HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

1986-1987

46th ANNUAL MEETING OF THE
CANADIAN ASSOCIATION
OF ADMINISTRATORS
OF LABOUR LEGISLATION

REGINA, SASKATCHEWAN
SEPTEMBER 16-17, 1987

Également disponible en français sous le titre
Les Faits saillants de l'évolution de la législation du travail
1986-1987

Report prepared for the 46th annual meeting of the Canadian Association of Administrators of Labour Legislation

Labour Canada

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July 1, 1986 to July 31, 1987

I. EMPLOYMENT STANDARDS

A. Minimum Wages

Manitoba has increased its minimum wage rate payable to persons 18 years of age or over to $4.50 per hour, effective April 1, 1987. It will be increased to $4.70, effective September 1, 1987. The minimum wage rate payable to workers aged under 18 will be increased in three successive stages, in such a way as to eliminate the youth differential. Effective April 1, 1987, it is $4.20 per hour; effective September 1, 1987, it will be $4.55 per hour; and effective April 1, 1988, it will be $4.70 per hour.

British Columbia has increased its minimum wage rates effective February 1, 1987. The rate payable to persons under 18 years of age was increased to $3.65 per hour, and that payable to adults to $4.00 per hour. The rates payable to various other categories of employees (domestics, agricultural workers, caretakers, etc.) have also been increased.

In the Yukon, the minimum wage has gone up to $4.75 per hour, effective May 1, 1987.

New Brunswick recently adopted a regulation to provide increases in the minimum wages payable to construction workers working on Crown construction projects.

Québec and Ontario have again acted in concert to bring their adult minimum wages up to $4.55 per hour, effective October 1, 1987. However, Ontario will still keep its minimum wage rate payable to students under 18 working not more than 28 hours in a week or during a school holiday, which will be increased to $3.70 per hour, effective October 1, 1987. Employees serving alcoholic beverages in licensed establishments will be entitled to $4.05 per hour, and domestic workers will receive at least $4.55 per hour, effective October 1, 1987. The daily, weekly and monthly rates for domestics have been dropped. In Québec, a draft regulation provides that persons who usually receive tips will be entitled to $3.83 per hour and domestics who reside at their employer's home will receive at least $161 per week. All other categories of workers will be entitled to the general minimum wage rate, effective October 1, 1987.

In Manitoba, a Bill has been presented which would provide increases in the fines under the Construction Industry Wages Act and giving the Lieutenant-Governor in Council the power to make any regulation compatible with the intent of the Act which may facilitate its application. For example, such a regulation may define the meaning of "major work" under this Act.

B. Commercial Establishments' Business Hours

An Act was recently adopted in Nova Scotia which removed Victoria Day from the list of uniform closing days under the Retail Business Uniform Closing Day Act. In addition, this Act repealed a provision providing a definition of "commercial establishment" and a delegation of powers to municipalities to issue permits to operate a commercial establishment on a uniform closing day.

In addition, Manitoba has adopted an Act which came into force on a trial basis from February 27, 1987 until June 30, 1987. This Act amended, for this period, the provisions of the Retail Businesses Holiday Closing Act respecting Sunday openings and exemptions from restrictions on Sunday openings, as well as the amounts of fines for violating the Act.

Moreover, Manitoba presented a Bill in May that would repeal and replace the Retail Businesses Holiday Closing Act. This Bill would also re-enact the provisions of the February 27 Act which permitted commercial establishments to open on a Sunday if it had been closed on the preceding Saturday.

C. General Holidays With Pay

Prince Edward Island has adopted an Act providing, among other things, that an employer is required to grant to each employee a holiday with pay on each of the following days: New Year's Day, Good Friday, Christmas Day, and any other day specified by regulation. These provisions do not apply to an employee who has been employed for less than 30 days; who fails to work his scheduled day of work preceding or following the holiday; who, without reasonable cause, failed to report for and perform work on that holiday after having agreed to do so; who is employed under an arrangement whereby the employee may elect to work or not when requested to do so; or whose terms and conditions of employment are established by a collective agreement. In addition, other provisions provide for when a holiday falls on a day that is normally a non-working day for an employee and for when an employee is required to work on a holiday.

D. Termination of Employment and Severance Pay

Ontario adopted, last November, an Act to prevent severance pay and termination pay from being considered as "wages" under the unemployment insurance rules.

Under the Act, every contract of employment is deemed to provide for the payment of severance pay and termination pay owing to an employee in two equal weekly instalments immediately following termination of employment and the amounts must be allocated to such weeks accordingly. However, this provision does not apply to severance pay if the employee maintains recall rights as provided in subsection 40a(7) of the Employment Standards Act.

Other payments payable upon termination, such as vacation pay, are not affected by the Act and, as was already the case, must be paid within seven days of the termination.

Moreover, Ontario has also adopted a second Act to amend the Employment Standards Act with regard to the termination of employment and severance pay provisions.

This Act provides longer notice of termination periods in cases of individual terminations. These periods vary from one to eight weeks, according to length of service.

In addition, an employer who is required to give a group notice of termination under the Act must provide information to the Minister where there is a mass termination, and the notice to employees begins to run only when this is done. The employer is also required to post the information in one or more conspicuous places in the establishment for the duration of the notice period.

The information to be given to the Minister may include details about: the economic circumstances surrounding the intended terminations; the consultations which have been taking place or that are proposed with local communities or with the affected employees or their agent; the proposed adjustment measures and the number of employees expected to benefit from each; and a statistical profile of the affected employees.

Certain amendments have been made to the provisions permitting an employee to make an election between his recall rights or his severance pay, where a temporary lay-off has become lengthy.

This Act also makes significant changes to the severance pay provisions. Severance pay entitlement is extended to cases where any employee having accumulated five years of service or more is terminated by an employer (including a group of related companies) having an annual payroll of $2.5 million or more. In addition, this Act expressly stipulates that: (1) an employee's severance pay entitlement must reflect credit for partial years of employment; (2) employees fired for misconduct are not entitled to severance pay; (3) employees who quit their jobs after receiving notice of termination retain their right to severance pay, provided they give their employer at least two weeks' notice; (4) the Director may approve payment of severance pay by instalments; and (5) unions are allowed to make settlements regarding severance pay claims on behalf of their members.

Other amendments of an administrative nature have been made. Certain provisions of this Act, including those dealing with the requirement to provide information to the Minister, will come into force on a date fixed by proclamation.

E. Employment Equity and Pay Equity/Human Rights

New Brunswick amended its Employment Standards Act, in June 1986, to ensure that the male and female employees of an employer are paid equal pay for work that is substantially the same. This rule does not apply where different levels of pay are paid in accordance with a seniority system, a merit system, a system that measures earnings by quantity or quality of production or any other system or practice that is not otherwise unlawful.

Québec has adopted a regulation respecting affirmative action programs under the Charter of Human Rights and Freedoms.

This regulation applies to any person who is required to devise, implement or carry out an affirmative action program upon a recommendation by the Human Rights Commission or under a court order. The object of an affirmative action program is to remedy the situation of any group subject to discrimination as proscribed by section 10 of the Charter, particularly women, members of cultural communities, the handicapped and native peoples.

This regulation establishes the elements which must be included in any affirmative action program, and, in particular, the following:

(1) the objectives sought in regard to the greater representation of target group members;

(2) the steps required to remedy the effects of an observed discriminatory situation;

(3) a time-table for attaining the objectives and implementing the measures proposed to that end;

(4) the control mechanisms that would allow for assessing progress made and problems encountered in carrying out the program and for determining any required adjustments.

The implementation of such a program requires serious analyses of staff, of availability and of employment procedures, in order to pinpoint the problem areas. To this end, the regulation indicates the purpose of each analysis and the manner of carrying them out.

An employer who participates in an affirmative action program must make his employees aware of all equal opportunity and corrective measures and of any support measure, if any, under the program. Equal opportunity measures aim at ensuring equality in the exercise of a right, in particular by eliminating discriminatory practices in the management of an undertaking. Corrective measures aim at eliminating the effects of discrimination against a group by temporarily awarding certain preferences to its members. A program may also provide for support measures aimed at solving certain employment problems for target group members. However, these measures must be accessible to all personnel of the undertaking.

An employer must entrust responsibility for implementing the program to an employee in a position of authority. The task of this employee, through a joint consultation process, consists in coordinating the measures of application and the control mechanisms and overseeing the application of the program according to schedule.

In addition, an affirmative action program employer must file with the Commission an annual report in writing that includes a description of:

(1) all activities initiated during the year to implement the program;

(2) progress made toward reaching the objectives of the program as compared to the time-table chosen;

(3) problems encountered in reaching program objectives and any steps planned to resolve them;

(4) any changes he would like to see in the program.

Finally, the regulation also deals with affirmative action programs in institutions providing educational services, health services or any other service generally available to the public, by stipulating that the preceding applies, with all appropriate changes, and by establishing certain specific requirements.

This regulation came into force on September 1, 1987.

The federal government adopted equal wages guidelines under the Canadian Human Rights Act.

These guidelines are intended to help employers in federally-regulated industries voluntarily comply with Section 11 of the Canadian Human Rights Act which provides for equal pay for work of equal value.

