HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

1987-1988

47th ANNUAL MEETING OF THE
CANADIAN ASSOCIATION
OF ADMINISTRATORS
OF LABOUR LEGISLATION

CORNER BROOK, NEWFOUNDLAND
SEPTEMBER 13-14, 1988

Également disponible en français sous le titre
Les Faits saillants de l'évolution de la législation du travail
1987-1988

Report prepared for the 47th annual meeting of the Canadian Association of Administrators of Labour Legislation

Labour Canada

HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

August 1, 1987 to June 30, 1988

INTRODUCTION

Between August 1, 1987, and June 30, 1988, many significant changes were made in the different areas of labour legislation in Canada.

With respect to labour standards legislation, some of the most significant changes include: the adoption of pay equity acts in Nova Scotia and Prince Edward Island (note also that Newfoundland, without adopting legislation, has an administrative policy on pay equity, which applies to the public sector); minimum wage increases in Alberta, British Columbia, Nova Scotia, Newfoundland, Ontario, Prince Edward Island, Québec and the Yukon; as well as new provisions concerning parental leave in the federal jurisdiction and concerning, among other things, maternity leave in the Northwest Territories. In addition, important changes to employment standards legislation were adopted in Alberta, and were introduced in British Columbia, New Brunswick and Saskatchewan.

In the field of industrial relations, Manitoba, Québec and Alberta approved important changes to their general collective bargaining law. Also, changes to the general collective bargaining legislation were passed in Prince Edward Island and proposed in New Brunswick. In addition, bills introduced in New Brunswick will modify laws governing collective bargaining in the public and parapublic sectors, the modifications being particularly significant as regards labour relations within municipalities. During the period covered by this report, emergency laws were adopted at the federal level and in three provinces. With respect to the construction industry, legislative changes were made in Québec, and new bargaining rules were approved in Alberta. Moreover, the government of Québec passed legislation providing that associations representing performing, recording and film artists may be recognized and act as bargaining agents.

Finally, several jurisdictions have made changes to their occupational safety and health legislation. Among these changes, regulations have been issued under Part IV of the Canada Labour Code to give effect to the widening of the ambit of Part IV to cover aircraft, trains and ships, to regulate oil and gas exploitation on certain Canada lands and to regulate certain mining operations; and many laws and regulations have been enacted to implement the Workplace Hazardous Materials Information System (WHMIS). Please note also the adoption of the federal non-smokers'act.

I. EMPLOYMENT STANDARDS

A. Proclamation of Certain Acts Described in Last Year's Report

The Act to amend the Labour Act of Prince Edward Island, which allows New Year's Day, Good Friday and Christmas Day, as public holidays, has been proclaimed effective September 7, 1987.

Ontario's Bill 85, which amended the Employment Standards Act with regard to termination of employment and severance pay provisions, was proclaimed in force on June 15, 1987 for the most part, and on August 15, 1987 for the remainder. Among other things, this Act provides longer individual notice of termination periods, permits a laid off employee to choose between recall rights and severance pay. It also extends the right to severance pay to any employee who has 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. This Act also requires that specific information be provided to the Minister concerning group terminations.

Bill 154, the Pay Equity Act of Ontario, has also been proclaimed effective January 1, 1988.

B. Legislation of General Application

In Alberta, Bill 21, the Employment Standards Code, makes various modifications to Alberta's employment standards legislation, principally in the areas of hours of work, rest periods, vacations, individual notices, parental benefits, and wage protection. The Employment Standards Code repeals and replaces the existing Employment Standards Act. The law remains largely unchanged, except in the areas described below.

The most notable change with respect to hours of work is the reduction of the maximum daily hours of work from 12 to 10 hours, except in emergency situations.

Compressed work weeks are specifically permitted under the Code. An employer may 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 are permitted, however, so that averaging of hours can be made over the two-week period.

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

A third week of vacation with pay is provided after five years of employment with the same employer. Vacation pay for the extra week of vacation consists of an amount equal to two per cent of the employee's annual wages, or, in the case of employees paid on a monthly basis, the monthly wages of the employee divided by 4 1/3.

Adoption leave of up to eight weeks is available to either parent upon the adoption of a child under three years of age. The adoptive parent is entitled to the leave if he or she has been employed for a continuous period of at least one year with the same employer and has submitted a written notice of leave to the employer. Wherever possible this notice must be submitted at least two weeks prior to the leave.

The Code provides lengthier individual notice of termination, or payment in lieu of notice, or a combination of notice and payment. The notice required is as follows: a) one week for an employee who has been employed for more than three months but less than two years; b) two weeks, where employed for two years or more, but less than four years; c) four weeks, where employed for four years or more but less than six years; d) five weeks, where employed for six years or more but less than eight; e) six weeks, where employed for eight years or more but less than ten; and f) eight weeks, where employed for ten years or more. The combination of notice and payment which may be given must be such that the employee receives an amount at least equal to the amount the employee would have earned if he or she had continued to work until the end of the applicable notice period. Employees are required to give their employer up to two weeks' notice when leaving their jobs.

The Code deems employees' unpaid wages to be held in trust. This applies to all wages, overtime pay, vacation pay and general holiday pay due or accruing due to an employee, whether or not the amount has in fact been kept separate and apart by the employer. In addition, this amount is deemed to constitute a secured charge, whether or not it is registered, on the property and assets of the employer to a maximum of $7 500. This claim is payable in priority to any other claim or right, with the sole exception of a conditional sales agreement, duly created before or after this charge. This secured charge cannot, however, attach to real property until an order of non-payment is registered in a land titles office by the Director of Employment Standards.

Finally, among the noteworthy amendments, the Code permits the Director of Employment Standards to order an employer to reinstate an employee who has been suspended or discharged illegally for attempting to claim the rights conferred by this Code, because of garnishment proceedings against him or her, or for giving evidence required under the Code. The Director thus has the alternative to order reinstatement or to order that compensation be made to the employee. An appeal to an umpire, who has the power to confirm, vary or revoke the order, may be lodged within 15 days.

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

New Brunswick recently introduced Bill 64, An Act to amend the Employment Standards Act. The definition of the term "pay" would be expanded to include public holiday pay and pay in lieu of public holidays. Moreover, the definition of the word "wages" would be amended to exclude

public holiday pay and pay in lieu of public holidays in addition to vacation pay and pay in lieu of vacation as well as gratuities or honoraria, which are already excluded.

Many amendments purport to improve the rights of part-time workers. According to the existing legislation, a worker is required to work more than five hours per day to be entitled to the weekly rest-day. This entitlement threshold would be reduced to three hours per day. Other such thresholds that normally affect part-time employees would be removed, in particular: one requiring that an employee work 15 of the last 30 calendar days to be entitled to a paid public holiday; one requiring an employee to work 19 days in a calendar month in order to acquire the monthly credit of annual vacations in respect of that month; and one requiring that an employee work at least 24 hours per week to be entitled to an annual vacation.

The public holiday benefits would no longer be calculated on the basis of gross "pay" earned, but would instead be equivalent to three per cent of "wages". An employee who works on a holiday would be entitled to time and a-half for all hours worked, regardless of whether or not the employee would have been entitled to pay for a holiday not worked. In addition, if a collective agreement or an employment contract offer combined public holiday and vacation benefits at least as generous as those provided in the Act, the collective agreement or the employment contract would have precedence over the Act.

The remuneration for an annual vacation would also be calculated on the basis of wages only.

Protection against illegal dismissals or reprisals would be expanded to include testimony provided by an employee against an employer in the course of a proceeding, pursuant to any other provincial or federal law or regulation.

The group notice of termination provision would be amended to cover not only employees bound by a collective agreement, as is presently the case, but also employees who are not bound by such an agreement.

An important amendment would provide that the statutory lien may be constituted against the real or personal property of an insolvent employer with respect to pay due and owing any employee. The lien would become payable in priority over every claim, lien, privilege or encumbrance of any person including the Crown, a Crown corporation, or a Crown agency.

In addition, the Bill proposes that in the event of the death or serious illness of the mother of a newborn child, the father would be entitled to a leave of absence without pay of 17 weeks, less any period of

maternity leave actually used by the mother of the newborn child. Consequential amendments would be made so that the father would be entitled to be reinstated in the same position or a comparable one, as would either parent granted adoption leave or parental leave.

Finally, various new leave without pay provisions would be added to the Act in order to provide adoption leave of up to 17 weeks, parental leave of up to one week, and bereavement leave of up to three days on the death of close relatives and one day on the death of certain other relatives. An employer would be prohibited from dismissing, suspending or laying off an employee who has been granted a leave of absence or for reasons arising from the leave alone. An employee who has been granted a leave of absence would continue to accrue seniority during the leave.

In Saskatchewan, Bill 73, the Employment Benefits Act, received first reading June 3, 1988. This Bill would repeal and replace the existing Employment Standards Act. What follows is a summary of the major changes proposed in the Bill.

A meal break of one-half hour would be available to employees after five consecutive hours of work, except in certain circumstances.

Employers would be required to give a notice in writing of one pay period of any reduction in wages affecting an employee. A similar notice would be required from employers to advise, at least one week in advance, each employee of any significant reduction in his or her regular hours of work.

An employer who cancels or unilaterally changes an employee's vacation, after it has been fixed in accordance with the terms of the Act, would be required to reimburse the employee for any losses associated with the employer's action.

This Bill would require longer periods of notice of individual terminations as follows: a) one week, if an employee has three months or more of continuous service, but less than one year; b) two weeks, if the employee has one year or more but less than two years; c) three weeks, if the employee has two years or more but less than three years; d) four weeks, if the employee has three years or more but less than four years; e) five weeks, if four years or more but less than five years; f) six weeks, if five years or more but less than six years; g) seven weeks, if six years or more but less than seven; and h) eight weeks, if seven years of service or more.

Protection against unjust dismissal would be provided. An employee who has two years or more of continuous service, who is not bound by a collective agreement, and who is dismissed for any reason other than cause or a shortage of work may make a complaint that he or she has been unjustly dismissed. If the complaint is not settled through mediation by an officer, the matter may be referred to the Employment Benefits Board established by the proposed legislation. The Board may require the

employer to reinstate the employee and/or award up to 12 months' wages or a maximum of $10 000. An employee who is unjustly dismissed would be under a duty to mitigate his or her losses.

