HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

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Labour Canada

HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

June 1, 1985, to June 30, 1986

INTRODUCTION

Between June 1, 1985, and June 30, 1986, many significant 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 proclamation of the greater part of the Employment Standards Act in New Brunswick; the adoption of Bill C-45, a federal Bill which will extend the coverage of Part III of the Canada Labour Code to employees of Parliament; the announcement of increases in the minimum wages in the federal jurisdiction, New Brunswick, Ontario, Québec and the Northwest Territories as well as the abolition of the lower rate payable to young workers in the federal jurisdiction, Québec and the Northwest Territories; the adoption of new provisions respecting the protection and recovery of wages in Manitoba; the adoption of more secular measures concerning the weekly day of rest in Alberta, New Brunswick, Prince Edward Island and the Northwest Territories; the introduction of many measures providing for pay equity in the federal jurisdiction, Manitoba, Québec and Ontario (Bill 105, still under study); as well as the adoption of provisions providing the right to paternity leave and adoption leave and the establishment of joint planning committees in cases of group dismissals in Manitoba.

In the field of industrial relations, legislation on first collective agreements was adopted in Ontario and Newfoundland, and in the latter province a requirement concerning the Rand formula was introduced. Modifications to the general collective bargaining legislation were also made in New Brunswick. In Québec, a new law was adopted regarding bargaining in the public and parapublic sectors. Alberta, British Columbia and Newfoundland also modified their legislation in this area, and the federal government passed a law conferring collective bargaining rights on employees of Parliament. Emergency laws were adopted in three provinces (Ontario, Québec and Saskatchewan). With respect to the construction industry, changes occurred in Québec and Nova Scotia.

Finally, several of the jurisdictions have made changes to their occupational health and safety legislation. Among these changes, amendments to Part IV of the Canada Labour Code were proclaimed into force at the federal level. Nova Scotia and Prince Edward Island adopted comprehensive occupational health and safety acts. Manitoba issued a regulation respecting hearing conservation and noise control in workplaces. Ontario adopted an important regulation dealing with asbestos on construction projects and in buildings and repair operations. Furthermore, new regulatory requirements were introduced at the federal level as well as in Alberta, Manitoba, Newfoundland, Saskatchewan and the Northwest Territories.

I. EMPLOYMENT STANDARDS

Legislation of General Application

In June 1982, New Brunswick had adopted a new Employment Standards Act. During the course of the last year, this Act has progressively been proclaimed in force by, first, proclaiming the provisions of an administrative nature, and later proclaiming the provisions of substantive law. At present, only paragraph 25(2), which contains a particular definition of "wages", and section 77, which provides for a "Payment of Wages Fund", remain unproclaimed.

This Act repealed and replaced the Employment Standards Advisory Board Act, the Fair Wages and Hours of Labour Act, the Industrial Standards Act, the Minimum Employment Standards Act, the Minimum Wage Act and the Vacation Pay Act.

In general, the rights contained in these statutes are continued, but the new Act also creates several new rights. Important new provisions provide the following: a maternity leave of 17 weeks; a notice of individual termination of employment of at least two weeks for employees who are credited with at least six months of service, and of at least four weeks for those credited with at least five years service, provided the employees are not covered by a collective agreement; a notice of group termination of employment of at least four weeks for employees who are covered by a collective agreement where 25 employees or more are dismissed; and a quasi-absolute prohibition against the use of lie-detector tests in employment.

In addition, a new administrative recourse for ensuring that the provisions of this Act and regulations are complied with has come into force. In short, the director and employment standards officers are invested with certain powers of inspection, investigation and examination. The director can, at any time after a complaint has been made, appoint a mediator to attempt to settle the matter amiably. If this attempt fails, the director can order the person in default to refrain from acts that violate the law, to comply with it, to pay a stated amount owing to an employee, or to reinstate an employee. An appeal lies with the Employment Standards Tribunal.

The order of the director or of the Tribunal, as the case may be, may warrant that a certificate be issued stating the amount owing to an employee. The certificate may be filed in the Court of the Queen's Bench and be enforced as a judgment of that Court.

Third-party demand (or attachment of third-party debts) procedures may also be taken by the director if he has reason to believe that a person is or is about to become indebted to the employer for any sum of money. This demand may even be issued before determination is made on a complaint for unpaid wages. This money is held in trust until a decision is made on whether or not the employer is indebted to an employee for unpaid wages.

Finally, the Minimum Wage Board is established to advise the Lieutenant-Governor in Council on matters pertaining to the minimum wage rates.

At the federal level, Bill C-45, the Parliamentary Employment and Staff Relations Act, has recently received royal assent. When its provisions come into force on a date fixed by proclamation, the Act will extend the application of Part III of the Canada Labour Code to employees of the Parliament, namely to those of the House of Commons, the Senate, the Library of Parliament, to any person employed by a member of Parliament and to staff employed to provide research or associated services to a political party as well as to the above-named institutions and to members of Parliament, in their capacity as employers.

In Prince Edward Island, an amendment has been made to the Labour Act to provide that a meal break be given; that sick leave with pay, where provided, not be considered as vacation with pay or pay in lieu of vacation; that any wages due to an employee upon termination of employment be paid not later than ten days following the termination; and that an employer who pays the wages of an employee by means of a cheque determined valueless within six months of its issue is deemed to have failed to pay the wages due.

Minimum Wages

The federal government has increased to $4.00 an hour the minimum wages payable to employees 17 years of age and over and to employees under 17, thus eliminating the youth differential.

Québec and the Northwest Territories have also taken measures to eliminate the youth differential. The minimum hourly wage has gone up to $5.00 in the Northwest Territories, effective April 1, 1986, whereas it will be increased to $4.35 in Québec, effective October 1, 1986. In addition, the minimum wage rates payable to various other categories of workers in Québec will be, in general, increased to at least $4.35, thus eliminating other pay differentials.

Ontario will act in concert with Québec by increasing to $4.35 an hour the rate payable to experienced adult workers, also effective October 1, 1986. However, Ontario will keep its special rate for students under 18 who work for not more than 28 hours in a week or during a school holiday; this rate will go up to $3.50 an hour, effective October 1, 1986. Moreover, Ontario had increased, in June 1985, the rates payable to fruit, vegetable and tobacco harvesters to the same levels as the ones payable to experienced adult workers and to young workers. This policy will be continued as of January 1, 1987, when these rates will be increased to $4.35 an hour and $3.50 an hour, respectively. Ontario will also eliminate many other differences in treatment with regard to its minimum wage rates.

New Brunswick will increase to $4.00 an hour its minimum wage rate, effective September 15, 1986.

In addition, Manitoba has also made many changes to the regulations establishing the minimum wages in the construction industry in order to increase the rates payable to workers of the building construction industry in Greater Winnipeg and of major building construction projects anywhere in the province.

Because there have been many important changes in the area of minimum wages, we include two charts on the minimum wage rates in Canada at the end of this section.

Unpaid Wages

Manitoba has amended its Payment of Wages Act in order to make the provisions for the protection of wages and the recovery of unpaid wages more effective.

Wages due or accruing due to an employee are, in addition to what was previously stipulated, deemed to be held in trust for payment of the wages to the employee in the manner and at the time provided by law, whether or not the employer is in receivership.

Every director and officer of a corporation is jointly and severally liable for the unpaid wages of every employee, for an amount not exceeding six months' wages, and for the totality of unpaid vacation pay. This liability had previously been limited to two months' wages and to 12 months' accrued vacation pay.