The guidelines set out how individual and group complaints are to be handled, define how employees are deemed to be working in the same establishment, give directives as to how to classify groups of workers as predominantly female or male, and establish criteria for methods of assessment of value of different jobs based on skill, effort, responsibility and working conditions.

Ontario recently adopted Bill 154, An Act to Provide for Pay Equity. This Act replaced Bill 105 respecting pay equity in the public service, which had been presented last year, but was left to die on the Order Paper.

The purpose of this Act is to redress systemic gender discrimination in compensation for work performed by employees in female-dominated job classes. This Act will apply, when it will come into force on a date fixed by proclamation, to all employers in the public sector (as defined) and to those employers in the private sector (as defined) who employ ten or more employees.

The criterion to be used for determining the value of work will be a composite of the skill, effort and responsibility normally required in the performance of work and the conditions under which it is normally performed. Employers will be required to establish and maintain compensation practices that provide for pay equity, and no employer or bargaining agent may bargain for, or agree to, compensation practices that would contravene this objective. An employer will not be allowed to reduce compensation to achieve pay equity. Tests for measuring the achievement of pay equity are set out in the Act.

Certain differences in compensation, namely those resulting from a legitimate seniority system, temporary postings equally available to male and female employees that lead to career advancement, red-circling, merit pay based on performance, or a skills shortage causing a temporary inflation in compensation, will not be considered when determining pay equity. Similarly, designated casual employment positions may be excluded when determining pay equity. In addition, once pay equity has been achieved in an establishment, differences in compensation resulting from differences in bargaining strength will be permitted under the Act.

All employers in the public sector and those employers in the private sector who employ at least 100 employees, will be required to develop and implement a pay equity plan or, if there is a bargaining agent representing the employees, negotiate its development and implementation. Employers in the private sector with ten or more employees, but fewer than 100, will not be required to prepare and implement such a plan. They will still be required, however, to achieve pay equity and may be subject to complaints from employees if they do not.

Pay equity plans are documents that identify the job classes which form the basis of a pay equity comparison. They must describe the gender-neutral job evaluation system used, the results of the comparisons, the positions or job classes that do not need to be considered when determining pay equity, the specific compensation adjustments to be made to achieve pay equity, and the dates on which the first adjustments will be made under the plan. The plan binds the employer, the employees and their bargaining agent, if any.

The following is a timetable for the various groups affected by the Act:

Group	Plan Posting Date	Wage Adjustment Starting Date
Public Sector Employers	2 years after proclamation of the Act	2 years after proclamation of the Act
Private Sector Employers with 500+ employees	2 years after proclamation	3 years after proclamation
Private Sector Employers with 100 to 499 employees	3 years after proclamation	4 years after proclamation
Private Sector Employers with 50 to 99 employees	posting is voluntary	5 years after proclamation
Private Sector Employers with 10 to 49 employees	posting is voluntary	6 years after proclamation

Each employer will be required to make annual adjustments in rates of compensation equal to at least one per cent of his annual payroll for the preceding year until pay equity is achieved. Employers in the public sector will have seven years from the effective date to achieve full implementation of their pay equity plans.

The Pay Equity Commission of Ontario will be established and will consist of the Pay Equity Office and the Pay Equity Hearings Tribunal. The Pay Equity Office will be responsible for administrative and enforcement matters. The Hearings Tribunal will be responsible for hearing objections and complaints, upon an appeal of a review officer's decision or a referral of a matter by a review officer following a request of the parties or following his own election. Review officers will be appointed to investigate objections and complaints, to endeavour to effect a settlement, to monitor the preparation and implementation of pay equity plans, and to generally assist employers, employees and bargaining agents in achieving pay equity.

The Act provides that review officers and the Hearings Tribunal will dispose of sufficient powers to correct a situation where, in their opinion, there has been a contravention of the Act or to take in hand the determination and implementation of a pay equity plan where it is not being implemented according to its terms, or it is not appropriate for achieving pay equity. In addition, fines may be imposed for contraventions of certain provisions of the Act and orders of the Hearings Tribunal. In particular, intimidation of persons who seek enforcement of the Act or who participate, or may participate, in enforcement proceedings will be prohibited.

Finally, provision is made for a review of the Act and its operation commencing seven years after proclamation date.

The Yukon adopted a new Human Rights Act, in February 1987.

This Act, which repeals the Fair Practices Act, contains, among other things, provisions relating to equal pay for work of equal value, to harassment based on any prohibited grounds of discrimination and to affirmative action programs.

Special programs and affirmative action programs are not considered to be discrimination. Special programs, such as the senior citizen's discount rates, are programs designed to prevent disadvantages that are likely to be suffered by any group identified by reference to a prohibited ground of discrimination. Affirmative action programs, such as when an employer voluntarily undertakes a program to encourage women into non-traditional work, are programs designed to reduce disadvantages resulting from discrimination suffered by a group identified by reference to a prohibited ground of discrimination.

Harassment is a concern of the Act in relation to the general areas of employment, accommodation and services as laid out in the Act. For example, the Act prohibits a co-worker or employer from harassing a person on the job because of age, sex or any other prohibited ground. Harassment manifests itself through vexatious conduct and includes constant racial or sexual slurs or insults, threats of physical abuse, or unwanted sexual advances.

The equal pay for work of equal value provision applies only to the public sector. This provision comes into force immediately with regard to the territorial government, and on December 10, 1987, for the municipalities and their boards, corporations and commissions. It is discriminatory for an employer to establish or maintain a difference in wages between employees who are performing work of equal value, if the difference is based on any of the prohibited grounds of discrimination. In assessing the value of the work performed, the criterion to be applied is the composite of the skill, effort, and responsibility required and the working conditions. For the purposes of this section "wages" means any form of payment for work performed by an individual, and includes any advantage received directly or indirectly from the individual's employer. It is prohibited to reduce wages to comply with this section.

Ontario also adopted the Equality Rights Statute Amendment Act, 1986.

This Act amends several Ontario statutes to conform to section 15 of the Canadian Charter of Rights and Freedoms. The following amendments have a bearing on employment standards legislation.

Effective March 1, 1987, the provision of the Employment Standards Act which provides for a lower minimum wage for handicapped employees has been repealed.

The Human Rights Code, 1981, is amended to include "sexual orientation" in the proscribed grounds for discrimination and to codify into statute the concept of "reasonable accommodation" with consideration to the cost, outside sources of funding, if any, and health and safety requirements, if any, of doing so. The "sexual orientation" clause came into effect on the date of royal assent, December 18, 1986. The "reasonable accommodation" clauses will come into force on a date fixed by proclamation.

The Lord's Day (Ontario) Act (R.S.O. 1980, c.253) has been repealed, effective December 18, 1986, along with a section of the Retail Business Holidays Act which referred to this Act.

Prince Edward Island is presently studying a Bill entitled the "Pay Equity Act" which would provide equal pay for work of equal or comparable value in the broader public sector. The legislation would apply to the Government, various agencies and Crown corporations, regional school boards, the University and the College, hospitals, nursing homes, as well as to other organizations prescribed in the Act or the regulations.

The object of this Act would be to achieve pay equity by redressing systemic gender discrimination in wages paid for work performed by employees in female-dominated classes and to maintain pay equity in the public sector. Systemic gender discrimination in wages would be identified by undertaking comparisons between female-dominated classes and male-dominated classes in terms of relative wages and the relative value of the work performed.

In determining value, the criterion to be applied would be the composite of the skill, effort and responsibility normally required in the performance of the work and the working conditions under which the work is performed. Certain differences in compensation arising from a seniority system or a merit system or that are due to a temporary shortage of a particular skill would be excluded in determining pay equity. An employer could not reduce the wages of any employee to implement pay equity.

The maximum wage adjustment to be made by an employer in any year, subject to certain exceptions, would be limited to one percent (1%) of his total payroll for the preceding year.

Every public sector employer would be required to take such action as may be necessary to implement pay equity for its employees. The implementation of pay equity, at every stage of its process, would be negotiated with the appropriate bargaining agents. The parties would endeavour to reach an agreement respecting the development or selection of a gender-neutral job evaluation plan and the fixing of the classes to which the job evaluation plan would be applied. Once the value of the work performed in

female-dominated and male-dominated classes is determined, the parties would endeavour to reach an agreement respecting the proportionate share of the quantum of pay equity adjustments among the bargaining units and the allocation of the pay equity adjustments to the employees in order to correct the inequities. The negotiation of pay equity agreements would take place separately from normal collective bargaining. Disputes between the parties would be resolved by reference to an arbitration board established under the Labour Act. Decisions of the arbitration board would be binding on the parties.

Negotiations to implement pay equity would begin three months after proclamation of the Act with respect to the civil service and fifteen months after proclamation for other public sector employees. Within nine months of commencement of the negotiations, the parties would be required to reach an agreement concerning the gender-neutral job evaluation plan and the fixing of the classes to which the plan would be applied. Within twelve months after the end of Stage I, the parties would apply the job evaluation plan in order to determine and compare the value of the work performed in those classes and reach an agreement respecting the quantum of pay equity adjustments. Three months after the end of Stage II, the parties would be required to have reached an agreement respecting the allocation of the quantum of pay equity adjustments among the female-dominated classes of employees who are represented by that bargaining agent and respecting the implementation of pay equity adjustments. Stage IV would be the period in which pay equity adjustments are made until pay equity is achieved. This stage would begin not later than 24 months after the beginning of Stage I.