New sick leave provisions would require an employer to grant leave without pay of up to three months to an employee who has 12 months or more of continuous service and is unable to work due to illness or injury. The period of leave would be extended to six months, where an employee is undergoing treatment or rehabilitation pursuant to the Workers' Compensation Act. The employee would be entitled to be reinstated in the same position or in a comparable one unless, after the absence due to illness or injury, the employee is unable to perform the work performed prior to the absence. In such a case, the employer could assign the employee to a different position with different terms and conditions of employment, but could not terminate the employee within the six months following the leave unless there is just cause or a shortage of work.

Parental leave without pay of up to 26 weeks would become available to either parent, whether natural or adoptive, upon the birth or the adoption of a child. The employee would be required to submit, at least four weeks in advance, a written request specifying the date on which the leave is to start, the estimated date of birth or adoption, and the date on which the employee intends to return to work.

The period of leave would be extended, where the actual date of birth is later than the estimated date of birth, so that the employee would benefit from not less than six weeks' leave after the actual date of birth. No employer could require an employee to commence her leave prior to the three months immediately preceding the estimated date of birth, and then only if the pregnancy would unreasonably interfere with the performance of the employee's duties.

Finally, this Bill would provide significant changes to the working conditions of part-time workers. Employees who do not work full-time, but who have accrued two years or more of continuous service with the same employer and who normally work more than eight hours in a week or 35 hours in a month, would be entitled upon request to all the fringe benefits, on a prorated basis, to which full-time employees are entitled. There would be no possibility for employers to offer cash in lieu of benefits. Fringe benefits would include, for example, pensions, sickness and health benefits, long-term disability, and group insurance plans. In addition, this Bill would improve and clarify the public holidays and vacations with pay provisions, and ensure greater access to them by part-time workers.

The Northwest Territories recently adopted An Act to amend the Labour Standards Act with regard to hours of work and overtime, maternity leave, recovery of unpaid wages and various other provisions.

This Act provides, among other things, for the reduction of the standard workweek from 44 to 40 hours. The maximum hours of work are increased from 54 to 60 hours in a week. Moreover, certain other employees have been added to the list of exclusions from hours of work provisions.

The provisions respecting the calculation of overtime in a week during which a general holiday occurs are clarified. In such cases, the standard workweek is considered to be of 32 hours. Moreover, the calculation of overtime must not include any hours worked by an employee on the general holiday.

Maternity leave provisions are enacted. They provide a period of leave of a maximum of 20 weeks, commencing at any time during the period of 11 weeks immediately preceding the estimated date of birth. An employee is entitled to the maternity leave, without pay, if she has completed the minimum period of service with the same employer prescribed by regulation. She must also submit a written request for the leave at least four weeks in advance, and, if the employer requests it, provide a medical certificate stating that she is pregnant and giving the estimated date of birth. Where the employee is unable to give the required notice, due to a medical condition arising from the pregnancy, she is nonetheless entitled to the leave if she provides the employer with a medical certificate within two weeks after ceasing to work.

If the actual date of delivery occurs after the estimated date, the leave must be extended, at the employee's request, by the period of time between the estimated and the actual date of birth, to a maximum of another six consecutive weeks. Similarly, the leave must be extended, for medical reasons, by a maximum of another six weeks, where the employee provides the employer with a medical certificate stating that she is unable to return to work for reasons related to the birth. Conversely, the leave may be shortened, with the consent of the employer, and the employee may resume her employment before the expiration of the 20 weeks of leave.

The Labour Standards Officer may require, upon a request from the employer, an employee to begin her leave where the Officer is of the opinion that the employee cannot reasonably perform her duties because of the pregnancy.

Upon resuming her employment, the employee must be reinstated in the same position or in a comparable one, with not less than the wages, seniority and benefits accrued to the beginning of the leave, and with all increments to wages to which she would have been entitled had the leave not been taken. An employer who has suspended operations during the time an employee was on maternity leave cannot refuse to reinstate that employee upon resumption of operations, or deny her any of the above-mentioned conditions of reinstatement, because she has taken the leave.

No employer shall terminate an employee, or otherwise change a condition of employment without the employee's written consent, because of the pregnancy or because the employee has requested or taken maternity leave. The onus is on the employer to prove that a contravention to this provision did not occur. The Labour Standards Officer may order an employer found guilty of a contravention to, among other things, reinstate the employee and pay her any lost wages.

This Act also clarifies the lien and charge on property provisions. Unpaid wages constitute a lien, charge and secured debt in favour of the Labour Standards Board, dating from the time the wages were earned, against all the real or personal property of the employer, including money due or accruing due to the employer from a contract, account receivable, insurance claim, proceeds of a sale, or any other source. The wage claim is payable and enforceable in priority of all liens, judgments, charges or any other claim or right, except a mortgage or a debenture duly registered in a land titles office before the certificate of non-payment of wages is filed.

The Act also provides for the reciprocal enforcement of wage certificates with provinces or the Yukon Territory, and designates the Board as the authority responsible for enforcing the order, judgment or certificate for a reciprocating jurisdiction. The Board may issue a certificate of non-payment on behalf of the reciprocating jurisdiction and file it with the Clerk of the Supreme Court. The registration of the certificate makes it enforceable as a judgment of that Court.

In addition, the Labour Standards Officer is given the power to consider associated employers to be one and the same employer for the purposes of this Act. This declaration by the Officer, which may be appealed to the Board, makes the associated employers jointly and severally liable for any contravention of the Act or regulations.

Lastly, other provisions of this Act exempt managers from hours of work provisions, and empower the Commissioner to make regulations respecting domestic workers and maternity leave.

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

C. Minimum Wages

In Alberta, the minimum wage rates have been increased to $4.50 an hour for adult workers and to $4.00 an hour for workers under 18 attending school, effective September 1, 1988. The rate payable to workers under 18 not attending school has been abolished.

British Columbia has also increased its minimum wage rates, to $4.50 per hour for adult workers and $4.00 per hour for workers 17 years of age or under, effective July 1, 1988.

In Newfoundland, the general minimum wage rate has gone up to $4.25 per hour, effective April 1, 1988.

In Nova Scotia, the minimum wage rate payable to persons 18 years of age and over will be increased to $4.50 per hour, effective January 1, 1989. The rate payable to workers 14 to 18 years of age will go up to $4.05 per hour, as of the same date.

Ontario and Québec have again acted in concert to bring their adult minimum wage up to $4.75 per hour, effective October 1, 1988. Ontario's rate for students under 18 who work not more than 28 hours in a week or during a school holiday will become $3.90 per hour, effective October 1, 1988. Employees serving alcoholic beverages in licensed establishments will be entitled to $4.25 per hour or more, and domestic workers will no longer be the object of a special category, effective the same date. Moreover, the rate payable to fruit, vegetable and tobacco harvesters will also be increased to $4.75 per hour, effective January 1, 1989. Effective October 1, 1988, the maximum amount an employer may deduct for room and board will be $59.50 per week. In Québec, a draft regulation provides that persons who usually receive tips will be entitled to $4.03 per hour or more, and domestics who reside at their employer's home will receive at least $172 per week.

In Prince Edward Island, the minimum wage rate payable to workers 18 years of age and over will go up to $4.25 per hour, effective October 1, 1988, and to $4.50 per hour, effective April 1, 1989. The rate payable to workers under 18 will increase to $3.75 per hour, effective October 1, 1988 and $4.00 per hour, effective April 1, 1989.

Similarly, the Yukon's general minimum wage rate has gone up to $5.39 per hour, effective May 1, 1988.

Moreover, Manitoba has revised the various regulations under the Construction Industry Wages Act. In general, these regulations provide, effective August 5, 1987, upward adjustments in the minimum wages by occupation. The standard hours of work employees have remained unchanged.

Finally, the Northwest Territories have repealed the provisions respecting the special minimum wage rate for handicapped persons.

D. Parental Leave

New Brunswick and Saskatchewan have both recently presented amendments to their legislation pertaining to parental leave. In addition, Alberta has adopted adoption leave provisions. These provisions are described above in section B in greater detail.

The Northwest Territories have recently adopted new maternity leave provisions. Also described above in greater detail, they provide maternity leave of up to 20 weeks.

Moreover, the federal government has made certain changes to both the Canada Labour Code and the unemployment insurance rules respecting maternity leave. The amendment to the Code clarifies the employer's obligation to continue to pay his share of employee benefits relating to pensions, health or disability if the employee chooses to continue to pay his or her own share during maternity or child care leave. In addition, the Unemployment Insurance Act, 1971, has been amended to provide that the father of a newborn child may claim paternity benefits under the Act if he must remain at home to care for the child by reason of the death of the mother, or a disability rendering her incapable of caring for the child. This Act also permits the mother of a prematurely born child to interrupt her maternity benefits for the period during which the child must remain hospitalized, in order that those benefits may be resumed once the child returns home. This Act is deemed to have come into force to March 29, 1987, one year prior to the day this Act received royal assent. A regulation under the Unemployment Insurance Act, 1971, which also became effective retroactively to March 29, 1987, ensures that claimants who qualify to receive paternity or shared adoption benefits are subject to the same rules as persons eligible to receive special benefits (e.g., sickness, maternity or adoption benefits). These amendments reflect the new requirements of the Act, as amended by Bill C-116.

E. Hours of Work

The federal government has adopted various regulations respecting hours of work or hours of service of road transport vehicle operators. They are described in the section of this document which deals with occupational safety and health.

In British Columbia, a regulation was adopted to exclude residential care workers (as defined) from the overtime provisions of the Employment Standards Act. This regulation also provides that where such a worker is required by the employer to remain on site during a day, the worker is entitled to a rest period of eight hours or more during that day.

In addition, the employer must pay the worker at the regular rate of pay for two hours, or for the number of hours of work caused by the interruption of the rest period, if this number is greater.