Where a receiver or a receiver-manager has been appointed by a court or under an instrument to administer the affairs of an employer, the receiver or receiver-manager to whom the Director of Employment Standards has directed an order to pay the unpaid wages of an employee has the choice to comply with the director's order or to request the director to refer the matter to the Manitoba Labour Board for a determination. Where the employer is a corporation, and an order has been directed to a director or officer of that corporation, the same choice is available. If the director or officer of the corporation pays the unpaid wages, he or she is vested with all the rights of the employee to take action or institute proceedings against the corporation to recover the monies paid.

An appeal lies to the Court of Appeal from any final order or decision of the Manitoba Labour Board upon any question involving the jurisdiction of the board or upon any point of law.

A copy of an order made by the director, by the board, or by the court may be filed at the administrative centre of the Court of the Queen's Bench and an order so filed is deemed to be a judgment of that court in favour of the director and may be enforced as such.

When money is paid out of the Payment of Wages Fund to an employee whose employer has failed or refused to pay the wages due and payable, all the rights of that employee to recover the unpaid wages become vested in the director who may take any action or proceeding against the defaulting

employer. The money collected by the director in such a manner must be credited to the fund, to compensate for the amount previously paid from the fund to that employee. If the amount collected exceeds the amount previously paid to the employee, the excess must be paid to the employee and not be credited to the fund.

The Employment Standards Act and the Vacations with Pay Act are also amended to provide, in both cases, that an appeal lies with the Court of Appeal of any final order or decision of the Manitoba Labour Board upon any question involving the jurisdiction of the board or upon any point of law. In addition, the Employment Standards Act is further amended to provide that, where an employer appeals such a decision, the appellant must, at the time of filing the appeal, pay into the Court of Appeal the amount he had been ordered to pay. Upon completion of the hearing of the appeal, the Court of Appeal may order the disposition of the monies paid into court in such manner as the court deems just.

The Yukon has also amended its Employment Standards Act with regard to the recovery of unpaid wages provisions. The procedure for the filing into court of a certificate has been amended. Where a certificate has been issued indicating that an amount of wages is owing, the director must, instead of filing the certificate with the clerk of the court, first serve the employer with a notice setting out the relevant information regarding the claim for wages. After the time for appealing the order to pay to the Employment Standards Board has expired and no appeal has been lodged, or after the appeal has been disposed of, the director may file a certificate with the clerk of the Supreme Court (previously, the Court of the Queen's Bench) and the certificate thus filed is deemed a judgment of that court. Where the employer is a corporation and wages remain unpaid after 30 days from the date such a certificate is filed, the director may issue, against one or more of the directors of the corporation who, in his opinion, are liable for the unpaid wages, a second certificate showing the amount of wages owed to an employee. In addition, a second notice must be served on the directors of the corporation and delays for appeal must be expired or the appeal rejected before the director may file a supplementary certificate with the clerk of the Supreme Court. That certificate is then deemed to be executory against the directors of the corporation.

Commercial Establishments' Business Hours

In Alberta, municipalities now have the power to regulate, by passing a by-law to that effect, the days and hours businesses are required to close (for example, on Sundays and holidays). The Municipal Government Act also empowers a municipal council to regulate entertainment events in the same way. A council also has the power to exempt businesses or events from any provision of the by-law.

In New Brunswick, the government has repealed the Lord's Day Act and has replaced it with the Days of Rest Act. Of a more secular nature, this Act designates Sunday, as much as is practicable, as a uniform weekly day of rest. In addition, the following days are declared to be prescribed

days of rest: New Year's Day, Good Friday, Victoria Day, Canada Day, New Brunswick Day, Labour Day, Thanksgiving Day, Remembrance Day, Christmas Day, Boxing Day, and any other day declared to be a general holiday. The operation of commercial establishments is prohibited on those days, except in activities exempted by the board created by this Act or by municipalities, by virtue of the powers conferred on them by the legislation. This Act or any provision thereof will come in force by proclamation.

Similarly, Prince Edward Island has adopted the Day of Rest Act which repeals and replaces the Lord's Day Act. This Act declares Sunday to be a uniform day of rest and it is prohibited, except in exempted activities, to carry on business on a day of rest. If an employee is required to work on a day of rest at one of the exempted activities, he is entitled to another day of rest within six days.

Moreover, the Northwest Territories have repealed the Lord's Day Act by means of the Statute Law (Canadian Charter of Rights and Freedoms) Amendment Act. At present, section 12 of the Employment Standards Act regulates the matter of a day of rest in seven.

Employment Equity

Manitoba has adopted the Pay Equity Act. "Pay equity" is defined as a compensation practice which is based primarily on the relative value of the work performed, regardless of gender. It includes the requirement that no employer shall establish or maintain a difference between the wages paid to male and female employees who are performing work of equal or comparable value.

The Act presents a phased approach intended to provide pay adjustments over a four-year period at a rate of one per cent per year to spread out the cost of pay equity, estimated at four per cent of the government's total payroll. An innovative feature of this Act is that it provides an implementation schedule with specific targets and deadlines, which began October 1, 1985, with the Manitoba civil service. The deadline for reaching an agreement respecting the development or selection and application of a job evaluation system was June 30, 1986. All Crown entities (i.e., Manitoba's four universities and 24 largest health care facilities) and external agencies will follow, beginning on October 1, 1986, with a deadline set at June 30, 1987.

The Act also encourages all public and private sector employees and employers to implement pay equity. To that end, a Pay Equity Bureau is established within the Department of Labour to assist employers and employees in any such undertaking. The bureau also has important powers to monitor compliance with the legislation. Reports must be filed with the bureau by public sector employers and these will be summarized in the executive director's annual report, which is to be tabled in the Legislature.

An important feature of the Act is that it calls upon the collective bargaining process to play a vital role in the implementation of pay equity. Bargaining agents or employee representatives, and the employers concerned, are obliged to bargain in good faith, making every reasonable effort to reach an agreement respecting a job evaluation system.

Job evaluation systems are designed to measure wage-gaps between male-dominated and female-dominated classes of employees. A class is considered gender-dominated if 70 percent or more of those in a class of 10 or more persons are of the same sex. In the case of employers with more than 500 employees, other classes may be considered gender-dominated in accordance with a negotiated agreement of the parties concerned. Regulations pursuant to the Act could set out further criteria for gender-domination of employers with fewer than 500 employees.

Once job evaluation has been completed, a second round of negotiations is required to deal with the exact allocation and phasing-in of necessary wage adjustments. This second agreement must be reached no later than September 30, 1986, for the civil service, and September 30, 1987, for Crown entities and external agencies.

Should the parties fail to reach the required agreements on implementation of pay equity, impasses will be resolved by adjudication, in the civil service through the appointment of an arbitration board, and in Crown entities and external agencies (which will be obliged by regulation to comply at a later date) through a referral to the Manitoba Labour Board. Both boards have sufficient remedial powers to ensure that the process of job evaluation occurs and that the pay equity wage adjustments required by the Act are made.

In addition, the federal government has adopted the Employment Equity Act.

The purpose of this Act is to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities, and persons who are, because of their race or colour, in a visible minority in Canada. The principle of employment equity not only means treating persons in the same way but also requires special measures and the accommodation of differences.

In order to give effect to this principle, an employer who falls within the legislative authority of the federal government and who employs 100 employees or more is required to prepare, each year, a plan setting out the goals that he intends to achieve in implementing employment equity and the timetable for the implementation of those goals. A copy of plans thus prepared must be kept at the employer's principal place of business in Canada for a period of at least three years following their preparation.