Finally, the Bill would establish a Pay Equity Bureau in the Women's Division of the Department of Labour. It would set out the information gathering, educational, advisory, investigative and adjudicative roles of the Commissioner of the Bureau. It also would establish the complaint mechanism.

In addition, Prince Edward Island recently adopted the Charter of Rights (Consequential Amendments) Act. This Act, among other things, removes from the Labour Act the provision permitting a lower minimum wage to be paid to handicapped persons, and repeals provisions in the Labour Act and the Human Rights Act which permitted discrimination in employment against domestics.

Manitoba has presented a Bill in first reading which would constitute a new Human Rights Code. This Bill would provide, among other things, provisions dealing with harassment based on any of the proscribed grounds for discrimination (and in particular, sexual harassment) as well as affirmative action programs.

Similarly, a Bill has received first reading in New Brunswick which would amend the Human Rights Act in order to prohibit sexual harassment against an employee, a person seeking employment, or certain other specified persons. Such an act committed by an employee or by a representative of the employer would be deemed to have been committed by the employer if the latter did not exercise the diligence appropriate in the circumstances to prevent the commission of the act.

F. Reciprocity

Soon after the Yukon had adopted, last year, a regulation establishing reciprocity with Alberta, British Columbia and Saskatchewan respecting the application of its Employment Standards Act, Alberta did likewise to establish reciprocity with the Yukon and Saskatchewan. Accordingly, the Directors of Employment Standards of those jurisdictions are designated as enforcement authorities of the Alberta Employment Standards Act. British Columbia had previously been declared a reciprocating province under this Act.

G. Upcoming Legislation

Alberta recently gave first reading to a Bill entitled "The Labour Code". Although most of the amendments contained in this Bill deal with industrial relations, there would be many changes to the employment standards legislation.

Specific provision is made that would permit the establishment of compressed work weeks. An employer could require or permit an employee to work 10 hours in a day for a total of 80 hours in a two-week period and not be required to pay overtime rates until those hours are exceeded. Minor variances from such a schedule would, however, be permitted so that averaging of hours of work could be made over the two-week period.

The most notable change with respect to hours of work provisions would be the reduction of the maximum daily hours of work from 12 to 10 hours, except in emergency situations. The Director of Employment Standards would retain the power to issue a permit authorizing hours of work in excess of the maximum, but would be required to ascertain whether the majority of the employees are in favour of the extended hours of work.

Overtime agreements, whereby an employee could accept compensatory time-off instead of overtime pay, would no longer be permitted.

The Act would also require employers to grant each employee a rest period of at least one-half hour during every five consecutive hours of work, except in certain circumstances.

A third week of vacation with pay would be provided after five years of employment.

Adoption leave of up to eight weeks would be available to either parent upon the adoption of a child under three years of age.

Domestic employees would be entitled to an annual vacation with pay and one day of rest per week, with provision to accumulate days of rest to a maximum of four days. Domestic employees are also entitled, at present, to wage protection, notice of termination and parental benefits.

With regard to termination of employment, employees would be required to give one week's notice to their employer upon leaving their jobs, where they have been employed for more than three months, but less than two years, or two weeks' notice, where they have been employed two years or more.

The Act would provide long-term employees greater individual notice of termination, or payment in lieu of notice. The notice could be as long as eight weeks, depending on the length of service of an employee.

The Act would also require an employer to give four weeks' notice of termination to the Minister, when he intends to terminate the employment of 50 or more employees within a four-week period.

The Act would deem employees' wages to be held in trust. Wages would not be considered part of the employer's assets in the event of an insolvency resulting in the non-payment of wages. Thus, the employees' capacity to recover their unpaid wages upon the insolvency of their employer would be enhanced.

The Act would enable employment standards officers to order an employer to reinstate an employee who has been suspended or discharged illegally for attempting to claim the rights to which he or she is entitled under the Act. The employment standards officer would also have the alternative of ordering that compensation be made to the employee, in lieu of reinstatement. Such orders may be appealed to an umpire who has the power to confirm, vary or revoke the order of the employment standards officer.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In British Columbia, the Industrial Relations Reform Act, 1987, (Bill 19) was assented to on June 26, 1987.

The Act brings many significant changes to the Labour Code whose title is changed to the "Industrial Relations Act". The changes came into force on July 27, 1987, except for provisions dealing with the intervention of the legislature or the Lieutenant-Governor in Council during a dispute. These provisions will take effect on a date announced by the government.

Industrial Relations Council

The Act creates a new administrative structure, the Industrial Relations Council and provides for a commissioner to head the Council, and for the appointment of at least two vice-chairmen: one who is chairman of the Industrial Relations Adjudication Division (IRAD), which replaces the Labour Relations Board, and one who is chairman of the Disputes Resolution Division (DRD), which replaces the Mediation Services Branch of the Ministry of Labour and Consumer Services. The IRAD contains equal representation from management and labour, and deals with and makes rulings on legal issues involving bargaining rights, unfair labour practices and strikes and picketing issues. Among others, the DRD monitors labour disputes and provides assistance to the parties in resolving collective bargaining conflicts.

Third Party Assistance During Negotiations

Where a request is made by either party after notice to bargain has been given, or on his own initiative during the course of bargaining, the chairman of the Disputes Resolution Division may appoint a mediation officer. At the request of either party or the chairman, the mediation officer makes a report which may include recommended terms of settlement.

Where there is a failure to conclude a first agreement, the commissioner may, at the request of either party and after any investigation he considers necessary, constitute a panel of the Council to inquire into the dispute. If the commissioner considers it advisable, the panel settles the terms and conditions of the first collective agreement. Such agreement is valid for one year.

Where strike or lockout notice has been served, a work stoppage has commenced, or the chairman of the DRD considers that a dispute exists between parties, the chairman reports to the commissioner. The commissioner may then, as he considers necessary or advisable to facilitate the making of a collective agreement between the parties:

a. refer the matter to the chairman for the appointment of a mediation officer to confer with the parties;

b. appoint a fact-finder to act in the manner described in the Act;

c. confer with the parties and make recommendations to them as to how the dispute may be resolved;

d. refer the matter to a public interest inquiry board.

Before the commencement of a strike or lockout, either the employer or the union may request that a vote be taken on the last offer received. A vote will then be held, but only once for each dispute. Also, during a strike or lockout, if the commissioner considers that it is in the public interest that the employees in the affected bargaining unit (or the employers in an employers' organization) be given the opportunity to accept or reject the last offer, he may direct a vote.

Further, the establishment of a public interest inquiry board provides the commissioner with the power to appoint a person as a public interest advocate to represent the public interest at the hearing or inquiry.

Intervention by Legislature or Lieutenant-Governor in Council

The Act provides that the legislature or the Lieutenant-Governor in Council can direct the commissioner to exercise special powers to resolve a dispute in the public or private sector. The Lieutenant-Governor in Council may make such a direction when the legislature is not in session and he considers that the dispute poses a threat to the economy of the province, or to the health, safety or welfare of its residents, or to the provision of educational services.

The commissioner must then order the resumption of operations and the return-to-work of employees if a work stoppage has occurred, or prohibit a strike or lockout. In order to resolve the dispute, he may require interest arbitration and direct the method to be used, or he may order the appointment of a mediation officer, a fact finder, a public interest inquiry board, or a special mediator acting as a mediator/arbitrator.

Where a collective agreement is determined by an arbitration board or special mediator without the consent of both parties, the legislature may by resolution approve or disallow it.

The provisions outlined in the preceding three paragraphs have not yet taken effect.

Interest Arbitration in the Public Sector

Under the Essential Service Disputes Act, which has been repealed by this Act, a firefighters', policemen's or health care union could elect to resolve a dispute by arbitration. Under the new legislation, both parties, in any public sector dispute, must give its consent before binding arbitration is used unless, as mentioned above, interest arbitration has been ordered by the commissioner on the direction of the legislature or the Lieutenant-Governor in Council.

Under the Act, "public sector employer" is broadly defined and includes the government, municipalities, school boards and post-secondary educational institutions, community care facilities, hospitals, libraries, crown corporations, and a variety of public or parapublic sector boards, commissions, councils, bureaus and authorities.

An arbitration board must consider a number of criteria when dealing with public sector labour disputes. These notably include a comparison of overall terms and conditions of employment with similar occupations in the relevant community in the province, and the cost and impact of the parties' proposals. In addition, there is a requirement that when ability to pay is an issue, the ability of the public sector employer to pay be the paramount factor.

Where the legislature or Lieutenant-Governor in Council directs the commissioner to settle a dispute in the public sector and arbitration is ordered, the commissioner may opt for the dispute resolution method known as final offer selection or mediation/arbitration.