In Nova Scotia, farm workers whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle, sheep, poultry, or animal furs have been excluded from the application of the provisions of the Minimum Wage Order respecting overtime pay and call-in pay. In addition, these workers have been exempted from sections 35 to 41, which deal with paid general holidays, and from sections 58 to 64 of the Labour Standards Code, which deal with hours of labour. These provisions became effective January 1, 1988.

The Ontario Regulation concerning domestics, nannies and sitters has been amended to provide that where such workers perform work during their weekly free period, the time spent working must be paid for at time and a-half, or added to a subsequent free period at the rate of one and one-half hours for each hour worked. This regulation also excludes these workers from Part IV of the Employment Standards Act, which deals with hours of work and overtime.

Moreover, Ontario has amended its Employment Standards Act to provide a remedy, which may include reinstatement, for employees who are dismissed because they refuse to contravene subsection 2(2) of the Retail Business Holidays Act. This subsection states that employees of retail business establishments may not perform saleswork on a holiday, including a Sunday. This does not, however, apply to certain small stores, as outlined in the Act. The legislation was made retroactive to December 2, 1987.

Finally, as previously mentioned in section B above, Alberta and the Northwest Territories are about to proclaim amendments to their hours of work provisions. Moreover, Saskatchewan has proposed certain amendments, contained in Bill 73, with respect to hours of work. In addition to the meal breaks and the notice of substantial reductions in the hours of work already described in section B above, this Bill contains a clause which would permit employers in the retail trade to require an employee to work, on one occasion per week, two shifts within one day without paying wages at the overtime rate for the hours worked in excess of eight hours during that day.

F. Recovery of Unpaid Wages

Alberta has adopted deemed trust for wages provisions. These are also described above in section B, and will come into force on a date fixed by proclamation.

In British Columbia, a Bill was recently introduced which would, among other things, make various amendments of an administrative nature to the recovery of unpaid wages provisions. These amendments would require more equitable and less onerous deposits from employers when they request that the Director of Employment Standards review an order. This amount, instead of constituting a fee payable to the government, could be applied to the reimbursement of the claim for unpaid wages. Moreover, the provision creating a lien would be expanded to include wages owing under an arbitration award filed pursuant to the terms of section 110 of the Industrial Relations Act.

New Brunswick proposes to reinforce its statutory lien provision. This amendment, which is part of Bill 64, is described in greater detail in section B above.

Similarly, the Northwest Territories have adopted new provisions making the claim for wages a secured charge, providing for reciprocity for

enforcing orders of non-payment, and permitting the identification of related employers. These provisions, which will come into force on a date fixed by proclamation, are described in greater detail in section B above.

G. Pay Equity

Nova Scotia has recently adopted a Pay Equity Act, similar to the legislation passed in Manitoba and Ontario.

The purpose of this Act is to increase the pay of employees in classes which are female-dominated where it is determined that, by reason of sex discrimination, these employees are paid less than they should be. This Act applies to the civil service and to the greater part of the broader civil service (i.e., crown corporations, hospitals, school boards, etc.).

Sex discrimination in pay is to be identified by undertaking comparisons between each female-dominated class and all male-dominated classes, whether in the same or another employee unit, in terms of the pay and of the value of the work performed. The criteria to be applied in determining the value of the work are the skill, effort and responsibility normally required in the performance of the work and the conditions under which the work is performed.

There is no discrimination where a difference in pay results from a formal seniority system or a merit pay system which is based on performance, from a temporary training or development program or assignment, equally available to men and women, or from a skills shortage that is causing a temporary inflation in pay.

The Act provides a staged approach, requiring that definite deadlines be met. In addition, the Act makes use of the collective bargaining process to achieve pay equity. Throughout the pay equity process an employer must meet and negotiate with its employee representatives; they must then bargain in good faith, and make every reasonable effort to reach an agreement. The pay equity process must begin September 1, 1988 with respect to the civil service, corrections services, highway workers, and the Victoria General Hospital and Nova Scotia Hospital. This process must begin September 1, 1989 for employees of crown corporations, other hospitals and school boards.

Within six months, an employer and all its employee representatives must endeavour to agree to a single system, one that does not discriminate on the basis of sex, for the evaluation of all job classes.

Within 21 months of the beginning of the process, the parties must apply the job evaluation system to determine and compare the value of the work performed.

Within 24 months of the beginning of the process, the parties must endeavour to agree to the quantum, allocation and orderly implemen-

tation, over a period not exceeding four years, of the pay adjustments required to achieve pay equity, in accordance with the terms of the Act. In achieving pay equity, no employer can reduce the pay of any employee, or demote any employee.

The Act establishes a Pay Equity Commission, whose mandate is to monitor the implementation of pay equity, to determine, in accordance with this Act, those matters upon which the parties fail to agree, to provide information and advice concerning pay equity, to prepare and maintain statistics, to prepare and disseminate educational material, and to perform such additional duties as the Minister may require. The Commission is invested with sufficient powers to carry out its mandate.

This Act came into force on May 25, 1988.

Prince Edward Island has also adopted a Pay Equity Act similar to those found in Manitoba, Ontario and Nova Scotia.

The object of this Act is to achieve pay equity in the public sector (as defined) by redressing systemic gender discrimination in compensation for work performed by employees in female-dominated job classes.

For the purposes of this Act, it is a discriminatory practice for an employer to establish and maintain differences in wages between employees in male-dominated classes and those in female-dominated classes who are performing work of equal or comparable value. In determining if a class is female-dominated or male-dominated, consideration is given to the historical incumbency of the class, gender stereotypes of fields of work (and such other criteria as may be prescribed by regulation), and not just to the fact that 60 per cent or more of the incumbents in the class are men or women.

The criterion to be used in determining the value of work is the composite of the skill, effort and responsibility normally required in the performance of the work, and the conditions under which it is normally performed. An employer cannot reduce the wages of any employee in order to implement pay equity.

Differences in compensation are not considered discriminatory, however, if they result from a formal appraisal system or a seniority system that does not discriminate on the basis of gender, or if they result from a skills shortage causing a temporary inflation in wages. In this case, however, the employer must establish that similar differences exist between the employees in the male-dominated class affected by the shortage and another male-dominated class performing work of equal or comparable value.

Every public sector employer must take such action as may be necessary to implement pay equity for its employees, and must, throughout the process, meet and negotiate with the appropriate bargaining agents

making every reasonable effort to reach agreement respecting the implementation of pay equity. The employer and bargaining agents must jointly endeavour to reach an agreement respecting the development or selection of a single gender-neutral job-evaluation plan or system as well as the classes to which the plan or system will be applied. The parties must jointly apply the plan or system in accordance with the agreement and decide the allocation of the quantum of pay equity adjustments to be made. In the event that the parties fail to reach an agreement, any contentious atter will be referred to an arbitration board constituted under section 40 of the Labour Act.

The Act provides various stages and deadlines in the implementation of a pay equity program. For the civil service, negotiations must begin three months after the Act comes into force, and for other public sector employers (including crown corporations and agencies, school boards, the College and the University, hospitals and nursing homes, etc.) fifteen months after proclamation. Within two years from the commencement of negotiations (Stage I), pay equity adjustments (Stage IV) must begin to be made. Stages II and III consist in the application of the evaluation plan or system and in the allocation of the quantum of pay equity adjustments.

A public sector employer is required to make annual pay adjustments equal to not more than one per cent of the total payroll for the preceding year until pay equity is achieved. Amounts in excess of one per cent may be required for the purpose of making retroactive adjustments under a pay equity agreement, or when so ordered by the Commissioner of Pay Equity or an arbitration board, or to combine the last two annual adjustments if the amount remaining in the final year is less than one per cent.

The Act establishes a Pay Equity Bureau in the Women's Division of the Department of Labour and sets out the information gathering, educational, advisory, investigative, and adjudicative roles of the Commissioner of Pay Equity and of the officers. The Bureau is invested with sufficient powers to ensure compliance with the requirements of this Act. The Act also sets out a complaint mechanism, as well as protection against intimidation, coercion, penalties, or discrimination for participating in a proceeding under this Act or seeking enforcement of the Act.

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

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In Manitoba, An Act to amend the Labour Relations Act (Bill 61) came into force on January 1, 1988 and is scheduled to expire on January 1, 1993. It provides for the inclusion in the Labour Relations Act of a dispute resolution mechanism known as "final offer selection".

Where a collective agreement is in force or has expired, either the employer or the union may request that the employees in the unit vote by secret ballot on the use of final offer selection. The request is made to the Manitoba Labour Board. There are two periods during which this procedure may be initiated. The first extends from the 60th to the 30th day preceding the expiry of the collective agreement and the second from the 60th to the 70th day 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 lock out is suspended pending resolution of the dispute. Under the new procedure, employer and union negotiators submit in writing their final offers on remaining unsettled contract items to an impartial third party known as the selector. They also provide a list of all terms and conditions agreed upon, and if they wish, material in support of their final offers. The parties have the opportunity to choose a selector jointly. If they fail to agree within seven days of the vote, the Manitoba Labour Board appoints a selector.

At a selection hearing, both sides in the dispute have an opportunity to present evidence and arguments in support of the final offer submitted. The selector then assesses the fairness of the two final offers and, within a period extending from the 8th to the 14th day after the hearing, selects the whole of the final offer of either the union or the employer. If one party fails to submit its final offer, the selector selects the final offer submitted by the other party. The decision of the selector is final and binding on the parties. It is not open to appeal or review in any court except on a question involving jurisdiction. Unless the parties agree otherwise, a collective agreement incorporating the decision of a selector remains in effect for one year. The parties are permitted to agree to amend it but not to reduce its term of operation.

While the final offer selection process is being carried out with respect to a dispute, the parties may continue bargaining. If a settlement is reached before the selector renders a decision, the agreed terms are deemed to have been ratified by the employees and the final offer selection process is terminated.

In Quebec, An Act to establish the Commission des relations du travail and to amend various legislation (Bill 30) was assented to on December 18, 1987.