In addition, beginning in 1988, every employer will be required to submit to the Minister of Employment and Immigration (or to another minister designated by the Cabinet), on or before June 1 of each year, a report respecting the preceding year containing the following information:

a) the industrial sector in which employees of the employer are employed, the location of their employment, their number and the number of persons in designated groups;

b) the occupational distribution of employees and the degree of representation of persons in designated groups in each of them;

c) the salary ranges of employees and degree of representation of persons in designated groups in each level; and

d) the number of employees hired, promoted and terminated and the degree of representation in those numbers of persons in designated groups.

The Minister must have a consolidation of the reports prepared each year, together with an analysis of its content, which must be presented to each house of Parliament before the end of each year.

The reports submitted by employers will be available for public inspection, and any person may obtain a copy upon payment of the costs of furnishing a copy.

An employer who fails to comply with the obligation to submit a report is guilty of an offence and liable, upon summary conviction, to a fine not exceeding fifty thousand dollars.

This Act will come into force on a date fixed by proclamation.

In Ontario, second reading has recently been given to Bill 105, the Public Service Pay Equity Act, 1986. This Bill would provide for pay equity in the public service first (nothing excludes that such an Act could eventually apply to the private sector) by using a pro-active and phased-in approach in which the collective bargaining process would be involved, an approach which is very similar to the one put in effect in Manitoba.

Finally, Québec has proclaimed into force the provisions of the Charter of Rights and Freedoms which deal with affirmative action programs. Moreover, a draft regulation, scheduled to come into force on September 1, 1986, provides the details of elements which must be included in an affirmative action program.

Maternity, Paternity and Adoption Leaves

Alberta has amended its Employment Standards Act and Individual's Rights Protection Act in order to reinforce, among other things, maternity protection.

The new provisions of the Employment Standards Act provide that the period of 18 weeks of maternity leave can now be taken, at the employee's discretion, in such a way as to commence at any time during the 12 weeks immediately preceding the estimated date of delivery and to include a period of at least six weeks immediately following the actual date of delivery. The medical certificate certifying that the employee is pregnant and giving the estimated date of delivery is no longer mandatory and needs be presented to the employer only if he requests it. It is prohibited for an employer to terminate the employment of or lay off an employee who has commenced her maternity leave under the Act. In addition, the employer cannot require the employee to commence her maternity leave, except where, during the 12-week period immediately preceding the estimated date of delivery, the pregnancy interferes with the performance of the employee's duties.

In addition, the Individual's Rights Protection Act now provides, among other things, that an employer who refuses to continue to employ any female employee or discriminates against any female employee with regard to any term or condition of employment, by reason only of pregnancy, is deemed to have discriminated against that employee because of the sex of that employee.

Moreover, Manitoba has adopted The Equal Rights Statute Amendment Act. This Act, among other things, amends the Employment Standards Act to provide paternity leave and adoption leave.

The paternity leave is for a period of up to six weeks and the adoption leave is for a period of up to 17 weeks. In both cases, the employee must have completed at least 12 months of service to be entitled and must submit a written application for the leave at least four weeks before he or she intends to commence it. An employee who fails to apply in advance for the leave is nevertheless entitled to, upon application, the leave or such portion of it as has not yet expired.

The employee may elect to begin either leave on the day the child comes into his or her actual care and custody; or on the expiry of, or before the expiry of a female employee's leave of absence in respect of the child (i.e. maternity leave, child care leave, adoption leave, etc.) taken under the Employment Standards Act, an act of Parliament or any other legislature, or any collective agreement. In addition, such leave may be taken at any time during the 90 days immediately following the birth of the child, in the case of paternity leave, or following the day on which the child comes into the employee's actual care and custody, in the case of adoption leave. In the case of paternity leave, the employee may also elect to begin the leave on the day the child is born.

The job protection provisions of the Act apply to paternity leave and adoption leave, with the necessary modifications.

Termination of Employment

The Employment Standards Act of Manitoba has also been amended in many other respects, including group termination of employment. The length

of notice required is increased to 10 weeks where the group of employees to be terminated does not exceed 100; to 14 weeks, where it exceeds 100 but does not exceed 300; and to 18 weeks, where it exceeds 300. The notice must now also mention the reasons for which the employment of the employees is being terminated as well as the names of not less than two persons for the purpose of appointment to a joint planning committee to represent the views of the employer.

The provision of the Act requiring co-operation with the Minister in any action or program aimed at facilitating the re-establishment in employment of redundant employees is expanded. A joint planning committee, whose object is to develop, on a co-operative basis, an adjustment program to eliminate the necessity for the termination of employment or to minimize the impact of such termination on the affected employees and to assist those employees in obtaining other employment is to be established if the Minister so requires. The joint planning committee consists of at least two representatives of the affected employees and two of the employer appointed by the Minister from among names submitted to him by the trade union, or by the employees if there is no trade union, and by the employer. The Minister may appoint such other persons to the committee as he considers appropriate. The members of the committee must elect from among themselves two co-chairpersons, one being an employee representative, the other being an employer representative.

The Minister may set the terms of reference of the committee as well as a date for reporting to him. The joint planning committee may determine its own procedure, except as provided for the convening of the first meeting of the committee within seven days after its being appointed. Employee representatives are entitled to their normal pay for any time spent in carrying out the functions and attending meetings of the committee.

The joint planning committee is not limited to dealing only with matters arising out of the application of a collective agreement in relation to termination of employment, but can also deal with all matters relevant to its object and mandate.

The employer and any trade union or affected employees must co-operate with and assist the committee in developing and implementing an adjustment program and provide any such information as the committee may reasonably request.

In addition, Alberta has amended its Employment Standards Act by means of the Charter Omnibus Act in order to provide that no notice of termination of employment, or pay in lieu of notice, is required to be given to an employee if it is the custom or practice of an employer that his employees terminate their employment by retirement on attaining a particular age, and the employee reaches that age.

Moreover, a Bill (108) has recently been introduced in Ontario that would amend the Employment Standards Act in order to ensure that workers receive termination and severance pay in a timely fashion, as is now the intent of the Act, while also minimizing the impact of the new unemployment insurance rules dealing with the payment of such amounts.

Reciprocity

Finally, the Yukon has adopted a regulation under the Employment Standards Act establishing, for the purposes of enforcing this Act, reciprocity with Alberta, British Columbia and Saskatchewan. The directors of employment standards of those jurisdictions are designated, for each of their jurisdictions, enforcement authorities of the Yukon Employment Standards Act.

MINIMUM WAGE RATES
FOR EXPERIENCED ADULT WORKERS AND YOUNG WORKERS AND STUDENTS

Jurisdiction	Experienced Adult Workers	Effective Date	Young Workers and Students*	Effective Date
Federal	$4.00	26/05/86	Employees under 17: $4.00	26/05/86
Alberta	$3.80	01/05/81	Employees under 18 not attending school: $3.65	01/05/81
			Employees under 18 attending school: $3.30	01/05/81
British Columbia	$3.65	14/03/81	Employees 17 and under: $3.00	14/03/81
Manitoba	$4.30	01/01/85	Employees under 18: $3.85	01/01/85
New Brunswick	$3.80 $4.00	01/10/82 15/09/86		
Newfoundland[1]	$4.00	01/01/85		
Nova Scotia	$4.00	01/01/85	Underage employees 14 to 18: $3.55	01/01/85
Ontario	$4.00 $4.35	01/10/84 01/10/86	Students under 18 employed for not more than 28 hours in a week or during a school holiday:	
			$3.15	01/10/84
			$3.50	01/10/86
Prince Edward Island	$4.00	01/10/85	Employees under 18: $3.25	01/10/85
Québec	$4.00 $4.35	01/10/81 01/10/86	Employees under 18: $3.54	01/10/81
			Repealed	01/10/86

* The federal jurisdiction, New Brunswick, Newfoundland, Québec (as of October 1, 1986), Saskatchewan, the Northwest Territories, and the Yukon Territory have no special rates for young workers or students.