Where the final offer selection method is applied and a public interest inquiry board (PIIB) has made prior recommendations, these recommendations must be considered by the arbitration board in addition to the positions proposed for selection by the parties. If no PIIB has been appointed, the arbitration board must consider, for final selection, any recommendations made by a mediator.

On application to the commissioner by a party to the dispute within 7 days after it receives an arbitration award, the commissioner may review the award, suspend its implementation pending such review, direct the arbitration board to reconsider the award in whole or in part, and give specific directions to achieve compliance with the legislation. The commissioner must inform the arbitration board and the parties of his reasons for giving a direction.

Essential Services

As mentioned above, the Essential Service Disputes Act has been repealed. The Act provides that where the minister, after receiving a report from the commissioner, considers that the dispute poses a threat to the economy of the province or to the health, safety or welfare of its residents or to the provision of educational services, he may order a 40-day cooling-off period during which the right to strike or to lock out is suspended and/or direct the Council to designate essential services. Only one cooling-off period may be ordered for a dispute.

Restraint Legislation in the Public Sector

The compensation stabilization program is phased out commencing on October 1, 1987. Also, the Public Sector Restraint Act, designed to reduce the number of public sector employees in the province, has been repealed.

Other Changes

Among other changes to the legislation are measures which:

- ensure free speech for both individual workers and employers as long as there is no undue influence, intimidation, coercion or threats;

- nullify provisions of collective agreements allowing for the boycott of the products of another employer or of the business done with another person (this does not affect a provision recognizing the right to refuse to cross a picket line);

- improve the protection of workers against job loss or job-related discrimination due to lack of union membership;

- require fairness in hiring hall and dispatch procedures;

- prevent non-affiliation agreements, except for construction work on construction projects;

- provide that businesses must be under "the same control and direction" for the Industrial Relations Council to treat them as one employer for collective bargaining purposes;

- provide for a certification or a decertification vote within 10 days after an application is made or such longer period as ordered by the Council if the vote is conducted by mail;

- define more precisely the circumstances giving rise to union successorship rights upon the disposition of a business, and provide that such rights do not apply where a business, or a substantial part of it, is disposed of by a trustee in bankruptcy, unless the Council is satisfied that there has been an attempt to evade collective bargaining obligations;

- allow an individual employer to withdraw from an employer's organization if he/she has been part of it for two years and has made an application at least nine months prior to the expiry of all collective agreements entered into on his/her behalf;

- redefine "technological change" in more precise terms and require affected employers to provide at least 90 days' notice, as well as details on the impact of the technological change;

- confine primary picketing to the site of a legal strike or lockout where employees perform work under the control or direction of the employer and the work is an integral and substantial part of the employer's operation;

- add the requirement that a person perform work, supply goods or furnish services for the benefit of a struck employer or of an employer who has locked out in order to be considered an ally;

- provide that the Council shall restrict common site picketing in such a manner that it affects only the operation of the employer causing the lockout or whose employees are on strike, or the operation of an ally;

- provide that divisions or other parts of a corporation be treated as separate employers for picketing purposes, if they are separate and distinct operations;

- remove the requirement contained in the Labour Code to obtain the labour relations board's consent before seeking damages before the court for a lockout, a strike or picketing declared illegal.

In Prince Edward Island, An Act to Amend the Labour Act (No. 2) (Bill 55) was assented to and came into force on May 14, 1987.

The amendment to the Labour Act provides that, upon the termination of a legal strike or lockout, the employees affected are entitled to be reinstated in their employment without discrimination, according to the terms and conditions of employment then in force. However, this requirement does not apply where, due to a decline in business, the operations or the functions (including similar work) performed by the employees before the work stoppage have been suspended or discontinued. Should those operations be resumed, the employees who were on strike or locked out must be reinstated first.

The employment of replacement employees is deemed to be terminated at the end of the strike or lockout, subject only to the terms and conditions of any return to work agreement.

In Québec, Bill 30, An Act to establish the Commission des relations du travail and to amend various legislation, received second reading on June 8, 1987.

The object of this Bill is the establishment of a body known as the Commission des relations du travail which will have functions similar to those of a labour relations board. The Commission will ensure that the right of association of employees, guaranteed by the Labour Code, can be exercised freely, and it will administer the certification process. The Commission will also be empowered to intervene in order to enforce most provisions of the Labour Code by mediation and, if necessary, by ordering the persons concerned to comply with it. In addition, the Commission will have, among its other functions, that of determining which services are essential and of seeing that they are provided in case of a strike, according to existing rules for public services and the public and parapublic sectors.

As a result, the Bill provides for the transfer to the new Commission of the responsibilities of the office of the labour commissioner-general, the Labour Court, the Essential Services Council and the office of the building commissioner.

In Manitoba, Bill 61, An Act to Amend the Labour Relations Act, received second reading on June 23, 1987. It provides for the inclusion in the Labour Relations Act of a new dispute resolution mechanism called "final offer selection".

Either the employer or the union will be able to request an employee vote by secret ballot on the use of final offer selection. The request will be made to the Manitoba Labour Board. There will be two occasions when this procedure may be initiated. The first will occur between 60 and 30 days prior to the expiry of the collective agreement; the second occasion will be between 60 and 70 days after the commencement of a strike or lockout.

If final offer selection is accepted by a majority of the employees who vote, the right to strike or to lockout will be suspended pending resolution of the dispute. Under the new procedure, employer and union negotiators will submit their final offers on remaining unsettled contract items to an impartial third party known as the selector. The parties will have the opportunity to choose a selector jointly. If they fail to agree, the Manitoba Labour Board will appoint one.

Both sides in the dispute will have an opportunity to present their case to the selector. He will then assess the fairness of the two final offers and select the whole of the final offer of either the union or the employer. If one party fails to submit its final offer, the selector will select the final offer submitted by the other party. While the offers are being reviewed, the parties will be able to continue bargaining, and mediation and conciliation services will be available. If a settlement is reached, the final offer selection process will be terminated.

A selector's decision will be final and binding. Except where the parties otherwise agree, the agreement will be valid for one year.

When adopted, the legislation will come into force on a date fixed by proclamation. It will expire five years after that date.

In Alberta, Bill 60, the Labour Code, was introduced on June 17, 1987. Among other things, the Bill contains a variety of changes in the area of industrial relations. Below is a description of the most significant of these changes.

Bargaining Procedures

The Labour Code introduces a method of third party neutral assistance which provides for recommendations from mediators. At any time after a notice to commence collective bargaining is served, either or both parties may request a mediator to assist in resolving the dispute. The mediator will, in any manner that he/she considers fit, assist the parties in resolving the dispute.

If a new collective agreement is not concluded 60 days after the date of commencement of bargaining, either or both parties may request the Director of Mediation Services to appoint a mediator who conducts a form of enhanced mediation. If no request is made or it is rejected, the Minister of Labour may order such an appointment. The mediator will make one of the three following recommendations: (1) recommended terms of settlement to be submitted to a vote of the parties; (2) a recommendation that a mediation board be established; or (3) a recommendation that suggests neither of these.

If a mediation board is established, it will have 20 days, or longer if agreed, to assist in the resolution of the dispute or to issue recommendations for settlement to be voted on by the parties.

The government's power to order special procedures to settle certain disputes causing emergencies will remain. As well, there will still be compulsory interest arbitration for firefighters and hospital employees. Also, disputes inquiry boards will continue to be available, but only after the commencement of a strike or lockout.

Strikes and Lockouts

If the parties are unable to resolve the dispute with the assistance of a mediator conducting enhanced mediation or a mediation board, they may apply to the Labour Relations Board for a supervised strike or lockout vote. The application will be made at least 14 days after notification of the results of a vote on the terms of settlement recommended by a mediator or mediation board, or at least 14 days after notification that no such recommendations will be made.

If no strike or lockout occurs within 90 days of the date of the strike or lockout vote, the vote will be considered void. No work stoppage will be allowed unless a new vote is conducted. In addition, no strike or lockout vote will be permitted after a 2 year period commencing at the end of the 14-day period mentioned previously.

Labour Relations Board Procedures

The Labour Relations Board will implement a three stage decision making process, commencing with an informal inquiry by a Board member or labour relations officer. Where the issue cannot be resolved, the matter may be referred to a one or three member panel of the Board for an informal hearing. The decision of the panel may be appealed to the Board. The quorum of the Board will then be five members including the chairman or a vice-chairman.

Certification

The certification process will be initiated by evidence from the applicant that it has obtained the support of at least 40% of the employees in the bargaining unit applied for. If the unit is appropriate for collective bargaining, the Labour Relations Board will conduct a vote. Certification will follow if the majority of employees voting support the trade union.

A supervised vote will be held before any certification is granted. In order to reduce delays, the chairman and a vice-chairman of the Labour Relations Board will be empowered to sit alone to decide specific questions associated with certification.

Picketing

Picketing will be restricted to the employees who are on strike or locked out and to the members of the trade union involved.

Strike Breaking

Employers will be prohibited to use, or to permit the use of, professional strike breakers. Professional strike breakers are defined as persons not involved in a dispute and whose primary object, in the Labour Relations Board's opinion, is to prevent or interfere with legal activities in respect of a strike or lockout.