The object of this Act is the establishment of a Labour Relations Commission (Commission des relations du travail). The new Commission replaces the following agencies: the Office of the labour commissioner general; the Labour Court (except for jurisdiction over penal matters); the Essential Services Council (Conseil des services essentiels); and the Office of the building commissioner. The mandate of the Commission is similar to that of labour relations boards existing at the federal level and in other provinces; and it hears and decides on, to the exclusion of any other tribunal, any complaint based on a contravention of the Labour Code and any application submitted to it in accordance with the Code. A decision of the Commission under the Code is not subject to judicial review, except on a question of jurisdiction.

Membership of the Commission

The Commission is composed of commissioners appointed by the Government upon the recommendation of the Minister of Labour, including a president and one or more vice-presidents. All commissioners are appointed after consultation with interested persons and bodies, including the Advisory Council on Labour and Manpower. The Act does not contain a requirement to choose Commission members from labour and management circles. The commissioners are appointed for a maximum term of seven years. During their tenure, they must avoid conflicts of interest or face forfeiture of office. However, such forfeiture does not occur if an interest devolves to them by succession or gift, provided they renounce or dispose of it with all possible dispatch. On the other hand, the commissioners and the personnel of the Commission are protected against prosecution by reason of omissions or acts done in good faith in the performance of their duties. In addition, the Act provides that they may not be compelled to divulge what has been disclosed to them in their attempt to bring the parties to an agreement, or to produce any document made or obtained on that occasion before any court, or any person or body exercising judicial or quasi-judicial functions. Such documents are also exempted from the coverage of the Act respecting access to documents held by public bodies and the protection of personal information.

Structure of the Commission

The president of the Commission is responsible for its administration, directs its personnel and sees to it that they carry out their duties within the scope of the regulations established. He coordinates the work of the commissioners who, in that respect, must submit to his orders and directives.

The Commission has at least two divisions. One of them limits its interventions to the public services and the public and parapublic sectors. It deals notably with matters relating to the maintenance of

essential services and may exercise special remedial powers in these sectors of activities. The other division has a more general mandate. With respect to the construction industry, the Act provides for the designation of a vice-president having responsibility for coordinating the activities of the Commission provided for in the Act respecting labour relations, vocational training and manpower management in the construction industry.

Powers of the Commission

The Commission has exclusive jurisdiction to hear complaints arising from the application of most provisions of the Labour Code. Certain complaints may not be submitted to the Commission, such as those relating to the anti-strikebreaking provisions. These complaints will be dealt with by the courts.

The powers and functions of the Commission include the following:

- the Commission administers the processes of trade union certification and decertification;

- the Commission may attempt to bring the parties to an agreement before rendering a decision; in this respect, the president of the Commission may appoint labour relations agents whose function is, among others, to attempt to re-establish a dialogue between the parties;

- the Commission may declare that a strike, a work slowdown or a lock-out is or would be illegal;

- the Commission has the authority to order any person, association or any group of persons or associations to comply with the Labour Code and notably to exercise the following powers:

  1. to order that they cease authorizing or participating in a current or upcoming unlawful strike, lockout or work slowdown;

  2. to order that they take measures that it deems appropriate to induce the persons represented by an association to cease participating in such an illegal action; and

  3. to order that grievance and arbitration procedures be amended so that the settlement of a grievance may be accelerated;

- In public services or in the public and parapublic sectors, where an actual or apprehended contravention of the Labour Code is or is

likely to be prejudicial to a service to which the public is entitled, the Commission also has the following remedial powers:

1. to issue a cease and desist order in view of maintaining the services to the public;

2. to apply appropriate measures of redress including the establishment of a fund for the benefit of the users of the service affected and to prescribe the terms and conditions governing the administration and use of the fund; and

3. to order a contravening party to make publicly known its intention to comply with the decision of the Commission.

- in the public services and the public and parapublic sectors, the Commission may exercise its remedial powers when there is a concerted action other than a strike, work slowdown or lockout that is or is likely to be prejudicial to a service to which the public is entitled;

- the Commission proceeds upon application by an interested person and according to the mode of proof it deems appropriate; however, it has discretion to exercise its remedial powers on its own initiative in public services and in the public and parapublic sectors;

- the Commission may render an interim decision in the case of a strike, work slowdown or lockout that contravenes or would contravene the Labour Code;

- the Commission may decline to exercise its remedial powers if it considers it equitable having regard to the conduct of the parties or if another recourse is available under a collective agreement;

- upon an application or on its own initiative, the Commission may, for cause, review or revoke a decision it has rendered, the re-examination may not be carried out by the committee of commissioners or the commissioner that rendered the decision; and

- upon an application of an interested party or on its own initiative, the Commission may file a decision at the office of the prothonotary of the Superior Court of the district concerned, giving it the same force and effect as a final judgment of that court.

Penal prosecutions

The jurisdiction of the Labour Court to decide, in first instance, in any penal prosecution brought under the Labour Code is transferred to the Court of the Sessions of the Peace. Penal proceedings may be taken by the Attorney General or, if the Commission gives its authorization, by an interested party. However, the authorization is not

required in the case of an offence that could not be the subject of a complaint to the Commission.

Coming into force

The provisions of the Act will come into force on a date or dates set by the government.

In Alberta, Bill 22, the Labour Relations Code, received third reading on June 30, 1988. It will come into force on proclamation, and will replace the Labour Relations Act.

Advisory Councils and Conferences

The legislation provides that the Minister of Labour may establish multi-sector advisory councils and will, from time to time, convene conferences assembling representatives of business, trade unions, the academic community and other groups he considers advisable to invite.

Negotiating Procedures

The Code introduces a method of neutral third-party assistance, through the services of a mediator, that provides for both early access to a mediator without a formal appointment as well as compulsory mediation with a formal appointment before a work stoppage may commence. The formal appointment of a mediator will provide for the issuance of either recommended terms of settlement for the parties to accept or reject, or no recommendation. A mandatory "cooling off" period of 14 days must precede any job action contemplated by the parties, which includes the taking of a strike or lockout vote by either party. Also, either party will be able to request Labour Relations Board supervision of a vote on its last offers, as well as on a mediator's recommendations if it has already indicated acceptance. A request for a vote on last offers may be made only once during any dispute.

In addition, disputes inquiry boards will continue to be available, and the government's power to order special procedures to settle certain disputes causing emergencies will remain.

Labour Relations Board Procedures

The Labour Relations Board will provide a number of informal and formal options to parties involved in an application or dispute.

Some cases will be resolved by an informal procedure, in which the chairman may refer the issue to one or more Board members. If settlement efforts succeed, the matter will end.

Where the informal process will appear at the outset unlikely to result in a settlement, the Board will refer the matter directly to a three - or five - person Board for hearing. Formal hearings will give

parties the right to be represented; evidence will be given under oath, and witnesses may be called and cross-examined.

Certification and Decertification Votes

The certification and decertification processes will be initiated by an indication from the applicant that it has obtained the support of at least 40% of the persons affected.

Once the Labour Relations Board is satisfied with respect to the 40% support, it will conduct a representation vote by secret ballot. Certification or decertification will take place if a majority of the employees who vote are in favour.

In order to expedite the certification/decertification process, the chairman and vice-chairman of the Board will be empowered to sit alone on specific issues associated with certification or decertification.

Bridging of Collective Agreements

A collective agreement will be deemed to continue until a strike or lockout commences; the right of the bargaining agent to represent the employees is terminated; or, a new collective agreement is concluded. Since a strike or lockout will not legally occur except within the parameters of the bargaining procedure defined within the new Code, generally speaking, collective agreements will remain in place while the parties bargain, until a work stoppage occurs.

Strikes and Lockouts

No strike or lockout vote will be permitted after the expiry of two years from the end of the "cooling-off" period mentioned previously. When such a prohibition will be in effect, the dispute will be deemed to no longer exist.

Status of an Employee During a Work Stoppage and Reinstatement

Similarly to the legislation that it replaces, the Code states that no person ceases to be an employee if cessation of work is the result of a legal strike or legal lockout. In addition, it provides that when a strike or lockout ends as a result of a settlement or the cancellation of bargaining rights, or when it terminates two years after its commencement, any employee not working because of his/her involvement in a legal work stoppage may apply to the employer to return to work in preference to any employee hired as a replacement worker. The application for reinstatement must be made in writing within a specific time period. 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.

Picketing

Peaceful picketing will be permitted at the employees' place of employment during a legal strike or lockout. However, upon application by any person affected by the strike or lockout, the Board will have specific powers that it may exercise. It will be empowered to determine whether any premises are a place of employment that can be picketed, to declare what number of persons may be involved in picketing, to determine the location and time of that action and make other declarations it considers advisable. In making a determination or order, the Board will be required to consider the directness of the interest of picketing persons and trade unions, any violence or likelihood of violence, the desirability of restraining picketing activities so that the conflict will not escalate, and the right to peaceful free expression of opinion.

Boycotts

Employees will be prohibited from refusing to perform work due to the performance or non-performance of other work by any person or persons not belonging to a trade union or a particular trade union. Employees will also be prohibited from refusing to take delivery of goods from a carrier or to assist it in the loading of goods for shipment, unless that carrier and his employees are engaged in a legal strike or lockout.

Firefighters and Hospital Employees

Firefighters and hospital employees will continue to be prohibited from striking. At present, disputes may be referred to a compulsory arbitration board which must take into consideration the government's fiscal policies. The Code will replace this requirement with a duty to consider the general economic conditions in the province.

Penalties for Illegal Strikes

Trade unions representing firefighters, hospital employees or employees affected by a suspension of their right to strike due to an emergency will be liable to particular sanctions if they declare an illegal strike. The Labour Relations Board will then have the power to order the employer to suspend dues check-off for a period of one to six months. Also, the government will have the power to order the Labour Relations Board to revoke the certification of a union causing or participating in such an illegal strike.

Strikebreaking

An employer or his representative will be prohibited from using or permitting the use of a person or organization not involved in a dispute and whose primary object, in the Labour Relations Board's opinion, is to prevent, interfere with or break up legal activities in respect of a strike or lockout.

Construction Industry

New bargaining rules applying to the construction industry are summarized in Section D of this report.