[1]Sixteen years of age and over.

Jurisdiction	Experienced Adult Workers	Effective Date	Young Workers and Students*	Effective Date
Saskatchewan	$4.50	01/08/85		
Northwest Territories	$5.00	01/04/86		
Yukon	$4.25	01/01/85		

MINIMUM WAGE RATES
FOR OTHER CATEGORIES OF EMPLOYEES

Jurisdiction	Rates and Categories	Effective Date
Alberta	Various categories of salespersons:	
	$150 a week	01/05/81
British Columbia	Live-in homemakers, domestics, farm workers or horticultural workers paid wages other than on an hourly or piece-work basis:	
	$29.20 per day or part of a day worked	14/03/81
	Resident caretakers in apartment buildings of 8 to 60 units:	
	$219 per month plus $8.76/unit	01/12/80
	Buildings of more than 60 units:	
	$744 per month	01/12/80
New Brunswick	Employees not strictly remunerated by commission and whose hours are not verifiable:	
	$167 per week	01/10/82
	$176 per week	15/09/86
Newfoundland	Domestics employed in a private home (16 and over):	
	$2.75 per hour	01/01/85
Ontario	Employees serving alcoholic beverages in licensed establishments:	
	$3.50 per hour	01/10/84
	$3.85 per hour	01/10/86
	Construction workers:	
	$4.25 per hour	01/10/84
	Repealed	01/10/86
	Domestic employees* (cooks, housekeepers, nannies) who work more than 24 hours a week:	
	$32 per day	
	$176 per week	
	$757 per month	
	$4.00 per hour	01/03/85
	$35 per day	
	$4.35 per hour	01/10/86

*Does not apply to baby-sitters or companions.

Jurisdiction	Rates and Categories	Effective Date
Québec	Employees who usually receive gratuities:	
	18 and over: $3.28 per hour	01/10/81
	Under 18: $2.95 per hour	01/10/81
	Generally: $3.63 per hour	01/10/86
	Domestic workers residing at the employer's residence:	
	$134 per week	01/10/81
	$150 per week	01/10/86
	Domestics who do not reside at the employer's residence and agricultural workers:	
	18 and over: $4.00 per hour	01/10/81
	Under 18: $3.54 per hour	01/10/81
	Generally: $4.35 per hour	01/10/86
	Forestry Operations:	
	Employees who cut wood: $4.26 per hour	01/10/81
	Cooks, cooks' helpers, fire-wardens or employees paid on a contract basis: $3.97 per hour	01/10/81
	Any other employee less than 18 years of age: $3.65 per hour	01/10/81
	Generally: $4.35 per hour	01/10/86

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In Newfoundland, An Act to Amend the Labour Relations Act, 1977 (Bill 14) came into force on June 28, 1985.

The legislation provides that the Labour Relations Board may certify a trade union if, as a result of a vote of the employees in the bargaining unit, it is satisfied that at least 70 per cent of them have voted and a majority of those voting have selected the trade union as their bargaining agent. The board has similar discretion in cases when a vote is taken to determine whether certification will be revoked.

The law 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 has the power to settle the terms and conditions of an agreement. These terms and conditions are binding on the parties for one year unless they agree to modify them.

Furthermore, the amendments contain 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 does not apply to the construction industry.

In New Brunswick, An Act to Amend the Industrial Relations Act (Bill 62) was passed on June 27, 1985.

The legislation contains amendments which clarify various provisions, modify certain procedures under the Act, and provide for other legislative changes.

Among other provisions, it stipulates that, where a collective agreement has expired, a grievance arbitration provision in that agreement continues in force after the expiration, for the benefit of an employee in the bargaining unit who is dismissed by the employer, until a legal strike or lockout occurs.

Another amendment relating to grievance arbitration provides that, where a party to the arbitration of a grievance complains to the Minister that the arbitrator or the arbitration board, as the case may be, has failed to render a decision within a reasonable time, the Minister may, after consulting the parties and the arbitrator or the arbitration board, issue whatever order he considers necessary in the circumstances to ensure that a decision will be rendered in the matter without further undue delay.

In addition, an amendment dealing with the enforcement of the Act specifies that, where employee rights under the Act have been violated so

that the true wishes of the employees are unlikely to be ascertained, the Labour Relations Board may certify a trade union if satisfied that it has adequate membership support, or refuse to certify if such support has been obtained by virtue of an unfair labour practice.

The provisions mentioned above took effect on July 11, 1985.

Finally, the sections of the Act relating to the Lorneville Area Projects Bargaining Authority are repealed and replaced by provisions establishing and governing the Lepreau Area Nuclear Power Project Bargaining Authority. This modification will come into force by proclamation.

On May 26, 1986, Ontario passed the Labour Relations Amendment Act, 1986 (Bill 65), which came into force on that date.

This Act provides for a dispute-settling mechanism applying to the negotiations of first collective agreements. Where the Minister has decided not to appoint a conciliation board or has released the report of such a board, either party may apply to the Labour Relations Board for the settlement of a first agreement by arbitration. The board must make its decision within 30 days of receiving the application without taking into consideration whether there has been a contravention of the Act regarding the duty to bargain in good faith. Among the grounds that will cause the board to order a settlement are: (1) the refusal of the employer to recognize the bargaining authority of the trade union; (2) the uncompromising nature of any bargaining position adopted by one party without reasonable justification; and (3) the failure of one party to make reasonable or expeditious efforts to conclude an agreement.

Where a direction is given to settle a first collective agreement, the matter is referred to a board of arbitration unless, within seven days, the parties notify the Labour Relations Board that they have agreed that it arbitrate the settlement. The Minister has the power to appoint a mediator to confer with the parties and endeavour to effect a settlement. Once the dispute is referred to arbitration by the board, the right to strike or lockout cannot be exercised; a reinstatement procedure is provided for employees affected by a strike or lockout; and working conditions in effect at the time notice to bargain was given must not be altered, unless the parties agree to an alteration, until the first agreement is settled. Such agreement is effective for a period of two years.

The provisions on the negotiations of first collective agreements do not apply where one of the parties is an accredited employers' organization in the construction industry, or where the agreement is a provincial agreement as defined in the Act.

In Saskatchewan, Bill 8, An Act to Amend the Trade Union Act, received first reading on March 21, 1986.

The Bill would prevent an employer from making a unilateral change in conditions of employment, after an agreement has expired and collective bargaining has taken place, without prior approval of the Labour Relations Board. It is specified that approval would be given if the board determines that the union failed or refused to bargain collectively with the employer respecting the change.

In Prince Edward Island, An Act to Amend the Labour Act (Bill 6) was introduced on June 10, 1986. The Bill provides that employees, upon the termination of a legal strike, are entitled to be reinstated in their employment according to the terms and conditions applicable at that time. The employment of replacement employees is then terminated subject to any agreement relating to the return to work. However, the above right does not apply where business has declined with the result that the employer no longer has persons engaged in performing work of the same or similar nature, or the operations concerned have been suspended or discontinued.

