemnity takes into account the age of the worker and the degree of impairment as determined with reference to a table of bodily injuries which will be established and adopted by the Commission by regulation. The maximum indemnity is set at $50 000.

The payment of life annuities to the survivors of a deceased worker will be replaced by a lump sum payment. The indemnity payable to a surviving spouse and to eligible children varies, notably according to their age at the time of the worker's death. In the case of the spouse, a minimum of $50 000 is set. The Bill also provides indemnities for other dependants.

The amounts and indemnities stated in the Act will be subject to an annual revalorization in accordance with the Consumer Price Index as determined by Statistics Canada.

In addition, the Bill establishes a right to return to work and sets out its limits and the conditions of its exercise. In principle, a worker having suffered an employment injury will be entitled to resume his or her employment, at the wage and with the benefits he or she would be receiving had the employment been continuous. If the employee remains unable to carry it on, he or she will have prior access to the first suitable employment becoming available in the employer's establishment. These rights will be extinguished after a continuous period of absence, one year where up to 20 workers work in the establishment, two years if over 20. These rights will be implemented in the manner provided by the applicable collective agreement, and the worker will be able to resort to the grievance procedure under the agreement. In the absence of a collective agreement, the manner of implementing return to work rights will be determined by the health and safety committee at the establishment or, failing that, by agreement between the worker and the employer. If the committee cannot agree or the worker or the employer is not satisfied, either one may ask the Commission to intervene.

Furthermore, a construction worker who has suffered an employment injury and who becomes able to carry on employment again will be entitled to be reinstated in the same employment, if it still exists. The manner of implementing this right will be determined by the worksite committee or, failing that, will be subject to an agreement between the worker and the employer. If the committee cannot come to an agreement or if the worker or employer is not satisfied, either one may ask the Commission to intervene. In addition, the construction worker will be entitled to have his or her class "A" or "Apprentice" certificate from the Office de la construction du Québec renewed even if, because of an injury, he or she has not accumulated the required number of hours of work for that purpose. A construction worker's rights regarding return to work will be exercisable without any time limits.
Finally, this Bill gives the Commission powers for use when it takes cognizance of a request for intervention in a matter regarding return to work or of a complaint by a worker that he or she has been subjected to restrictive measures or a penalty by the employer because such employee has suffered an employment injury or has availed himself or herself of rights under this Act.

The proposed legislation contains new provisions relating to the funding of the scheme and the collection of assessments from employers. The Bill will replace the review boards with a procedure of administrative review by the Commission of all its decisions except those of a medical nature or on the right to return to work. This Bill establishes a new board, the Commission d'appel en matière de santé et de sécurité du travail, which will have exclusive jurisdiction, among other things, to hear appeals of an administrative review by the Commission or of a decision by the Commission on a medical question.

No civil recourse will lie against the employer of an employee who has suffered an employment injury, nor against his or her agents or employees except if the matter concerns another employer, and then only in certain cases. In all cases, the Commission will be subrogated to the rights of the beneficiary.