In Prince Edward Island, An Act to amend the Labour Act (Bill 65) was assented to on May 17, 1988 and will come into force by proclamation.

Among other things, the Act stipulates that the structure of the Labour Relations Board must be representative of employers and employees equally, and provides for the designation of one of the vice-chairmen as deputy chairman. It also reinstates a burden of proof provision in matters relating to unfair labour practices complaints, and provides that all representation votes as well as strike votes will be decided by a majority of those who vote, rather than a majority of those in the unit.

In New Brunswick, Bill 46, An Act to amend the Industrial Relations Act, received second reading on May 12, 1988. It provides that every collective agreement, entered into after the coming into force of the amendments or still in effect two years after that date, must contain provisions concerning technological change. Among other things, these provisions will define technological change, determine whether the employer has an obligation to give advance notice of technological change, and if advance notice is required, describe the contents of the notice. Where a collective agreement does not contain such provisions, it will be deemed to contain a provision allowing one party to submit the matter to arbitration for final and binding settlement, without stoppage of work. The parties to an agreement will be able to opt out of these provisions by expressly stating in their collective agreement that a benefit, privilege, right or obligation was agreed to in lieu of the application of the technological change provisions contained in the Act.

B. Public and Parapublic Sectors

In Prince Edward Island, an amendment to the Labour Act was brought into force on September 7, 1987, providing explicitly that nurses have the collective bargaining and other rights conferred by Part I of the Labour Act (Industrial Relations). However, employees of hospitals and nursing homes do not have the right to strike.

On April 9, 1988, the Collective Bargaining Regulations under the Nurses Act were revoked.

Another amendment to the Labour Act (Bill No. 65), adopted on May 17, 1988 and coming into force on proclamation, provides that certain hospital employees and non-instructional personnel in schools have the collective bargaining and other rights conferred by Part I of the Labour Act (Industrial Relations). It also states that employees of community care facilities and non-instructional personnel in schools do not have the right to strike.

In New Brunswick, Bill 45, An Act to amend the Public Service Labour Relations Act, received second reading on May 12, 1988. It provides that every collective agreement, entered into after the coming into force of the amendments or still in effect two years after that date, must contain provisions concerning technological change. Among other things, these provisions will define technological change, determine whether the employer has an obligation to give advance notice of technological change, and if advance notice is required, describe the contents of the notice. Where a collective agreement does not contain such provisions, it will be deemed to contain a provision allowing either party to submit the matter to arbitration before the Public Service Arbitration Tribunal for final and binding settlement, without stoppage of work. The parties to an agreement will be able to opt out of these provisions by expressly stating in their collective agreement that a benefit, privilege, right or obligation was agreed to in lieu of the application of the technological change provisions of the Act.

Also in New Brunswick, Bill 65, An Act to amend the Industrial Relations Act, was given second reading on May 18, 1988.

The Bill introduces new provisions applying to the employees of a municipal employer, including police officers but excluding full time firefighters whose contract disputes will continue to be resolved by binding arbitration if an agreement cannot be reached by the parties.

Under these new provisions, no strike of employees of a municipal employer will be permitted, unless a contingency plan has been filed with the Minister of Labour. The contingency plan will make adequate provision for the protection of the health, safety, security and property of the public during the strike. Among other things, the plan will designate an official of the municipal employer having full responsibility to direct the employees required to work during the strike. If a trade union and a municipal employer are unable to develop a contingency plan, at the request of either of them, and after allowing each party an opportunity to file a plan, present evidence and make representations, the Industrial Relations Board will approve a contingency plan as filed or substitute one of its own. A contingency plan developed by the parties or determined by the Board will then be filed with the Minister, without delay.

An employee of a municipal employer required to work during a strike in accordance with a contingency plan will not be permitted to participate in the strike. Subject to the provisions of the contingency plan, such an employee will continue to be covered by the expired collective agreement or, failing such an agreement, by the terms and conditions in force before the right to strike is acquired. In addition, no employee of a municipal employer will be permitted to picket, parade or in any manner demonstrate at or near the site or place of work of an employee who is required to work during a legal strike. As far as the municipal employer is concerned, it will not be permitted to declare a lockout or to hire a person to perform any of the normal duties of an

employee engaged in a legal strike. If the percentage of employees in a bargaining unit required to work during a strike in accordance with a contingency plan exceeds 30%, prior to declaring a strike, the union will be able to opt for binding arbitration. When an award is made in such circumstances, the arbitrator or arbitration board will be required to consider, among other factors, the local economic conditions and the fiscal policies of the Province applicable to the municipal employer.

If following a report of the Minister, the Lieutenant-Governor in Council believes that the trade union or municipal employer concerned has not made or is (or is likely to be) unable to make adequate provision for the protection of public safety, he may issue an order prohibiting a strike or the continuance of a strike.

In addition to changes to the Industrial Relations Act, amendments to the Police Act will establish an arbitration process replacing the Police Discipline Appeal Board as the appeal body in relation to appeals from sanctions imposed against members of a police force.

Also, by virtue of amendments to the Police Act and the Public Service Labour Relations Act, provisions that determine what can be bargained by municipal police forces and the New Brunswick Highway Patrol will be repealed.

C. Emergency Legislation

In the last 11 months, emergency legislation was adopted at the federal level, as well as in Saskatchewan, Ontario and Quebec.

In the federal jurisdiction, the Maintenance of Railway Operations Act, 1987, was enacted on August 28, 1987.

The Act was adopted to ensure the resumption and continuance of railway operations in the country. It was divided into four parts.

Part I dealt with a work stoppage, affecting both national railways, of employees represented by nine unions bargaining in a coalition known as the Associated Railway Unions. It came into force on August 29, 1987, 12 hours following royal assent. The railway companies concerned were ordered to resume operations and all employees on strike were obliged to return to their duties, without delay, when so required. The term of each collective agreement between the parties was extended to cover the period from January 1, 1987 to December 31, 1988. With the consent of the parties, an agreement could be further extended for a maximum period of one year by an arbitrator appointed by the Minister of Labour to settle all matters in dispute concerning the amendment or revision of each collective agreement. The arbitrator's decision was to be incorporated into each collective agreement, as well as any amendments agreed to by the parties. The parties could agree to amend any provision of an agreement modified as a result of the adoption of the legislation, except as regards the term of operation. Substantial fines were provided

for a contravention of the Act by a railway company, a union, an officer or representative of either of them, or an individual.

The legislative measures contained in Part I were also found in each of the three other parts of the Act. These parts addressed other disputes that could have disrupted railway operations. Part II applied to disputes between Canadian Pacific Limited and five unions forming the Canadian Council of Railway Shopcraft Unions. The other parts applied to disputes between the Canadian National Railway Company and three unions in the Canadian Council of Railway Shopcraft Unions (Part III) and the International Brotherhood of Locomotive Engineers (Part IV). Part IV was brought into force by proclamation on September 1, 1987. Parts II and III were not proclaimed.

On October 16, 1987, the federal government also passed the Postal Services Continuation Act, 1987. This law was adopted to bring an end to a dispute between the Canadian Union of Postal Workers and the Canada Post Corporation. From 1:00 a.m. on October 17, 1987, the employer was required to continue or resume postal operations and every employee concerned was required to continue or resume the performance of his/her duties when so required. The application of the collective agreement that expired on September 30, 1986 was extended for a term established by a mediator-arbitrator of not less that two years but not more than three years. The terms and conditions of the collective agreement, as modified during the process of dispute resolution prescribed in the legislation, were made binding on the parties for the period of extension.

All matters in dispute relating to the amendment or revision of the collective agreement were referred to a mediator-arbitrator appointed by the Minister of Labour. Within 90 days after the date of appointment, or a longer period allowed by the Minister, the mediator-arbitrator was to mediate all matters in dispute and, if an agreement could not be brought about in respect of any of them, he was to act as an arbitrator. Before proceeding with the arbitration of any matter, the mediator-arbitrator was to hear the parties and give cognizance to the report of the conciliation commissioner previously appointed. Once a new agreement was in place, the parties were permitted to mutually agree to amend any of its provisions, except as regards the term of operation.

Substantial fines were provided for a contravention of the Act by an individual (from $500 to $1000), by an officer or representative of one of the parties (from $10 000 to $50 000) and by the employer or union (from $20 000 to $100 000). These fines were applicable to each day or part of a day during which the offence continued. In addition, an officer or representative of either party convicted of an offence under the Act was prohibited from being employed by that party or acting as its officer or representative for five years from the date of the conviction.

On January 20, 1988, another law, the Prince Rupert Grain Handling Operations Act, was adopted by the federal government to bring an

end to a dispute between the Grain Workers' Union, Local 333 and Prince Rupert Grain Ltd. The union members had been on strike since December 9, 1987, effectively halting the flow of export grain shipments through the port of Prince Rupert, British Columbia. The employer was required to resume grain handling operations at Ridley Island in the port of Prince Rupert effective January 21, 1988, and every employee was required to resume the performance of his/her duties when so required. The collective agreement that expired on December 31, 1983 was extended until December 31, 1989. During this period of extension, the terms and conditions of the agreement, as modified during the process of dispute resolution prescribed in the legislation, were made binding on the parties.

The agreement was deemed to be amended by the incorporation therein of the terms and conditions of the current collective agreement between the B.C. Terminal Elevator Operators' Association and the union. However, the matters in dispute relating to staffing at the grain centre, job classifications and security personnel were referred to an arbitrator appointed by the Minister of Labour. The arbitrator was to submit a decision within 45 days after the appointment, or a longer period agreed upon by the parties. Once a new agreement was in place, the parties were permitted to agree to amend any of its provisions, except as regards the term of operation.

Substantial fines were provided for a contravention of the Act by an individual (from $500 to $1000), by an officer or representative of one of the parties (from $10 000 to $50 000) and by the employer or union (from $20 000 to $100 000). These fines were applicable to each day or part of a day during which the offence continued.

In Saskatchewan, the University of Saskatchewan (Resumption of Instruction, Teaching and Examinations) Act was passed to provide for a temporary cooling-off period allowing the University of Saskatchewan Faculty Association and the University of Saskatchewan to resume collective bargaining.