Reinstatement of Employees

An employee not working because of a strike or lockout will be able to apply to the employer to return to work within two years of the commencement of the work stoppage. Where the employers' operations are continuing and the type of work the employee had performed continues, the employer will be required to reinstate the employee.

Bridging of Collective Agreements

When there is no settlement, expired collective agreements will be deemed to continue to apply until the commencement of a strike or lockout.

Expedited Arbitration

Where a difference between the parties to an agreement arises regarding termination, lay-off, or long term suspension from employment, an expedited arbitration procedure will apply. Unless the parties agree otherwise, the matter must be submitted to an arbitrator or arbitration board within seven days from the date on which the employer is notified of the difference. If the time limit is not respected, the Director of Mediation Services will have the power to appoint an arbitrator. A written decision must be available in the next 14 days, or a longer period if the parties so agree.

B. Public and Parapublic Sectors

In British Columbia, Bill 20, the Teaching Profession Act, was enacted on May 26, 1987.

The Act establishes a College of Teachers consisting of public school teachers, superintendents and assistant superintendents, as well as other persons who may be admitted. The College will determine the qualifications for teachers, become the profession's disciplinary body, and ensure

continued professional development of teachers. The governing body of this College is a Council consisting of 15 elected members (one for each zone set out in the Act), 2 persons appointed by the Lieutenant-Governor in Council, 2 persons appointed by the Minister of Education and 1 person nominated jointly by the Deans of the Faculties of Education in the province.

The Act provides that there will no longer be compulsory teacher membership in the B.C. Teachers' Federation. Teachers within school districts will be able to form a union, seek certification and bargain terms and conditions of employment. They will have the same collective bargaining rights as other employees in the province, including the right to strike.

Where there is no teachers' union representing teachers in a school district, an association will be able to negotiate with a school board and enter into agreements respecting terms and conditions of employment. Such an association will not have the right to strike.

Directors of instruction, principals and vice-principals will be excluded from membership in a trade union or an association.

The College of Teachers was established on June 22, 1987; however, many provisions of the Act relating to its activities will come into force at a later date to be announced by the provincial government. The other provisions described above will take effect on January 1, 1988, except for some clauses which will become effective on June 30, 1988.

In Ontario, the Inflation Restraint and Public Sector Prices and Compensation Review Repeal Act, 1987 was assented to on February 3, 1987. The Inflation Restraint Act, 1982 and the Public Sector Prices and Compensation Review Act, 1983 were repealed since the periods of wage and price control that they covered had expired. The Inflation Restraint Board, established under the Inflation Restraint Act, 1982, was, notwithstanding the repeal of the Act, continued in existence for the limited purpose of implementing the decision or order of a court made on a proceeding commenced before February 3, 1987.

In the federal jurisdiction, Part I of the Parliamentary Employment and Staff Relations Act was brought into force on December 24, 1986. This part of the Act confers collective bargaining rights on employees of the Senate, the House of Commons, and the Library of Parliament.

C. Emergency Legislation

In the last 13 months, emergency legislation was adopted at the federal level and in Québec. In Québec, an order was also issued to suspend the right to strike in a situation endangering public health and safety.

In the federal jurisdiction, the Maintenance of Ports Operations Act, 1986 was enacted on November 18, 1986. The legislation was adopted to ensure the resumption of longshoring operations at ports on the west coast.

The dispute involved all longshoring operations by the 65 member companies of the British Columbia Maritime Employers Association, who locked out the membership of the International Longshoremen's and Warehousemen's Union - Canadian Area - on November 15, 1986.

Each company was required to resume longshoring and related operations at ports on the west coast on November 19, 1986, and every employee concerned had to return, without delay, to his duties when so required. The term of the collective agreement was extended to cover the period from January 1, 1986 to December 31, 1988. The terms and conditions of the collective agreement were deemed to be amended by earlier recommendations contained in the report of a conciliation commissioner other than the recommendation concerning the container provision of the agreement. The contentious matter of the container handling clause was referred to an industrial inquiry commission appointed by the Minister of Labour for final and binding determination after a thorough study. The commission was required to make its report to the Minister not later than June 30, 1987. The conclusions of the industrial inquiry commission were to be incorporated into the collective agreement as of September 1, 1987, or, if in the opinion of the Minister that date was impracticable, as of a later date determined by him.

The legislation provided that, if the parties were unable to agree on the interpretation or incorporation of any of the conciliation commissioner's recommendations regarding the collective agreement, a referee could be appointed to interpret the amendment for the purpose of incorporating it in the agreement and/or to determine the manner in which the amendment should be expressed in contractual language. The referee's decision was final. The law also provided that the parties could amend the agreement except as regards its term of operation.

Substantial fines were provided for a contravention of the Act by a company, the union, an officer or representative of either of them, or an individual. Also, an officer or representative of either party who was convicted of an offence under the Act was prohibited from being employed by that party or act as its officer or representative for five years.

In Québec, An Act to ensure that essential services are maintained in the health and social services sector was adopted on November 11, 1986. The object of this special law was to ensure that essential services were maintained in health and social services establishments and in regional councils.

Every employee was required, from 12:01 a.m. on November 12, 1986, to perform all the duties attached to his functions in accordance with the applicable conditions of employment without stoppage, slowdown, reduction or alteration in his usual activities. Every employee who had ceased to discharge his duties by reason of a strike had to return to work, from the same time, in accordance with his work schedule. It was, however, provided that an association of employees could declare a strike by proceeding as specified in certain provisions of the Labour Code dealing with strike notices and essential services to be maintained.

If the employees did not comply with the Act in sufficient number to ensure that the essential services were maintained, the Government could, by order, exclusively for the purposes of ensuring the provision of essential services, replace, amend or strike out any stipulation of the collective agreement relating to the mode by which the employer fills a position or hires new employees, and any matter related to work organization. It could also, for the same purposes, replace, amend or strike out any stipulation of the said collective agreement to exclude the new employees hired to provide essential services from the application of the stipulations relating to seniority.

In the case of an offence under the Act, the following sanctions could be imposed:

1. fines for each day or part of a day during which the offence continued (ranging from a fine of $25 to $100 for a certain type of infraction committed by an employee to a fine of $20 000 to $100 000 in the case of an association of employees or a group of associations of employees);

2. the suspension of the withholding of union dues from the salary of employees for 12 weeks for each day or part of a day during which the offence continued;

3. the reduction of an employee's salary, for work done after the offence, by an amount equal to the salary he would have received for each period of absence or cessation of usual activities prohibited by the Act;

4. loss of seniority for an employee from a date determined by order of the Government (one year for each day or part of a day during which the absence from work or the cessation of usual activities continued in contravention of the Act);

(Note: Sanctions 3 and 4 could be lifted if every reasonable means had been taken to comply with the Act, and the failure to comply was not part of any concerted action.)

5. the civil liability of an association of employees for any damage due to the refusal of employees it represented to return to work or continue their usual activities unless the association proved that the damage was not a result of the contravention, or that such contravention was not part of any concerted action (the Act facilitated the institution of a class action by a health care recipient).

On May 7, 1987, Québec also passed the Act respecting the resumption of certain services of the University of Québec at Montréal.

The object of this law was to ensure the resumption of certain teaching services of the University of Québec at Montréal.

To that end, it required lecturers, who were on strike, to resume their duties from 8:00 a.m. on May 11, 1987. In addition, it provided that where the employees did not comply with this requirement in sufficient number to ensure teaching services, the Government could, by order, replace, amend or strike out any stipulation of the collective agreement relating to the mode by which the employer fills a position or hires new employees and any matter related to work organization.

The clauses of the last collective agreement between the parties were maintained in force until December 31, 1988, while the rates of remuneration were increased according to the scale applicable to the public sector.

Lastly, any person who contravened the Act was liable to penalties and, in the case of a lecturer, to the loss of the priority points credited under the collective agreement.

Finally, the Government of Québec passed an order on May 4, 1987, suspending the right to strike by virtue of the essential services provisions of the Labour Code.

Due to the fact that the essential services provided for were insufficient and that this situation was endangering public health and safety, the order suspended the right of the Montreal Transit Union (C.N.T.U.), representing maintenance employees, to declare a strike against the Montreal Urban Community Transit Commission.

Such a suspension remains in effect until it is proved to the Government that, where the right to strike is exercised, essential services will be sufficiently maintained.

D. Construction Industry

In Québec, on August 29, 1986, a collective agreement was made between, on one hand, the Association of Building Contractors of Québec and, on the other hand, the Québec Provincial Building Trades Council (INTERNATIONAL) and the Québec Federation of Labour (FTQ-CONSTRUCTION). On the same date, the parties to the collective agreement submitted to the Minister of Labour a petition for the legal extension of this collective agreement, by the Government of Québec, to the whole construction industry in Québec. Changes were agreed to by the employers' association and the employee associations whose representativeness is more than 50%, and the Government of Québec has approved the adoption of the Construction Decree. This decree came into force on September 1, 1986, and will remain in effect until April 30, 1988.

On December 17, 1986, Québec also passed An Act to amend the Act respecting labour relations in the construction industry. The amendment changes the title of the Act to the following: "Act respecting labour relations, vocational training and manpower management in the construction industry".