B. Public and Parapublic Sectors

In Alberta, the Public Service Employee Relations Amendment Act, 1985 was adopted on June 5, 1985. The amendment contains various changes aimed at improving the operation of the Act and broadens the Public Service Employee Relations Board's power to exclude persons from a bargaining unit.

In British Columbia, the Compensation Stabilization Amendment Act, 1985 was enacted on June 3, 1985.

The amendment ensures the confidentiality of the mediation process under the Compensation Stabilization Act and shortens 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 permits 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.

Another amendment, Bill 3, the Compensation Stabilization Amendment Act, 1986, was assented to on June 17, 1986. It clarifies certain provisions of the Act and authorizes the Compensation Stabilization Commissioner, where written application is made by a public sector employer and he considers it appropriate, to approve the implementation of an increase in compensation for a group of public sector employees before he determines whether the final compensation plan is within the guidelines. The amendment will come into force on a date to be specified.

In Québec, Bill 37, an Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors, received royal assent on June 19, 1985.

This Act provides for the creation of a research and information institute on remuneration. The institute's board of directors consists 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 are appointed by the Government and come from union and management circles. The institute is 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 also carries out any other study or research mandate defined by two thirds of the members of the board of directors. A report of its findings must be made public not later than November 30 each year.

With respect to the organization of the parties, the Act contains for the most part the provisions that were previously in force. However, in the social affairs sector, negotiation responsibilities are entrusted to a management committee and five subcommittees for specified classes of establishments.

As regards the mode of negotiation, the Act ensures the decentralization of negotiations in respect of certain matters.

In the education sector, in respect of the teaching staff, and also in respect of the non-teaching professional staff in the colleges, certain clauses of the collective agreements dealing with matters listed in a schedule to the Act must be the subject of local or regional negotiation. Once approved, these clauses 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 are able, as provided in the Act, to resort to a mediator-arbitrator who is 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 does 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 Act 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 are negotiated and agreed upon in the same manner as other clauses that are subject to negotiation at the provincial level. For each of the subsequent two years of the collective agreement, strikes and lockouts on these matters are prohibited, and the determination is made according to the process that follows.

After the institute has published its annual report on remuneration, the parties attempt to reach an agreement on the salaries and salary scales. Following that negotiation, a draft regulation is 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 form part of the collective agreement. They cannot be less advantageous for employees than those of the previous year.

The Act sets up a new mediation procedure for the settlement of disputes at the provincial level and subjects 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 Act fixes, by class of establishment, a minimum percentage of employees (generally from 55 per cent to 90 per cent) to be maintained at work in the event of a strike to ensure continued service to the users. Moreover, the approval of the lists or agreements on essential services by the Conseil des services essentiels (Essential Services Council) is henceforth required for exercising the right to strike.

Finally, the Act 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 is henceforth 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 has the same effect as a judgment of the Superior Court once a true copy of it is filed by the council in the office of the prothonotary of that court.

The new legislation replaces the Act respecting management and union parties organization in collective bargaining in the sectors of education, social affairs and government agencies. It came into force on June 19, 1985, except for the sections dealing with negotiations at the local or regional level and the clause giving remedial powers to the Essential Services Council. These clauses were proclaimed on August 1, 1985.

In Newfoundland, An Act to amend the Public Service (Collective Bargaining) Act, 1973 (Bill 15) came into force on June 28, 1985.

The amendment includes in the legislation a list of bargaining units excluded from the essential employees designation process. Also, the obligation for 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, now applies only to those in the health care sector.

Finally, in the federal jurisdiction, Bill C-45, the Parliamentary Employment and Staff Relations Act, was assented to on June 27, 1986, and will come into force by proclamation.

The Act confers collective bargaining rights on employees of the Senate, the House of Commons, and the Library of Parliament. The term "employee" is subject to the usual exclusions and does not include specific 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 are excluded from the collective bargaining provisions. Employee organizations will make certification applications to the Public Service Staff Relations Board (PSSRB). If negotiations are unsuccessful, conciliation services will be provided to the parties by the PSSRB. 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, with the right to adjudication on matters such as demotion, denial of appointment, classification and discharge (other than rejection on probation in respect of an initial appointment).

C. Emergency Legislation

In the last 13 months, emergency legislation was adopted in Ontario, Saskatchewan and Québec. In the latter province, orders were also issued to suspend the right to strike in certain situations endangering public health and safety.

In Ontario, the Wellington County Board of Education and Teachers Dispute Settlement Act, 1985 was enacted on November 26, 1985.

The legislation was passed to end a strike by secondary-school teachers against the Wellington County Board of Education. The strike had continued since September 16, 1985, and the Education Relations Commission had advised the government that its continuance would jeopardize the students' education. The teachers were required to resume their duties on November 27, 1985, in accordance with their contracts of employment, written collective understandings as agreed to by the parties, and previous recommendations made by a mediator. The board, for its part, was to resume the employment of the teachers and normal operation of the schools. Any strike or lockout was prohibited until a two-year agreement containing the matters agreed to by the parties and particular recommendations made by the mediator was put into effect. Fines were provided for cases of contravention of the legislation. In the case of an individual, the maximum fine was $500 per day, while in the case of the employer or the union, it was set at $10 000 per day.

Also in Ontario, the Wheel-Trans Labour Dispute Settlement Act, 1986 was assented to on April 25, 1986.

A strike by Local 113 of the Amalgamated Transit Union against the All-Way Transportation Corporation (Wheel-Trans Division) had caused a cessation of transportation services for the handicapped. Effective April 25, 1986, the Act ordered the termination of the strike, the return to work, and the resumption of operations. Except with the consent of both parties, there was not to be any alteration in the rates of wages (as increased by the legislation) or in any other term or condition of employment, or in any right, privilege, or duty in force on December 31, 1985. Upon the advice of the Minister of Labour, an arbitrator was to be appointed by the Lieutenant Governor in Council to examine and decide upon the matters in dispute. The two collective agreements between the parties were to be for periods of two years, in each case commencing on the day immediately following the expiry date. An increase of 50 cents per hour was provided by the Act for the first year of the agreements; however, an arbitrator could grant a larger increase or increases. Fines were provided for cases of contravention of the legislation. In the case of an individual, the maximum fine was $1 000 per day, while in the case of the employer or the union, it could reach $10 000 per day.

In Saskatchewan, the SGEU Dispute Settlement Act was passed to bring an end to a rotating strike conducted by the Saskatchewan Government Employees' Union. As of the coming into force of the legislation on January 31, 1986, all employees were required to resume or continue the duties of their employment, and the employer was required to permit them to do so. The collective bargaining agreement was deemed to have been amended in accordance with previous proposals made by a conciliator as amended by the Act. The amended agreement was deemed to cover the period from October 1, 1984, to September 30, 1986. The Act permitted the parties to agree to vary or revise it during the term of operation. Any person who contravened the legislation was liable to one or more fines, and failure or refusal by an employee, without lawful excuse, to resume or continue his/her employment was deemed to be just and reasonable cause for suspension or dismissal. Finally, the Act contained a provision exempting it from the application of paragraph 2(d) (freedom of association) of the Canadian Charter of Rights and Freedoms as well as from the application of the Saskatchewan Human Rights Code.

In Québec, An Act respecting the resumption of transportation service in the territory of certain school boards was assented to on March 27, 1986.