On April 8, 1988, the employees were required to resume their duties; the employer was required to permit them to do so; and work stoppages were prohibited until May 12, 1988. The last collective agreement between the parties was extended to cover the period from July 1, 1987 to May 12, 1988.

Following the coming into force of the Act on April 8, 1988, the parties had five days to appoint a mediator or one would be appointed by the Minister of Human Resources, Labour and Employment. If the dispute was not resolved before May 12, 1988, the mediator was to submit a report to the Minister on that date concerning the status of the negotiations.

The Act provided for fines and court orders applying in cases of non-compliance. It expired on May 13, 1988.

Also in Saskatchewan, the Regina Police Services (Continuation of Services) Act was passed to prevent a strike by the Regina City Policemen's Association. As of its coming into force on May 19, 1988, the members of the association were required to continue the duties of their employment, and the employer was required to permit them to do so. The last collective agreement between the parties was extended from December 24, 1986 to the date on which a new or amended agreement was concluded in accordance with the legislation. Work stoppages were prohibited during this period of extension. If eight days after the coming into force of the Act a new or amended agreement had not been concluded between the employer and the association, the parties were then required to submit the matters in dispute to final and binding arbitration. The arbitrator was named in the legislation, and if for any reason he was unable to act, another person could be appointed by the government. If the parties negotiated and settled all matters in dispute while these matters were being considered by the arbitrator, the arbitration process was terminated. The Act provided for substantial fines and court orders applying in cases of non-compliance.

In Ontario, the Toronto Economic Summit Construction Act, 1988 was assented to on April 28, 1988.

The Act was passed to facilitate construction work required for the Toronto Economic Summit of June 1988. Provincial agreements in the construction industry were expiring on April 30, 1988 and as a result, work stoppages could occur.

For the purposes of carrying out construction work on the lands and premises in and near the Metropolitan Toronto Convention Centre and required in connection with the Toronto Economic Summit, each provincial agreement in operation on April 29, 1988 was continued until replaced by a new ratified provincial agreement. However, this extension did not apply later than June 30, 1988. Strikes and lockouts in respect of such construction work were prohibited. The Act ceased to have effect on June 30, 1988.

In Quebec, An Act to amend the Act to ensure that essential services are maintained in the health and social services sector was passed on June 22, 1988 and came into force on the same date. The amended legislation had been adopted on November 11, 1986, and the purpose of the June 1988 amendment was to make every person operating an ambulance service anywhere in Québec and the employees of such a person subject to its provisions.

D. Construction Industry

In Quebec, An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry (Bill 114) came into force on December 18,1987. Its main object is to extend the time for negotiating collective agreements in the construction industry, to make a corresponding change in the prescribed time for

changing union allegiance in the industry, and to make the effective date of the workers' choice of union allegiance coincide with the beginning of negotiations.

Also in Quebec, the Construction Decree was extended and amended with the consent of the Association of Building Contractors of Quebec and of associations representing more than 50% of the employees.

The Decree which was scheduled to expire on April 30, 1988 was extended until April 30, 1989. Effective May 1, 1988, the wage rates were increased by 5%; there was an equivalent increase in the amounts provided as compensation for travelling expenses.

In addition, on June 17, 1988, Quebec passed Bill 31, which amends the Act respecting labour relations, vocational training and manpower management in the construction industry. The amendments came into force on June 17, 1988, except for certain provisions dealing with the new concept of "independent contractor". The latter will take effect on January 1, 1989.

As a result of amendments made to the Act, certain construction work carried out for personal and non-profit purposes will no longer be covered by the Act and the Construction Decree. The type of work concerned consists in maintenance, renovation, repair and alteration work in respect of a dwelling in which the person for which the work is done lives, as well as the construction of a garage or a storage shed adjoining such a dwelling. However, any worker performing electrical, plumbing or carpentry work in such circumstances will be required to hold an appropriate competency certificate. In addition, a worker carrying out plumbing or electrical work will have to hold a contractor's licence.

Other amendments grant the Quebec Construction Commission (Commission de la construction) additional powers to ensure the application of the Act and the Construction Decree, and increase the amount of the fines applicable to violation cases.

Lastly, amendments to the Act respecting manpower vocational training and qualification will authorize the Minister of Manpower and Income Security to set up optional training and qualification programs in respect of non-regulated trades.

In Alberta, Bill 22, the Labour Relations Code, passed third reading on June 30, 1988, and will come into force on proclamation. It contains new rules governing collective bargaining in the construction industry that will replace those provided in the Labour Relations Act and the Construction Industry Collective Bargaining Act.

The Code provides that an employers' organization may apply to the Labour Relations Board to be registered as the collective bargaining agent for the employers in respect of a part of the construction industry that the employers' organization considers appropriate for collective

bargaining. The expression "part of the construction industry" refers to a part of the industry that operates within a particular trade jurisdiction established by the Board and a particular sector determined by work characteristics and specified in regulations. An application for registration must specify that part of the construction industry for which registration is sought, and the trade unions the employers' organization seeks to have included within the scope of the registration.

An application for registration will require evidence, in a form satisfactory to the Board, that the employers' organization has as members at least 40% of the employers engaged in that part of the construction industry to which the application relates, with whom one or more of the trade unions in the group of trade unions specified in the application have established collective bargaining rights. A representation vote by secret ballot will be conducted by the Board, and will be decided on the basis of a majority of the ballots cast by the employers affected. One or more registration certificates will be granted for a part of the construction industry on a province-wide basis for a trade jurisdiction within a sector of the industry.

In deciding which trade unions to group together in respect of a registration certificate, the Board will notably consider the province-wide nature of bargaining, the fact that local trade unions are affiliated with, or are locals of, one or more trade union organizations, and the ability of the trade unions to bargain collectively and to administer a collective agreement as a group.

A collective agreement entered into by parties covered by a registration certificate will terminate on April 30, calculated biennially from April 30, 1989. The Code's provisions on bridging of collective agreements will apply.

Prior to the commencement of each biennial round of collective bargaining with respect to registered employers' organizations and groups of trade unions affected by registration certificates, the Board will determine which registered employers' organizations and groups of trade unions will be consolidated for the purposes of the ensuing round of collective bargaining. In making such a determination, the Board will consider any affiliation of groups of trade unions with a central body, the likelihood of common industrial action and serial strikes and lock-outs, as well as the sectors within the construction industry.

The Board will supervise strike votes in respect of the construction industry subject to registration certificates on the basis of a consolidation order. It will not supervise a strike vote with respect to a group of trade unions in a sector until it receives applications from at least 60% of all those groups of trade unions in a sector that have been consolidated and that have not reached an agreement.

A strike vote with respect to each of the groups of trade unions that have been consolidated will be deemed in favour of a strike only if,

in at least 60% of the groups of trade unions, at least 50% of the employees who vote in each group are in favour of strike action. In addition, a strike will be legal only if at least 60% of the employees participating in the overall consolidated vote are in favour of the strike. If a supervised vote is in favour of a strike, all those groups of trade unions wishing to strike may do so only if they serve strike notice and strike at the same time. Similar requirements will apply to a lockout.

The Code provides that when a strike commences that affects employers on whose behalf a registered employers' organization bargains collectively, the bargaining agent may, 60 days after the beginning of the strike, make a settlement with one or more of the employers. A similar provision applies to an employer affected by a lockout. Such a settlement remains in effect until the earliest of the revocation of the bargaining rights, the expiry of the term specified in the settlement (one year if no term is specified) and the entering into a collective agreement between the registered employers' organization and one or more bargaining agents.

When 75% of the groups of trade unions and registered employers' organizations in a sector have entered into collective agreements, at the request of one or more of the parties who have not reached a settlement or on his own initiative, the Minister will refer the remaining items in dispute to the Construction Industry Disputes Resolution Tribunal established under the Code. When the Minister takes such action, any strike or lockout will be deemed to terminate, and the terms and conditions of employment that applied to the parties immediately prior to the strike or lockout will be deemed to continue.

Similarly to present legislation, the Code will permit applications for common employer declarations in the construction industry. It specifies that if the Board considers that activities are carried on by or through more than one corporation, partnership, person or association of persons in order to avoid a collective bargaining relationship with a trade union in a part of the construction industry, it will make a declaration extending the collective bargaining relationship effective as of the date on which the application was made or any subsequent date. The Code also provides that the Board will not make such a declaration in respect of a corporation, partnership, person or association of persons that does not have employees performing work of the kind performed by members of the applying trade union.

Non-union employers will be exempted from common employer declarations for a period of one year from the coming into force of the new legislation. However, this will not apply to employers who, through certification, become obliged to bargain collectively with a trade union after June 5, 1987.

In addition, the Code contains special provisions relating to major construction projects. They provide that a person who wishes to engage in a major construction project, as defined, may apply to the

Minister for an authorization allowing a principal contractor to bargain collectively with respect to that project. If the Minister considers that the project is significant to the economy of the province, he will forward the application to the Lieutenant-Governor in Council, who may designate the project as one to which the special provisions apply, and authorize the principal contractor to bargain collectively in respect of that project. The Code lays down particular rules that will apply to collective bargaining in relation to designated construction projects, and it specifies that no principal contractor or employer for whom a principal contractor is authorized to bargain and no trade union or persons will strike or lock out with respect to such negotiations.

Finally, the Code contains provisions relating to work jurisdiction disputes in the construction industry. Under these provisions, the Minister will have the power to make any regulations that he considers necessary for the purpose of effecting the final and binding settlement of differences arising in the construction industry with respect to the assignment of work to members of a trade union or to workers of a particular trade, craft or class. Such regulations may provide for the establishment of the Alberta Impartial Jurisdictional Disputes Board. Also, the Minister may enter into an agreement with one or more persons or organizations concerning the establishment and operation of such a board.

E. Performing, Recording and Film Artists

On December 17, 1987, Quebec passed An Act respecting the professional status and conditions of engagement of performing, recording and film artists (Bill 90).