The Québec Construction Commission (Commission de la construction du Québec) is created and, among other things, it is assigned duties in the area of vocational training in the construction industry. This commission replaces the Québec Construction Bureau (Office de la construction du Québec).

Among other changes, mechanisms are introduced to allow the construction industry to take on greater responsibility in the area of vocational training. Also, the Act defines how responsibilities in that area are to be shared by the Minister of Manpower and Income Security, the Minister of Education, and the Québec Construction Commission.

The classification certificate that served to control the access of workers to the construction industry is abolished. New mechanisms are introduced to control access to the industry by means of a competency certificate. This certificate may be a journeyman competency certificate, an occupation competency certificate (for activities not included in a trade) or an apprentice competency certificate. The Commission has the power to grant, in special circumstances, an exemption from the obligation to hold a competency certificate.

In addition, an amendment makes it the responsibility of the Attorney General of the Province of Québec to institute penal proceedings under the Act.

Except for some clauses, the amending Act came into force on January 1, 1987. It contained transitional provisions governing access to the construction industry from that date. Also, other provisions were maintaining the rules laid down by the Regulation respecting placement of employees in the construction industry regarding placement agencies and regional priority in matters of manpower placement, hiring and mobility.

On May 6, 1987, Québec adopted the Regulation respecting the issuance of competency certificates under the Act respecting labour relations, vocational training and manpower management in the construction industry.

The regulation specifies the rules governing the issuance and the renewal by the Québec Construction Commission of competency certificates. It also establishes their duration as well as the cases involving an assessment of competency. In addition, the regulation determines in what circumstances the Commission may, by way of exception, exempt a person from the obligation to hold a competency certificate.

Moreover, the regulation provides for certain temporary limitations concerning the issuance of an apprentice competency certificate or an occupation competency certificate to a person in respect of whom an employer files a request for manpower, guarantees employment for a minimum period and furnishes proof of adequate safety training. Until December 31, 1988, the Commission will proceed with such an issuance only on the condition that less than 10% of the total number of employees holding an equivalent certificate, domiciled in the region contemplated in the application, are available at the time it is submitted. This does not apply in the case of the son or daughter of the employer filing the application.

In Alberta, Bill 53, the Construction Industry Collective Bargaining Act, was assented to on June 17, 1987.

The Act applies to the unionized sector of the construction industry, except for construction work at the Syncrude plant site. It gives the Minister of Labour the power to order the establishment of a Federation of Construction Trade Unions and a Federation of Construction Contractors which have the responsibility for collective bargaining.

The parties will negotiate a "master construction agreement" which consists of two parts. The first part is a general part containing terms and conditions of employment common to all employees and employers covered by the legislation. The general part covers such matters as jurisdiction, hours of work, overtime, recognition, management rights, travel allowance and grievance procedure. The second part consists of subsidiary agreements, applying to all employees and employers in designated trade groups, regions or sectors. The subsidiary agreements cover wages, benefits and other items that are agreed to by the parties or that are prescribed by the Minister.

The general part of the master construction agreement remains in effect for at least 5 years, while the subsidiary agreements have a term of 2 years.

Mediation services are available to the parties. In addition, each bargaining federation is entitled to request that a "proposal stating its position" be put to a vote of the other party. A request for such a vote can be made once for the general part and once for a subsidiary agreement. Before a legal lockout can take place, it must be supported by at least 60% of the employers who vote and who collectively employ at least 60% of the employees. Conversely, a legal strike requires the support of at least 60% of the trade unions and at least 60% of eligible employees who vote.

If, after having bargained, the parties are unable to reach an agreement by September 15, 1987, or any later date prescribed by the Minister, the latter will have the power to refer the dispute to a construction industry disputes resolution tribunal. Any work stoppage will then become illegal and, if necessary, the tribunal will issue a binding award.

In resolving any items in dispute, the construction industry disputes resolution tribunal will implement any method or combination of methods of arbitration directed by the Minister, including the method known as "final offer selection".

There will be no labour relations board orders extending collective bargaining rights to non-union companies existing before June 5, 1987, until two years after the master construction agreement is concluded. However, this will not affect any previous application for extension of bargaining rights in respect of which a hearing had commenced.

The Act came into force on June 5, 1987.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Legislation of General Application

The Yukon has proclaimed its Occupational Health and Safety Act. This Act, which had received royal assent on November 29, 1984, came into force on November 1, 1986. It establishes a comprehensive framework to deal with safety and health in the workplace. It repeals and replaces 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 is mandatory in a workplace where 20 or more workers are regularly employed for a period exceeding one month. Such a committee is not 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 must 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 must 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 20, 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 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 has 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 an 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 is 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 do not have the force of law but may be admissible as evidence in a prosecution for the violation of a provision of the regulations.

Moreover, effective November 1, 1986, various regulations were adopted under this Act. They cover general safety, mine safety, blasting, occupational health, minimum first-aid, commercial diving, and radiation protection.

The general safety regulations are comprehensive regulations prescribing various safety standards, equipment, practices and procedures applicable to workplaces in general. There are also particular requirements applying to such industries as construction, demolition, forestry and logging, sawmills and woodworking.

The mining safety regulations contain a vast array of safety and health requirements applying to mining operations in the territory. Among others, they provide for a mandatory medical examination prior to the employment of any person in a dust exposure occupation and for health monitoring measures. The General Safety Regulations, the Blasting Regulations, the Occupational Health Regulations, the Minimum First Aid Regulations and the Radiation Protection Regulations apply to mining operations unless otherwise indicated.

The blasting regulations apply to any operation in which explosives are used for blasting. They deal with blasting permits, the reporting of blasting incidents, the transportation, keeping and handling of explosive materials and various other operations which are potentially dangerous due to the presence of explosives.

The occupational health regulations provide comprehensive requirements for such things in the workplace as lighting systems, noise control, ventilation, thermal environment, space allotment, heat stress limits, hazardous, poisonous and oxidizing substances, and air contaminants. Exposure to the following dangerous substances is also specifically regulated: organic lead, mercury, alkyl mercury compounds, asbestos, silica, and radon gas. In addition, permissible concentrations for airborne contaminant substances are established.

Among important details of these regulations are the following: a maximum exposure to 80 dBA steady state noise for 8 hours (a more stringent standard than generally found); the establishment of an audiometric testing program; close monitoring and control of employment thermal conditions, such as air temperature, radiant temperature, humidity and air movement; a safeguard against overcrowding to a degree that may cause risk of injury; and mandatory medical examinations whenever exposure levels to dangerous substances attain levels at or above 50 per cent of the limits prescribed or whenever the Director requires them.

The minimum first-aid regulations establish the obligation of all employers to provide and maintain first-aid services, equipment and supplies according to their hazard classification. The classification is determined by taking into account the surface travel time to a hospital and the number of workers per shift.

The commercial diving regulations provide that, for every dive, it is the duty of the diving supervisor to plan the dive, to brief the crew and to ensure that all necessary equipment is provided and in good operating condition. The diving plan must also be discussed in detail and approved by the divers, the on-site representative of the employer or owner and the diving supervisor. General safety measures require, among other things, that a dressed-in stand-by diver be available during a diving operation and that warning devices, such as buoys, be used. These regulations also prescribe the manner in which to deal with potential hazards such as moving machinery or equipment, underwater exhausts or intakes, etc. Notification of accidents or incidents must be made in the way prescribed, and emergency procedures, including the use of hyperbaric chambers, are outlined. In addition, the general storage, maintenance, testing and repair of all diving equipment is regulated. Finally, the minimum requirements regarding the conduct of any SCUBA diving operation and deep diving operation, as well as surface-supply diving are established in these regulations.

Finally, the radiation protection regulations establish the standards for the installation and the use of any x-ray machine or x-ray source as well as any laser equipment or laser apparatus. It is the obligation of the owner of any x-ray equipment to ensure that it is maintained in safe operating condition, and that it is inspected regularly according to the manufacturer's recommendations. Moreover, these regulations establish the radiation exposure and dose limits for any x-ray worker. As for laser operations, it is incumbent upon the owners of laser equipment to develop a written code of practice for the safe operation of the equipment. This code of practice must contain a reference to these regulations and include the 17 principles that are set forth in the regulations. Provision is made for regular medical examinations of workers engaged in work with laser equipment or laser apparatus.

The federal government has proclaimed into force sections 18 and 19 of An Act to Amend the Canada Labour Code and the Financial Administration Act. One section deals with the application of Part IV, and the change represents the final step in bringing all workers under federal legislative

authority under the same occupational safety and health law. The second section concerns the power to make an exclusion order from the application of Part IV of the Code with regard to any work or undertaking regulated pursuant to the Atomic Energy Control Act.

In addition, the federal government has adopted three regulations under the Canada Labour Code respecting occupational safety and health on board aircraft, ships and trains.

These regulations came into force on April 2, 1987, and cover employees involved in the operations of trains, aircraft and ships under the federal jurisdiction. Until now, workers in most transport industries were not covered by Part IV of the Canada Labour Code when their trains, aircraft and ships were in operation.