The purpose of the Act was to bring an end to a strike by employees of Autobus Terrebonne Inc., which had interrupted pupil transportation to various schools since October 21, 1985. From 12:00 noon on March 27, 1986, the employees had to return to work and perform all the duties attached to their functions. However, in the case of bus drivers, this requirement did not apply until April 1, 1986. For its part, the employer had to take the appropriate means to organize transportation services and, from April 1, provide such services for the pupils of the school boards concerned. The dispute related to remuneration clauses which had been reopened during the term of the agreement. In this respect, the Act provided for an increase of 3.5 per cent from August 31, 1985, and a lump sum of $150 for each employee

returning to work as required. The collective agreement so amended was presumed to bind the parties until August 31, 1986. Strict fines could be imposed in case of contraventions of the Act. In addition, the law provided for the establishment of a mediation board to make recommendations to the parties concerning the remuneration applicable during the subsequent collective agreement.

Also in Québec, in two instances, there was a suspension by the government of the right to strike. This power provided in the Labour Code can be exercised when essential services are insufficient in public services, which have been ordered to maintain such services, and this situation is endangering public health or safety. The unions involved were the Union of Maintenance Employees for the Montréal South Shore Transit Commission (C.N.T.U.) and CUPE, local 301, which was on strike against the City of Montréal. The suspensions came into effect on February 16, 1986, and March 19, 1986, respectively. Such an order to suspend a strike has effect until it is proved to the government that, where the right to strike is exercised, essential services will be sufficiently maintained.

Finally, on June 17, 1986, Québec passed Bill 106, An Act to ensure the resumption of construction work. This legislation is described in the following section dealing with the construction industry.

D. Construction Industry

In Québec, a Regulation amending the Regulation respecting the placement of employees in the construction industry has been adopted under the Act respecting labour relations in the construction industry. With the adoption of this regulation, employees holding classification certificates expiring on March 1, 1986, have automatically received classification certificates valid until December 31, 1986.

Also in Québec, an Act to ensure the resumption of construction work was assented to on June 17, 1986.

This Act was adopted to ensure the resumption of construction work interrupted because of a labour conflict. Every employee who ceased to perform construction work on June 16, 1986 by reason of a strike or lockout, was required to return to work from 07:00 a.m. on June 17, 1986, according to his regular schedule. From the same time every employee assigned to construction work was required to perform all the duties attached to his employment, taking into account the applicable conditions of employment, without stoppage, slowdown or reduction of his ordinary activities. Similarly, every employer had to take the appropriate measures to ensure that all construction work interrupted because of a labour conflict was resumed.

The Act temporarily gave effect again to the provisions of the Construction Decree in force on April 29, 1986; some amendments were made regarding annual vacations and general holidays. A mediator was appointed by the Minister of Labour to assist the parties in reaching an agreement.

Failing such agreement, the mediator had to make a report to the Minister on the state of negotiations on August 1, 1986. If the government considers that the parties cannot reach an agreement, it will then have the power to fix by decree the conditions of employment of the employees for a period not extending beyond April 30, 1989. However, such a decree could not be adopted unless the employers' and employees' associations have had an opportunity to be heard by the parliamentary committee on labour and the economy.

Finally, the Act provides for substantial fines in the event of the non-performance of the obligations which it imposes.

In Nova Scotia, Bill 91, An Act to Amend Chapter 19 of the Acts of 1972, the Trade Union Act, was assented to on May 26, 1986.

This legislation amends Part II of the Trade Union Act, which deals with labour relations in the construction industry. It provides that, after the report of a conciliation officer has been made to the Minister but before the commencement of a strike, a vote by secret ballot must be taken among the employees as to the acceptance or rejection of the offer of the employer last received in conciliation by the trade union in respect of the matters in dispute. The union may include any additional proposals communicated to it by the employer prior to the taking of the vote. A similar provision applies to employers belonging to an accredited employers' organization. Also, the earliest commencement of a strike is delayed from the time when a conciliation officer fails to bring about an agreement between the parties until two days after the date on which his or her report is made to the Minister.

Another amendment to the Act provides that, in a construction industry sector for which there is an accredited employers' organization, there cannot be a strike unless three or more unions have voted for the strike by secret ballot and, after the vote, union members entitled to strike withdraw their services from all of the job sites then being worked in that sector. Similarly, there cannot be a lockout unless the accredited employers' organization votes to lock out three or more unions and the employers entitled to lock out do so regarding all union members affected from all jobs then being worked in that sector. Where collective agreements are reached with all except two or fewer unions, a strike or lockout is no longer permitted except that, if one or two unions which do not have a collective agreement wish to strike or remain on strike, the work stoppage ends as soon as an agreement is reached or within 21 days, whichever occurs first. Where collective agreements have not been concluded and a return to work is required, the conflict is referred to a Construction Industry Conciliation Board. The board is composed of three members, one appointed by each party and a third member, the Chairman, appointed by the other two. In the event of any failure to appoint a member, the Minister of Labour makes the appointment. The board conducts a hearing and is empowered, in the absence of an agreement, to impose a binding settlement of all outstanding issues. The settlement must be consistent with settlements already

concluded in the current round of negotiations and give due consideration to historic relationships existing in the construction industry for that union or those unions.

The amendments mentioned above came into force on July 1, 1986.

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, sections 17, 20 and 41 of An Act to Amend the Canada Labour Code and the Financial Administration Act were proclaimed into force on March 31, 1986. These provisions replace Part IV of the Canada Labour Code (Occupational Safety and Health) and extend its application to the Public Service of Canada. The provisions that will extend the application of Part IV of the Code to the operation of ships, trains and aircraft, the operation of pipelines, and petroleum exploration and development in Canada lands, as well as a provision allowing the exclusion from Part IV of atomic-energy related enterprises have not yet been proclaimed into force.

In addition, the Canada Occupational Safety and Health Regulations were adopted under Part IV of the Canada Labour Code. These regulations, which became effective March 31, 1986, replace 20 regulations made under the Code. These are comprehensive regulations which deal with many types of work-related hazards and prescribe a wide variety of safety standards, the manner of performing duties, things that are required under the Code, and other matters related to employers' and employees' duties under the Code. Among other things, safety standards are prescribed in more detail than in the former regulations, and the discretionary powers formerly attributed to safety officers have been eliminated.

Two other regulations were also adopted under Part IV of the Code. The Safety and Health Committees and Representatives Regulations, which became effective March 31, 1986, replace the former regulations on safety and health committees. Among other things, the regulations prescribe the manner of selection of safety and health committee members and representatives. As well, they require safety and health committees to submit a report of their activities for the preceding year, in the prescribed form, to the regional safety officer at the Department of Labour's regional office no later than March 1 in each year, and prescribe the manner of providing minutes of committee meetings.

Also, the Parliamentary Employment and Staff Relations Act, which was assented to on June 27, 1986, includes a provision that will, when proclaimed, 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, employ any person or have the direction or control of staff employed to provide research or associated services for the caucus members of a political party.

In Alberta, the Radiation Protection Act was assented to on June 5, 1985. The purpose of this Act, which will come into force by proclamation, is to provide for general protection from radiation hazards. A provision states that if there is a conflict between the Act and the Occupational Health and Safety Act, the latter prevails. Among other things, the Act

provides that every person owning, installing, supplying, operating, or servicing a radiation facility, radiation equipment, or a radiation source, as defined, must take all reasonable precautions to protect persons from radiation. Employers have an obligation to ensure that workers who are likely to be exposed to radiation are informed of the potential hazards and the precautions to be taken. In turn, workers must take all reasonable precautions, including the use of protective clothing, equipment, and devices provided by the employer, to ensure their own safety. The Director of Radiation Health may require an owner or an employer to establish an appropriate code of practice. The Radiation Health Advisory Committee is continued under the Act. The Committee will, among other things, have jurisdiction to hear appeals of decisions relating to registration certificates for designated radiation equipment and directives from a radiation health officer. The present Radiation Protection Act and the Radiological Technicians Act will be repealed.