This law recognizes the professional status of performing, recording and film artists who practise their art as creators or performers on their own account. Moreover, it establishes a system for the negotiation of group agreements and creates an Artists' Associations Recognition Commission (Commission de reconnaissance des associations d'artistes) with the duties and powers required for the implementation of the negotiation system.

For the purposes of the system of negotiation, the Act establishes, with respect to the status of artists, the presumption that creators and performers act on their own account so far as they regularly bind themselves to one or several producers by way of engagement contracts pertaining to specified performances.

The legislation guarantees an artist's freedom to join an artists' association. It also allows him or her to negotiate and agree to the conditions of engagement by a producer. An artist and a producer bound by the same group agreement cannot, however, stipulate conditions that are less advantageous for the artist than those provided in that agreement.

The Act provides that the Commission grants recognition to an association if the latter comprises the majority of artists in the negotiating sector that it defines and if the by-laws of the association fulfill the prescribed requirements. Only one association may obtain recognition for a negotiating sector. Recognition allows an artists' association to negotiate, with an association of producers or with a producer who does not belong to such an association, a group agreement with a term of not more than three years, that will be binding on the producers and on the artists in the negotiating sector concerned.

Recourse to mediation or voluntary arbitration is possible. The parties are permitted to resort to pressure tactics except during the term of a group agreement or arbitration award. It is prohibited to induce a third party to boycott a producer.

A group agreement binds a producer and every artist belonging to the negotiating sector who is engaged by the producer. In the case of an agreement concluded with an association of producers, the agreement binds every producer who is a member of the association at the time of the signing of the agreement or who subsequently becomes a member thereof, even if he ceases to belong to the association or if the association is dissolved.

The Artists' Associations Recognition Commission is composed of three members. Its main duties are to define sectors for the negotiation of group agreements, to grant recognition to professional artists' associations and to appoint a mediator at the request of a party for the negotiation of a group agreement or to act as an interest arbitrator at the request of both parties. The Commission's decisions are final and without appeal. They are not subject to judicial review except on a question of jurisdiction.

In addition, the Act contains penal provisions imposing fines on offenders. Finally, it provides for the continued application of group agreements in force on April 1, 1988 which is the date on which a large number of provisions came into force. The legislation will be wholly effective on November 1, 1988 when the provisions on recognition of artists' associations will take effect.

The Minister of Cultural Affairs is responsible for the administration of this Act.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Legislation of General Application

The federal government has continued the review of its occupational safety and health legislation to make it more relevant to the various industries under its jurisdiction. Thus, it has adopted the Oil and Gas Occupational Safety and Health Regulations under the Canada Labour Code.

These regulations, made pursuant to section 106.3 of the Code, prescribe standards whose enforcement will provide a safe and healthy workplace for employees working in the exploitation of oil or gas in Canada lands (as defined in the Canada Oil and Gas Act).

These regulations adapt most of the requirements of the general Canada Occupational Safety and Health Regulation to this industry and the language used makes the regulations more relevant and understandable to all levels in the workplace. For example, the standards for first-aid take into account various industry-specific situations.

In general, the regulations contain provisions respecting building safety, temporary structures and excavations, elevating devices, boilers and pressure vessels, levels of lighting, levels of sound (maximum exposure for an eight-hour period to continuous noise is set at 85 to 90 dBA), electrical safety, sanitation, dangerous substances, confined spaces, safety materials, equipment, devices and clothing, tools and machinery, materials handling and storage, hazardous occurrence investigation, recording and reporting, first aid, as well as respecting the safe occupancy of the workplace.

The three main benefits of bringing the employees of this industry 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) these employees 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 Canada Oil and Gas Lands Administration Drilling Regulations, these occupational safety and health regulations will ensure employee protection.

These regulations became effective October 30, 1987.

In addition, the federal government has adopted an amendment to the Canada Safety and Health Regulations. This amendment follows from the adoption of the Oil and Gas Occupational Safety and Health Regulations and is necessary in order to avoid duplication of application. The effect of this amendment is to allow employees employed on or in connection with the transportation of oil or gas through interprovincial pipelines to continue to be governed by the general regulation. All other employees employed on or in connection with the oil and gas industry that come under federal jurisdiction are regulated by the new industry-specific regulation described above. These regulations became effective October 30, 1987.

Moreover, the federal government recently adopted an Act entitled "The Non-Smokers' Health Act". This Act establishes the duty of every federally-regulated employer in both the public and private sectors to provide a smoke-free workplace for all employees. Nothing in the Act, however, prevents an employer from providing a designated smoking room, which must be separately ventilated, wherever reasonably possible. In addition, smoking is prohibited on an aircraft operated by a Canadian air carrier, a passenger ship, a passenger train or a passenger motor vehicle operated pursuant to the terms of federal acts regulating these means of transportation. Regulations may be made permitting smoking, under prescribed conditions, in a designated smoking area during flights of more than two hours, during international flights, or during the conveyance of passengers by ship, train or bus. This Act will come into force by proclamation.

Nova Scotia has adopted new regulations concerning first aid.

These regulations establish the obligation of all employers to provide and maintain first-aid services, equipment and supplies, the extent of which are determined in accordance with the number of workers employed on any one shift at a workplace. They also establish special requirements for underground mining and surface works.

In addition, these regulations repeal sections 54 to 76, inclusively, of the Industrial Safety Regulations and sections 114 to 120, inclusively, of the Construction Safety Regulations, which previously established the first aid requirements. These regulations became effective on March 1, 1988.

In the Northwest Territories, amendments to the General Occupational Safety Regulation have been adopted, principally to add provisions respecting work in confined spaces, ventilation, and safety-belts, body-harnesses, lanyards and life-lines.

B. Workplace Hazardous Materials Information System / The Right to Know

The federal government has adopted a number of regulations concerning the implementation of the Workplace Hazardous Materials Information System (WHMIS) in the federal jurisdiction.

At the outset, the reader should note the proclamation of Part III of an Act to amend the Hazardous Products Act and the Canada Labour Code, to enact the Hazardous Materials Information Review Act and to amend other Acts in Relation Thereto, effective October 1, 1987. Part III consists of the Hazardous Materials Information Review Act.

A total of four regulations have been adopted by the federal government to implement various aspects of the WHMIS, respecting, for example, the disclosure of ingredients of chemical products, the supply of material safety data sheets, and labels, as well as worker training. These regulations will come into force on October 31, 1988.

First, a regulation entitled "Ingredient Disclosure List" under the Hazardous Products Act, contains a list of the chemicals which must be identified on material safety data sheets if they are included in products which fall into the hazard criteria established under the Controlled Products Regulations, described below, in accordance with the WHMIS.

A second regulation establishes the criteria for determining the validity of a claim for exemption from disclosing product information in accordance with the WHMIS. This regulation is entitled the "Hazardous Materials Information Review Regulations" under the Hazardous Materials Information Review Act.

The Controlled Products Regulations under the Hazardous Products Act require suppliers of hazardous materials to provide labels and material safety data sheets as conditions of sale or importation. Generally, a material safety data sheet (MSDS) must contain information specifying: 1) hazardous ingredients; 2) who prepared the MSDS and when; 3) product information (manufacturer, supplier, product use, etc.); 4) physical data (physical state, odour and appearance, vapour pressure, evaporation rate, boiling point, freezing point, etc.); 5) fire or explosion hazard; 6) reactivity data; 7) toxicological properties (routes of entry, effects, exposure limits, carcinogenicity, teratogenicity, mutagenicity, etc.); 8) preventive measures; and 9) first-aid measures. Labels on controlled products must identify the product, contain a statement to the effect that a MSDS is available and a specified hazard symbol, and include the appropriate risk phrases, precautionary measures to be followed and first-aid measures to be taken.

Among other things, these regulations also set out the criteria for the classification of hazardous products, by reference to specific test guidelines or standard testing methods.

Lastly, a regulation has been adopted to amend the Canada Occupational Safety and Health Regulations under the Canada Labour Code.

These regulations require employers of federally-regulated enterprises to ensure that labels, material safety data sheets and worker education programs are provided in accordance with the WHMIS.

In addition to these regulations, the federal government has adopted four industry-specific regulations to implement the WHMIS on board ships, trains and aircraft as well as in the oil and gas industry. These Occupational Safety and Health Regulations under the Canada Labour Code provide amendments necessary to prescribe, by reference to the federal Controlled Products Regulations and the Hazardous Products Act, the products which must be labelled and for which a MSDS must be prepared. These regulations establish the employer obligation to ensure that all such products are properly labelled and appropriate MSDSs are provided.

In addition, the regulations require employers to provide workers with education programs designed to inform them of all hazards concerning a controlled product and to instruct them in the proper use, storage and handling of such a product.

The regulations also establish certain other requirements, where an employer has applied for an exemption in order to protect confidential business information that would otherwise be disclosed on a label or on a MSDS.

These regulations will come into force on October 31, 1988.

Alberta has recently adopted an Act to amend the Occupational Health and Safety Act. This Act provides that any substance may be designated, by regulation, as a controlled product. An employer responsible for a work site must ensure that, if a controlled product is used, stored, handled or manufactured at the work site, the controlled product is labelled appropriately and a MSDS, containing the information required by regulation, is made readily available. In addition, the employer must ensure that any worker who works with a controlled product, or in proximity to one, receives education, instruction or training with respect to the controlled product in accordance with the regulations.

Regulations may be made pursuant to this Act to govern, among other things, the preparation of the MSDS pertaining to controlled products as well as worker training.

This Act also provides for employer-paid medical examinations of workers, the obligation of an employer or of a principal contractor to prepare a code of practice and to post it in a conspicuous place, the investigation of a situation of imminent danger, as well as various other matters of an administrative nature.

A Bill providing for the implementation of the WHMIS was proclaimed on June 30 in British Columbia. This Bill amends the Workers' Compensation Act and the Workplace Act to enable the government of British Columbia to adopt regulations respecting the disclosure of information, by labelling or otherwise, relative to hazardous or potentially hazardous materials to workers handling them or working nearby. This Bill also permits persons required to disclose information to request an exemption in order to protect certain trade secrets.