These regulations adapt most of the requirements of the general Canada Occupational Safety and Health Regulation to each industry and the language used makes the regulations more relevant to them. For example, the lighting requirements will likely differ from one industry-specific situation to another.

In general, the regulations contain provisions regarding noise levels (maximum exposure for an eight hour period to continuous noise is set at 87 to 90 dBA for aviation and trains, and at 85 to 90 dBA for ships), lighting, electrical safety, sanitation, dangerous substances (control of airborne chemical contaminants is usually in accordance with the standards set out by the American Conference of Governmental Industrial Hygienists), safety materials, equipment, devices and clothing, materials handling, as well as hazardous occurrences investigation, recording and reporting, and first-aid.

Among the industry-specific provisions for aviation are provisions requiring appliances that have exposed moving, rotating, electrically charged or hot parts or that process, transport or handle materials while an aircraft is in operation and that may constitute a hazard for an employee to be equipped with specially designed machine guards. Elevating devices on board ships must meet the standard set out in CSA standards CAN3-B44-M85 and B311-M1979. Similarly, the regulation concerning safety and health on board trains contains provisions that relate directly to rolling stock, using terms appropriate to the industry.

The three main benefits of bringing the employees of these industries under Part IV of the Canada Labour Code are:

1) the Minister of Labour becomes responsible for the safety and health of all federally-regulated employees; this ensures consistency of application under the law;

2) the employees on board aircraft, ships and trains while in operation will enjoy the same privileges, under Part IV of the Code, of the right to know of dangerous situations, the right to refuse to work in such situations and the right to participate in maintaining a safe and healthy work environment; these are considered to be three fundamental rights of any worker; and

3) if there has been non-compliance under the various Transport Canada Regulations, these occupational safety and health regulations will ensure employee protection.

On May 1, 1987, Prince Edward Island has proclaimed its Occupational Health and Safety Act, which had received royal assent on May 28, 1985. Section 5 of this Act, which deals with the establishment of the Occupational Health and Safety Division, had been proclaimed 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 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 aribtrator 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.

Finally, the Occupational Health and Safety Council Act has been repealed by this Act. The Construction Safety Act will also be repealed when section 35(2) of this Act is proclaimed.

Prince Edward Island has also adopted regulations pursuant to the above-mentioned Occupational Health and Safety Act.

These regulations, which came into force May 1, 1987, establish the health and safety requirements for every workplace. These requirements generally have to do with the physical installations and salubriousness of the workplace, the work practices, and the use of protective equipment or of equipment that in itself presents special risks, and the handling and storage of dangerous substances.

With regard to physical installations, workplaces must contain toilet and washing facilities according to the number of occupants, an adequate supply of drinking water, a clean lunch room or eating areas, as well as first-aid stations or kits equipped in the manner prescribed. Workshops and buildings must also be equipped with adequate fire protection equipment, such as fire extinguishers. In addition, lighting, heating, noise levels, ventilation, electricity, exposure to non-ionizing radiation (such as lasers, infra-red, ultra-violet, micro-wave or radio frequencies), etc., are specifically regulated to maintain the salubriousness and the safety of the workplace. For example, continuous noise levels that are permitted under the regulations may not exceed 85 dBA for 8 hours in a day. Other limits are established according to the duration in hours of exposure to noise. Threshold limit values for impulsive or impact noise are also set.

With respect to work practices, these regulations establish the basis for sound practices and standards regarding the use of personal protective equipment in specified circumstances; the placing of fencing and barricades, guardrails, platforms, runways and ramps, stairs and ladders as well as bracing and supports during construction; fall protection systems; safe working conditions in demolition, formwork, welding, woodworking, working over water, around tanks and vessels, and in confined spaces, in forest operations, in a compressed air environment and in underwater diving operations. These regulations also prescribe the use and maintenance of explosive-actuated tools, machinery, pile driving equipment, powered mobile equipment and hoists and hoisting apparatus.

Finally, the handling and storage of materials in general, of explosives and of hazardous liquids must conform to the requirements set out. Moreover, contamination of the air in working areas may not exceed the "Threshold Limit Values" or "TLVs" as prescribed by the American Conference of Governmental Industrial Hygienists in the publication Threshold Limit Values and Biological Exposure Indices for 1985-86 (with annual update).

B. Designated Substances and Chemical, Physical and Biological Agents

Ontario has adopted a Regulation Respecting Ethylene Oxide under the Occupational Health and Safety Act.

This regulation prescribes ethylene oxide as a designated substance and regulates the exposure of a worker to this substance. Every employer must take all necessary measures and procedures to ensure that the time weighted average exposure of a worker to airborne ethylene oxide is reduced to the lowest practical level and, in any case, does not exceed one part of ethylene oxide per million parts of air by volume or 1.8 mg of ethylene oxide per m^3 of air. In no case shall exposure exceed 10 parts per million by volume or 18 mg per m^3 of air, for short-term exposure concentration measured over 15 minutes, unless the employer provides and requires a worker to wear and use respiratory equipment.

The employer must, where an assessment indicates that a worker is likely to inhale, absorb or come into contact with ethylene oxide, establish and enforce a control program. The control program must include provisions for: engineering controls, work practices and hygiene practices, and facilities to control the exposure; methods and procedures to monitor the concentrations of airborne ethylene oxide; records of exposure, including the time-weighted average exposure of each worker, and of the concentrations of ethylene oxide and times in which the measures were taken; and a training program for supervisors and workers on the health effects of ethylene oxide and the measures and procedures in effect under the control program.

This regulation also provides that, where an assessment reveals that a worker is likely to inhale, absorb or come into contact with ethylene oxide in the case of an accident or leak, the employer must develop an emergency program. In devising the control program and the emergency program, the employer must consult with the joint health and safety committee and the committee may make recommendations.

Other provisions deal with the review of current measures and procedures: the power of an inspector to render a decision regarding a dispute between an employer and a joint health and safety committee; how workers are to become acquainted with the control program or the emergency program; a reference to the "Code for Measuring Airborne Ethylene Oxide" in relation to the procedures for monitoring, sampling and determining the concentrations of this substance; the posting of results of monitoring; the keeping of records of exposure; and with medical examinations and clinical tests to determine whether a worker has an occupational illness resulting from exposure to this substance.

A schedule provides the method for calculating the time-weighted average exposure of a worker to airborne ethylene oxide over periods of 40 hours per week and 8 hours per day.

Moreover, another regulation in Ontario amended the basis for the calculation of the time-weighted average exposure of a worker to substances designated under section 22 of the Occupational Health and Safety Act to provide that both the weekly (40 hours) and the daily (8 hours) time-weighted average exposures do not exceed the specified limits. The regulations establishing the following substances as designated substances are amended accordingly: lead, mercury, vinyl chloride, coke oven emissions, asbestos, isocyanates, silica, benzene, acrylonitrile, and arsenic.

In addition, Ontario has adopted a Regulation Respecting Control of Exposure to Biological or Chemical Agents under the Occupational Health and Safety Act.

This regulation provides greater protection from the potentially harmful effects of all hazardous chemical and biological agents used in the workplace. It requires employers to take all measures reasonably necessary in the circumstances to protect workers from exposure to a hazardous chemical or biological agent in the course of the storage, handling, processing or use of such agents in the workplace. These measures include the provision and use of engineering controls, work practices, hygiene facilities and practices and, in limited circumstances, personal protective equipment.

The regulation places specific legal limits on the levels of exposure for more than 600 agents, above which workers may not be exposed.

C. The Workplace Hazardous Materials Information System

The federal government recently adopted the Act to establish the Workplace Hazardous Materials Information System.

This Act, which will come into force on October 31, 1988, or on such earlier day or days fixed by proclamation, provides for the establishment of the Workplace Hazardous Materials Information System (WHMIS) at the federal level. It amends the Hazardous Products Act and Part IV of the Canada Labour Code and enacts a new Hazardous Materials Information Review Act.

1. Hazardous Products Act Amendments

Amendments to this Act:

- provide for the establishment of criteria for identifying hazardous materials for the purpose of providing information about them in the workplace;

- require suppliers and importers, as a condition of sale and import, to ensure that containers of hazardous materials are labelled;

- require suppliers and importers to provide, in the form of a Material Safety Data Sheet, the most up-to-date information available about the hazards of products designated under WHMIS;

- authorize the establishment of a supplementary Ingredient Disclosure List to be used by suppliers when preparing a Material Safety Data Sheet;

- increase the current penalties of the Hazardous Products Act from the present maximum of $1 000 to a maximum of $100 000 on summary conviction and establish a maximum $1 million fine for indictable offences;

- provide for consultation with the provinces, territories, industry and labour prior to changes in WHMIS;

- protect sensitive proprietary information; and

- exempt from inclusion, under WHMIS, certain products and substances that are regulated under other federal legislation, as well as hazardous wastes, consumer products that already fall under Part II of the Schedule to the current Hazardous Products Act, wood and wood products, tobacco and tobacco products and manufactured articles.

2. Canada Labour Code - Part IV Amendments

Amendments to Part IV of the Canada Labour Code extend the protection of the proprietary information mechanism to federally regulated employers. All other authorities to implement WHMIS, including requirements for worker education programs, are currently contained in Part IV of the Code.