As well, the Work Camps Regulations were adopted under the Public Health Act. These regulations repeal the Provincial Board of Health Regulations relating to industrial and construction camps. They set standards for work camps established on a temporary basis to accommodate persons who are employed in mining, lumbering, construction, drilling, resource exploration or any other similar industry.

In Manitoba, the Regulation respecting hearing conservation and noise control in workplaces was adopted under the Workplace Safety and Health Act. The object of this regulation, which came into force on November 18, 1985, is to promote the implementation of effective workplace hearing conservation programs in order to prevent noise-induced hearing loss. It applies to every workplace where a worker is exposed or is likely to be exposed to sound levels greater than the prescribed limit (80dBA). If there is a likelihood of such exposure, the employer must make an assessment of the worker's exposure to sound in consultation with the workplace safety and health committee, the worker safety and health representative or, where there is neither, a worker representative chosen by the union or the workers, as the case may be. If the assessment discloses that the exposure to sound exceeds the prescribed limit, the employer must develop, implement, and maintain a hearing conservation program in accordance with the regulation and, as well, in consultation with the same parties. The program includes periodic hearing tests for workers and other relevant health examinations and clinical tests conducted under the general supervision of a physician engaged by the employer. Records of sound exposure data, results of audiometric tests and hearing surveillance, health histories and associated reports must be maintained for the duration of the affected worker's employment plus 10 years. The regulation also provides that an employer must implement all necessary engineering and work practice controls to ensure that the maximum sound exposure level (90dBA) is not exceeded. In addition, the employer must provide personal hearing protection under certain circumstances.

The Regulation respecting the construction industry was also adopted under the same Act. This regulation came into force on July 2, 1985. It replaces a regulation on construction covering protective clothing and equipment, guardrailing, temporary services, safe housekeeping on work-sites, and proper handling and storage of materials. Safeguards for working on live electrical equipment are expanded. The regulation also replaces certain provisions of the general workplace safety regulation and deals with, among other things, safe access to and from work areas, design and utilization of ladders and temporary support structures, and safety of excavation work and scaffolding.

In New Brunswick, An Act to Amend the Occupational Health and Safety Act was assented to and came into force on June 27, 1985. This Act provides that the Occupational Health and Safety Act will not apply to a private home unless the work that is carried on has been contracted to the employer of one or more persons employed there. Among other things, the Chief Compliance Officer may authorize a deviation from the regulations in accordance with standards prescribed by regulation. If no standards are prescribed for granting deviations, he may authorize such a deviation if he is satisfied that it will give equal or greater protection to the workers' health and safety than that prescribed by regulation. The Act also clarifies the responsibility for the establishment of joint health and safety committees on project sites. The principal contractor or, if there is none, the owner must ensure the establishment of such a committee.

Newfoundland adopted the Occupational Health and Safety First Aid Regulations, 1986 under the Occupational Health and Safety Act. These regulations set standards regarding first aid in the workplace. They repeal provisions of the Occupational Health and Safety Regulations that dealt with first aid. These regulations apply to all workplaces in general with the exception of those the Director of the Occupational Health and Safety Division or an officer may exempt. Notwithstanding such an exemption, the Director or officer may require that the employers provide first-aid services and supplies as the Minister may prescribe under the Act. In general, the regulation provides for the establishment of first-aid services with adequate equipment and supplies and proper first-aid training.

In Nova Scotia, the Occupational Health and Safety Act was assented to on May 17, 1985, and proclaimed into force on January 1, 1986. The object of this Act is to promote health and safety in the workplace. It is of general application and encompasses all provincial Crown employees. A provision affirms the primacy of the Act and its regulations over any other general or special Act whenever there is a conflict. Exemptions from the Act's application may be enacted by regulation.

The Act establishes an Occupational Health and Safety Division within the Department of Labour and Manpower to administer the Act and its regulations. The Division is 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 heads the

Division, which includes officers and inspectors who administer and enforce the Act and its regulations. Their powers of inspection are similar to those existing in the other jurisdictions, including the use of stop-work orders. The Division carries the functions of other divisions related to occupational health and safety, including mining safety and accident prevention.

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

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

An employee has 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 must then inform the supervisor and the committee, if any. The right to refuse dangerous work cannot 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 has 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 has the duty to advise the other employees of the refusal and the reasons for it. The employee who refuses to work may 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 are forbidden from taking or threatening disciplinary action against an employee who has acted in compliance with, or sought the enforcement of, the Act or the regulations. The disciplinary action taken may be justified if the employer establishes that it was solely motivated by legitimate business reasons. Any alleged contravention is 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 may, among other things, order the reinstatement of an employee.

Employers must 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 will be imposed if the Act or regulations are infringed. The Construction Safety Act and the Industrial Safety Act were repealed when the Act was proclaimed into force.

In Ontario, asbestos on construction projects and in buildings and repair operations was made a designated substance under the Occupational Health and Safety Act. This regulation applies generally to every project involving the construction, repair, maintenance, alteration or demolition of a building, as well as to work on machinery, equipment and vehicles where material containing asbestos is likely to be handled. It also applies to building and project owners, constructors, employers, and workers engaged in such a project. It does not apply to employers and workers engaged in alteration, maintenance, and repair work to machinery, equipment and vehicles if it is carried out in accordance with an asbestos control program established under the Designated Substance - Asbestos Regulation (O.Reg. 570/82), provided the program was in effect on or before December 16, 1985.

Certain duties are imposed on owners under the regulation. Among other things, they are required to establish an asbestos management program which includes:

- preparation and maintenance of a record of the location of friable asbestos-containing material;
- notification of workers, who may work in proximity to and may disturb the material, of its presence;
- a training and instruction program for those workers;
- periodic inspection of the material; and
- remedial action on material that has deteriorated.

The owner must notify a tenant or lessee in the building of the location of the friable asbestos-containing material. The tenant or lessee then becomes responsible for the training and instruction program with respect to his workers.

The regulation sets safety standards regarding the use and presence of friable material containing asbestos. Among other things, operations that may cause exposure of a worker to asbestos are classified into three types. Work that is classified as Type 1 may result in minimal exposure to asbestos fibres. Type 2 operations are associated with work that results in greater air concentrations of asbestos. Type 3 operations will produce the highest asbestos fibre levels. Measures and procedures to control asbestos exposure are prescribed for each classification. If a dispute arises as to the classification of an operation, a party to the dispute may notify an inspector who will investigate and render a decision. The procedures required for each type of exposure can be divided into five categories:

1) steps to be taken in preparing the work area;

2) measures to control the spread of airborne dust from the work area;

3) requirements for the use of protective equipment;

4) procedures to be followed in cleaning up the work area and disposing of asbestos waste; and

5) requirements for washing facilities.

The measures required within each category become increasingly demanding as the exposure risk (i.e., the classification) increases.

Employers must ensure that instruction and training are provided by a competent person for workers engaged in all types of operations, regarding the hazards of asbestos exposure, personal hygiene and work practices, and the use, cleaning and disposal of respirators and protective clothing. The health and safety representative or the joint health and safety committee, as the case may be, must be advised of the time and place where this training and instruction will be carried out.