The Manitoba Regulation respecting the Workplace Hazardous Materials Information System under the Workplace Safety and Health Act has been adopted.

This regulation establishes the WHMIS in Manitoba. It prescribes, by reference to the federal Controlled Products Regulations and the Hazardous Products Act, the products which must be labelled and for which a MSDS must be prepared. It establishes the employer obligation to ensure that all such products are properly labelled and an appropriate MSDS provided.

In addition, the regulation requires employers to provide workers with education programs designed to inform them of all hazards concerning a controlled product and to instruct them in the proper use, storage and handling of such a product.

The regulation also provides an exemption that can be applied for where an employer requires protection of confidential business information that would otherwise be disclosed on a label or on a MSDS. However, if an exemption is granted, such information cannot be withheld from a medical professional who requests it for the purpose of making a diagnosis of, or rendering treatment to, a person in an emergency. This regulation will come into force on October 31, 1988, or, with respect to certain provisions, 90 days after that date.

Manitoba has also adopted the Workplace Health Hazard Regulation under the Workplace Safety and Health Act.

This regulation imposes several obligations upon employers in order to prevent, in as much as is reasonably practicable, health hazards to workers.

To achieve this, employers must apply requirements to controlled products found in fugitive emissions and hazardous wastes similar to those applicable to controlled products in the Workplace Hazardous Materials Information System Regulation. Employers are required to evaluate and make appropriate determinations with respect to each ingredient of each controlled product used, stored or handled, each fugitive emission produced or disposed of and each hazardous waste produced, stored, handled or disposed of at a workplace. The purpose of this is to ascertain whether, to what extent and in what manner a controlled product is or may be a health hazard to workers.

The regulation also requires employers to take steps to ensure that where a worker is or might be exposed to a health hazard of a controlled product, the workplace is monitored and, where necessary, control measures are used to eliminate the health hazard. In addition, the employer must develop and implement a prevention plan in consultation with the workplace safety and health committee or the worker safety and health representative.

Finally, the regulation provides that an employer must keep a record of the actions taken to prevent health hazards, and must grant access to those records to workers, the workplace safety and health committee or the worker safety and health representative.

This regulation will come into force on October 31, 1988, or, with respect to certain provisions, 90 days after that date. It repeals Manitoba regulations 206/77 (concerning spray painting) and 208/77 (about industrial processes, particularly those involving lead or benzol) as well as section 11 (about control of dusts, vapours or gases) of Manitoba Regulation 210/77.

New Brunswick has amended its Occupational Health and Safety Act, amendments which were proclaimed in force on June 30, 1988, to provide for the protection of trade secrets while giving greater importance to the "right to know". Accordingly, an employer must provide information, including confidential business information, to a medical practitioner or registered nurse who requests the information on the controlled product for the purpose of making a medical diagnosis or rendering medical treatment in an emergency.

Every employer must, in co-operation with the health and safety committee, prepare a list of all biological, chemical or physical agents used, handled, produced or otherwise present at the workplace and must identify them by their common or generic names. The only exception is if he is exempted from doing so by regulation, after having requested an exemption respecting the disclosure of confidential business information in respect of a controlled product.

An employer, where required by a regulation or by the Health and Safety Commission, must establish a code of practice and post it in a conspicuous place in the establishment.

Regulations may be made respecting, among other things: the storage, handling or use of a controlled product; the labelling or identification of a controlled product; the material safety data sheets in respect of controlled products; employee training and instruction in relation to controlled products; as well as exemptions from disclosure of confidential business information in respect of a controlled product.

In Nova Scotia, an amendment to the Trade Secrets Regulation under the Occupational Health and Safety Act has been adopted to include nurses to the list of medical practitioners and to define the term "nurse".

Saskatchewan gave its assent to An Act to amend the Occupational Health and Safety Act on June 21, 1988. This Act, among other things, requires employers to ensure that controlled products in the place of employment are properly labelled, in the manner prescribed by regulation, that appropriate material safety data sheets pertaining to controlled products are provided, and that any information in their possession respecting a controlled product is provided to any physician or registered nurse who requests it for the purpose of making a medical diagnosis or of rendering medical treatment to a worker in an emergency. This Act also provides that an employer may apply for an exemption from the obligation to disclose any information respecting a controlled product.

The Yukon also adopted enabling legislation respecting the implementation of the WHMIS. Bill 95, an Act which amends the Occupational Health and Safety Act, received royal assent on May 18, 1988.

C. Mining Safety

The federal government has adopted An Act to amend An Act respecting the Hudson Bay Mining and Smelting Co., Limited. This Act provides that certain Acts and Regulations of the province of Manitoba respecting occupational safety and health, apply to the operations of the Hudson Bay Mining and Smelting Co., Limited within the Flin Flon mineral area. These operations are largely in Manitoba, but also partly within the province of Saskatchewan. The Act also states that Part IV of the Canada Labour Code does not apply. These mining and smelting operations had been declared to be for the general advantage of Canada in 1947 because they extended beyond the limits of one province. Since operations on the Saskatchewan side of the border will apparently cease within two years. It is appropriate that Manitoba safety and health laws apply to these operations. This Act will come into force by proclamation.

In addition, the federal government has adopted regulations respecting uranium and thorium mining under the Atomic Energy Act. These regulations deal with radiological health and safety in uranium mining facilities and formalize requirements that are currently imposed through licence conditions. They regulate such things as the emitting of licences, the preparation and application of a code of practice, ventilation and dust control, waste management systems, the provision of washing facilities, change rooms and lunch rooms, health and safety rules and procedures, inspections and compliance, reports and records, etc. These regulations impose some important new requirements respecting the training and medical surveillance of workers and of supervisors, recognition of the right of workers and their representatives to receive information and accompany inspectors, and administrative procedures concerning fairness. To achieve fairness, the regulations establish criteria in the use of

discretionary powers, the requirement to observe minimum standards of natural justice when the Atomic Energy Control Board makes a decision which may adversely affect a person, and the need to be reasonably specific in stating requests for information.

Lastly, the Canada Labour Code has been amended in order to better regulate occupational safety and health in the coal mining operations. Accordingly, the Coal Mining Safety Commission is established, composed of employer and employee representatives appointed by the Minister, whose role is essentially to approve the use by the employer of mining methods, machinery or equipment in respect of which no prescribed safety standards are applicable, where, in its opinion, protection of the safety and health of employees would not thereby be diminished. The Commission may also authorize variances to prescribed safety standards, award exemptions from such standards, or substitute for any provision, any other provision with substantially the same purpose and effect, where, in its opinion, the safety and health of employees would not thereby be diminished.

In addition, because of the special risks involved in working in a coal mine, employers are required to permit inspections and tests to be carried out on behalf of the employees in any part of the mine and on any machinery or equipment therein, in the prescribed manner and at intervals not greater than the prescribed interval.

This amendment also contains a provision requiring employers to conduct, at the prescribed intervals, personal searches of every person, other than a mine worker, entering the underground portion of the mine, as well as of a prescribed proportion of employees, for the purpose of preventing alcohol and drugs from being brought into the mine.

Another provision permits the Minister to make regulations in relation to the safety and health of employees on trains while in operation, enabling the Minister to regulate such matters referred to in sections 82 to 83 of the Code (which deal with duties of employers and employees) in such manner as he considers appropriate in the circumstances.

Finally, this Act requires, among other things, that safety and health committees submit a yearly report of activities to a designated person, in the prescribed form and within the prescribed time determined by regulations.

D. Hours of Service of Motor Vehicle Transport Operators

The federal government has adopted new regulations concerning motor vehicle transportation, including the Motor Vehicle Transport Act, 1987 Drivers Hours of Service Regulations and two consequential amendments to regulations under the Canada Labour Code.

These regulations replace Part XVIII of the Canada Occupational Safety and Health Regulations and the schedule to Part XVIII. The Canada Motor Vehicle Hours of Service Regulations and the Motor Vehicle Operators Hours of Work Regulations under the Canada Labour Code, which also deal with hours of service, apply only to employees of for-hire carriers and are intended for employee protection. The present regulations, while similar in content, are of a wider ambit. In addition to previous Canada Labour Code coverage, these regulations apply to owner-operators and to private trucking operations as well. These regulations are directed at the protection of the general public and strengthen existing safety regulation of commercial vehicles on the highways, where a vehicle exceeds a registered gross weight of 4500 kg, and, if a bus, has a seating capacity of more than 10 persons including the driver.

These regulations limit the number of hours any person may drive a commercial vehicle on a highway, as described below.

(1) A driver cannot accumulate hours of service in excess of:

  (a) 10 driving hours during any work shift;
  (b) 15 hours on duty during any work shift; and
  (c) 60 hours on duty during any period of seven consecutive days.

(2) Where a motor carrier operates motor vehicles every day of the week, the driver may accumulate 70 hours on duty during any period of eight consecutive days.

(3) A driver is permitted, on not more than two occasions in any period of seven consecutive days, to increase driving hours to 12 during any work shift, provided that items 1(b) and (c) and 2 above and item 5 below continue to be met.

(4) Prescribed rest periods of 10 minutes following four consecutive driving hours or of 30 minutes following six consecutive driving hours are to be observed.

(5) The prescribed off-duty period is eight hours before any work shift.

(6) Extension of driving and hours on duty can be authorized for a period not exceeding one year.

(7) Each driver must, each day, make a daily log (subject to certain exceptions) and upon request by an inspector, must produce the original copies of his records for inspection. Drivers must carry these daily logs in their vehicle at all times. All these daily logs must be retained by each motor carrier for a period of not less than 13 months.

The requirements respecting log books and on-route inspections are the principal differences between these regulations and the regulations they replace under the Canada Labour Code.

The first amendment to the regulations under the Code is made to the Motor Vehicle Operators Hours of Work Regulations to make reference at secions 4(1) and 6(3) to the Drivers Hours of Service Regulations described above.

The second amendment is to the Canada Occupational Safety and Health Regulations in order to revoke Part XVIII as well as the schedule to Part XVIII of these Regulations, both of which applied specifically to motor vehicle operators.