Revised occupational safety and health regulations will implement WHMIS in federally regulated workplaces, in a manner consistent with similar provincial and territorial occupational safety and health legislation.

3. Hazardous Materials Information Review Act

Under the WHMIS program, it is necessary to balance workers' legitimate rights to know with industry's need to protect proprietary information. WHMIS will do this through the Hazardous Materials Information Review Act, which:

- creates the Hazardous Materials Information Review Commission, an independent proprietary information adjudication mechanism to review and approve claims for exemption from the information disclosure requirements under WHMIS. This Commission will report to Parliament through the Minister of Consumer and Corporate Affairs;

- establishes a multipartite Council of Governors for the Commission to be appointed by the Governor in Council. The Council will reflect the views of the parties to the WHMIS concensus: federal, provincial and territorial governments, organized labour and industry.

Proprietary information claims will be ruled on by a screening officer of the Commission. Affected parties can appeal screening decisions to a tripartite appeal board representing labour, industry and governments.

The Commission will be self-financing and have the power to charge fees to cover screening and appeal costs.

A regulation was adopted in Nova Scotia, entitled "Trade Secret Regulations under the Occupational Health and Safety Act", which is similar legislation to the federal Hazardous Materials Information Review Act, described above.

These regulations, which became effective September 1, 1986, establish a mechanism to protect trade secrets, as defined, when employers, suppliers and manufacturers are required to disclose information with respect to hazardous substances. Upon the written request of a health professional, as defined by the regulations, an employer, supplier or manufacturer is required to disclose, in non-emergency situations, a specific chemical identity for the purpose of providing medical or other occupational health services to an exposed employee. The request from the health professional must contain detailed information, such as the identity of the person for whom the request is made, a description of one or more of the occupational health needs outlined in the regulations, an explanation as to why alternative information, as described by the regulations, would not satisfy these needs and a description of the specific procedures to be used to maintain the confidentiality of the disclosed information. In addition, the health professional and the employee must conclude a written confidentiality agreement in favour of the employer, supplier or manufacturer, in which they agree that they will not use the trade secret information for any purpose other than the need asserted. As well, the health professional and the employee must agree not to release the information under any circumstances other than as provided by the regulations, by the terms of the agreement, or by the employer, supplier or manufacturer involved.

If the health professional receiving the information decides that there is a compelling need to disclose it to the Executive Director of the Occupational Health and Safety Division, he must inform the employer, supplier or manufacturer involved prior to, or at the time of, the disclosure.

A denial of the request made by the health professional must be made to him in writing within 30 days of the request and must state, among others, specific reasons for the denial. The health professional may then refer the matter to the Executive Director for a decision following representations made by the parties. The Executive Director's decision is subject to an appeal within 15 days to the Minister of Labour, who must follow essentially the same procedure as the Executive Director. The Minister's decision is, in turn, subject to appeal within 15 days before the Trial Division of the Supreme Court of Nova Scotia.

At each level of the appeal process, measures must be taken to ensure the confidentiality of the proceedings.

Pursuant to a provision of the Act, the regulations outline a special procedure for disclosure of information that may constitute a trade secret in cases where a treating physician or nurse determines that there is a medical emergency.

In Prince Edward Island, An Act to amend the Occupational Health and Safety Act, recently adopted, is also companion legislation to the federal WHMIS legislation. This Act permits the adoption of regulations providing confidentiality protection for trade secrets that could otherwise be disclosed pursuant to a program giving effect to the WHMIS.

Similarly, Ontario also adopted An Act to amend the Occupational Health and Safety Act to establish WHMIS in its jurisdiction. Bill 101, which had been introduced last year, has been put aside in favour of this Act which contains many of the same requirements. It makes it mandatory for employers to prepare inventories of hazardous materials and to provide information to their workers respecting hazardous materials and hazardous physical agents. Under this Act, members of the public will also be entitled to inspect copies of hazardous materials inventories which must be filed with medical officers of health. The Act also provides for the giving of information, including confidential business information, in medical emergencies. This Act will come into force on a date fixed by proclamation.

Newfoundland enacted, on May 1, 1987, changes to the Occupational Health and Safety Act, that also permit the adoption of regulations to establish WHMIS in its jurisdiction.

D. Mining Safety

Manitoba has adopted a regulation respecting the operation of mines under the Workplace Safety and Health Act. This regulation has been transferred from the Mines Act to the Workplace Safety and Health Act, bringing mine safety and health into the Department of the Environment and Workplace Safety and Health's general framework.

Many amendments have clarified and formalized existing provisions to ensure worker safety, and among them, the following are of greater importance:

- the duties of workplace safety and health committees have been clarified, providing for greater committee involvement in day-to-day activities;

- the definition of a serious injury has been clarified and the reporting requirements set out;

- a health surveillance program for workers is now required;

- existing practices, including submission of predevelopment plans, have been formalized in the regulation;

- the regulation's requirements have been clarified to make compliance easier.

A similar regulation has been adopted in Ontario. This regulation amends Regulation 694 of the Revised Regulations of Ontario to provide safer working conditions in mines.

This regulation requires the owner of a mine to assess the ground stability of a mine once a year, or prior to any major alteration. A mine design, consisting of drawings, plans and written specifications and assessments, must contain detailed information on the geological features, planned excavations, instances of ground instability, mining methods used, ground support systems and assessment methods planned and used. The mine design must be available at the mine site for review by the ministry inspectors and by the joint health and safety committee, if any, for the mine.

This regulation provides that special training programs must be developed jointly by labour and management for both hard rock and soft rock mines. Employers must ensure that each new full-time worker is given the Basic Common Core Program within the first year of employment.

An employer, in consultation with the joint health and safety committee, if any, must develop a timely communications system to pass information on a mine's safety conditions between all shifts and all workers and supervisors.

In addition, motorized mines vehicles will require, in certain circumstances, Falling Objects Protective Structures (FOPS) to protect operators from falling rocks.

A new provision, which will come into force on June 1, 1988, establishes minimum standards for lighting in mines. Illumination must be adequate for a worker to visually assess ground conditions around his work station. Cap lamps must be capable of providing a peak illuminance of at least 1500 lux at 1.2 metres from the light source. Where necessary, the employer will be required to install auxiliary lighting that will provide the illumination required. A record of cap lamp maintenance test results must also be kept.

E. Miscellaneous

Ontario has also adopted three other regulations under its Occupational Health and Safety Act. They deal with x-ray protection, offshore drilling for oil and gas, and diving operations.

The X-Ray Safety Regulation requires, among other things, that every employer who owns, uses or intends to use an x-ray source in a work-place must register with the Director of Special Studies and Services Branch of the Ministry of Labour. The installation and use of an x-ray source is also subject to the approval of a plan by an inspector upon application. Moreover, new rules for the safe use and operation of an x-ray source by a qualified person have come into force.

The Oil and Gas - Offshore - Regulation provides, among other things, the procedures that must be followed in reporting an accident, explosion or fire causing injury or disability, or in reporting an occupational illness, as well as the steps taken to prevent its recurrence.

The Diving Operations Regulation requires, among other things, that a diving plan be submitted before each diving operation by the diving supervisor. The diving plan sets out details about the operational procedures and a contingency plan for emergencies.

Québec has adopted an Act which came into force on January 1, 1987, entitled An Act respecting the Protection of Non-Smokers in Certain Public Places.

This Act regulates the use of tobacco in certain public places to ensure better protection for the health and well-being of non-smokers.

To this end, in premises occupied by a government agency, a municipal body, a school body or another public body (as defined in the Act) smoking is prohibited: 1) in a room or at a counter where services to the public are provided; 2) in a library, a laboratory, a conference room, a classroom or in a room where a seminar is being conducted; 3) in an elevator; and 4) in any other area designated as smoke-free by the person who is in the highest authority within the public body. In premises occupied by a health and social services establishment, smoking is prohibited except: 1) in quarters restricted to the personnel; 2) in a smoking room; or 3) in any other area designated as a smoking area by the person who is in the highest authority.

The Act also prohibits smoking aboard most buses; in enclosed premises used for religious, sports, judicial, cultural or artistic activities while those activities are in progress; in day care centres, stop-over centres or nursery schools; as well as in the waiting rooms of doctors' offices.

The Act also includes various rules regarding the rights of smokers and non-smokers with respect to premises shared by both.

A second scope of application is entrusted to the municipalities which are responsible for the enforcement of this Act in their territories, except as regards premises occupied by another public body. A municipality may adopt a by-law to prohibit smoking in any place not mentioned in the Act.

Finally, the Act provides certain powers of inspection and certain measures of control designed to protect the rights granted to non-smokers under this Act.

Finally, New Brunswick has very recently adopted a Radiological Health Protection Act which, among other things, requires the owners of radiation equipment (as defined) to register with the Director of Radiation Safety and to apply, each year, for a registration certificate with respect to the equipment. In addition, the installation of such equipment is not permitted without the written authorization from the Director. An application for approval must contain the plans, specifications and information required by regulation. This Act also governs the safe use and operation of the equipment by qualified personnel.