Employers of workers engaged in a Type 2 or Type 3 operation must complete an asbestos work report in the prescribed form for each worker at least once in each 12-month period and immediately upon the termination of the employment of the worker. They must forward the completed report to the Chief Physician of the Occupational Health Medical Service of the Ministry of Labour and must also give a copy of the report to the worker. The Chief Physician must establish and maintain an Asbestos Workers Register containing the names of workers for whom an asbestos work report is submitted by an employer. The Chief Physician may require a worker who is listed in the register to undergo examination.

The Director of the Construction Health and Safety Branch of the Ministry of Labour is empowered to approve variations to the prescribed measures and procedures upon the written application of an employer, who must establish that the variation affords adequate protection for the workers. This regulation became effective March 16, 1986.

Arsenic was also made a designated substance under the Act. The regulation sets limits of exposure for workers. If for specific reasons the limit for maximum exposure of a worker to airborne arsenic cannot be complied with, the employer must provide respiratory equipment. A worker exposed to airborne arsenic may request respiratory equipment regardless of the level of exposure, and the employer must provide it.

Every employer to whom this regulation applies must cause an assessment to be made of the exposure or likelihood of exposure of a worker to the inhalation, ingestion, absorption or contact with arsenic. 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 an arsenic control program. Among other things, such programs must include provisions for methods and procedures to monitor the concentration of airborne arsenic in the workplace and workers' exposure to it, as well as for personal records of exposure, medical examinations and clinical tests.

The results of monitoring and the information pertaining to records of exposure, physical examinations and clinical tests must be disclosed to the persons mentioned in the regulation and must be kept for a specified period of time.

In Prince Edward Island, the Occupational Health and Safety Act was assented to on May 28, 1985, and proclaimed into force on July 13, 1985. The object of this Act is to ensure the health and safety of workers as well as self-employed persons. It is of general application and encompasses 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 is continued under the legislation.

An Occupational Health and Safety Division administers the Act and its regulations. The Division is 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 has been 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 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 is by agreement or mandatory if the Minister requires it following a recommendation by the Director. Employees or employers are entitled to request the Director to recommend that a committee be established. At least half of the members of the committee have to be employees at the workplace who do not exercise management functions. They are selected by the employees. The functions of the committee are similar to those of existing committees in other provinces. In workplaces where no committee is established, the Minister is 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 has the same functions as a committee.

An employee has 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 must then inform the supervisor, who must promptly investigate the situation. The employee has 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 has a right of appeal to a safety officer. The employer has a duty to advise the other employees of the refusal and the reasons for it; and the employee who refused to work can 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 are forbidden to take or threaten 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. An employee subjected to disciplinary action is entitled to file a complaint with the Minister, and the matter is settled through arbitration. The arbitrator may, among other things, order the reinstatement of an employee.

Employers 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 allows a Director to arrange medical examinations of employees, with their consent, in order to determine whether they are suffering from an occupational disease. Fines are imposed if the Act or its regulations are infringed. The Occupational Health and Safety Council Act and the Construction Safety Act are repealed.

In Saskatchewan, the Radiation Health and Safety Act, 1985, was assented to on June 19, 1985. This Act, which came into force on that date, provides for the protection of the health of persons exposed to radiation, and for the safety of those who work in connection with the operation and use of radiation producing equipment and associated apparatus. The former Radiation Health and Safety Act has been repealed.

The Act lays down requirements pertaining to ionizing radiation and non-ionizing radiation installation, equipment and associated apparatus. The legislation is enforced by officers appointed by the Minister of Labour. The Radiation Health and Safety Committee that existed before is continued. Its functions are primarily to advise the Minister and to promote an educational program among all owners, operators, workers and other persons who may be exposed to radiation. Broad powers are given to the Lieutenant Governor in Council to issue appropriate regulations under the Act following consultation with the committee.

In addition, the Occupational Health and General Amendment Regulations, 1986 were adopted under the Occupational Health and Safety Act. These regulations, which came into force on March 13, 1986, amend the Occupational Health and General Regulations, 1981. These comprehensive amendments, which deal with many types of hazards and prescribe a wide variety of safety standards, are divided into several parts forming additions to the present regulations. They notably cover general safety provisions dealing with, among other things, approval of equipment, signalling, and protection against falls. Also included are general provisions respecting machinery, safeguards and warning signs; personal protective equipment; powered mobile equipment and other vehicles; hoists, cranes and other lifting appliances and lifting tackle; scaffolding and temporary support structures; excavations, trenches, tunnels and excavated shafts; the use, handling and storage of flammable liquids; hot work and work in confined spaces; demolition work; explosives; oil and gas drilling, servicing and producing; and work in compressed air. In addition, the appendices containing, among others, lists of hazardous chemical substances and workplace contamination limits have been replaced.

In the Northwest Territories, the Mining Safety Regulations were adopted under the Mining Safety Act. These regulations came into force on January 1, 1985. These are comprehensive regulations that deal with many types of hazards and prescribe a wide variety of safety standards. The former Mining Safety Rules were repealed.

The Radiation Hazard Regulations were adopted under the same Act. These regulations apply to mines which have radioactive material. Among other things, the manager of a mine must prepare and implement a Radiation Exposure Control Code of Practice, which must be approved by the Chief Inspector. A manager must also ensure that a mill and the underground portion of a mine are monitored to determine the exposure of workers or other persons to radiation. Records must be kept and reports must be submitted periodically to the Chief Inspector concerning the exposure to radiation received by each worker. A schedule lists the maximum permissible doses. These regulations came into force on January 1, 1985.

Upcoming Legislation

In Ontario, Bill 101, An Act to Amend the Occupational Health and Safety Act, received first reading on April 22, 1986. The purpose of the Bill is to make it mandatory for employers to prepare inventories of hazardous materials and physical agents, as defined by the Bill, and to make available information on these materials and physical agents. Among other things, every employer would be required to make an inventory of all hazardous materials that are present, used, handled, or stored in the workplace. Such an inventory would have to be prepared in consultation with the joint health and safety committee, if any, or a representative chosen by the workers. Employers would be required to post a copy of the inventory in the workplace in order to allow workers to examine it and would also have to furnish a copy to the committee or the representative. In addition, the employer would have to file a copy of the inventory in the office of the Ministry of Labour nearest the workplace, as well as furnish a copy to the fire department of the municipality and to the medical officer of the health unit located nearest to the workplace.

The proposed legislation would also require any person who brings into Ontario or distributes, supplies, manufactures, or produces a hazardous material for use in a workplace to ensure that every container of the material has a label, as prescribed by the legislation, as well as an unexpired material safety data sheet (MSDS), also as prescribed by the legislation. It would be the duty of every employer to ensure that every container of hazardous material received in the workplace bears the prescribed label and, also, to obtain an unexpired MSDS for the material.

In addition, the proposed legislation also provides for the establishment of a procedure to protect trade secrets. It would allow an express claim to be made on an MSDS to the effect that information required by the regulations is a trade secret. After being notified, the Director of the Occupational Health and Safety Division would determine whether the information being withheld is a trade secret. This decision would be

subject to review before the District Court. If a final decision determined that no trade secret was involved, the MSDS would have to be amended accordingly.

The proposed legislation would also require employers to provide instruction and training for workers exposed or likely to be exposed to a hazardous material or a hazardous physical agent, as prescribed. The employer would develop the instruction and training in consultation with the joint health and safety committee, if any.