Highlights of Major Developments in Labour Legislation

1989-1990

49th Annual Meeting of the Canadian Association of Administrators of Labour Legislation

Toronto, Ontario September 18-19, 1990 Également disponible en français sous le titre Les Faits saillants de l'évolution de la législation du travail 1989-1990

Report prepared for the 49th annual meeting of the Canadian Association of Administrators of Labour Legislation

Labour Canada

HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

July 1, 1989 to June 30, 1990

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INTRODUCTION

Between July 1, 1989 and June 30, 1990, many significant changes were made in the different areas of labour legislation in Canada.

With respect to labour standards, the most significant changes include: minimum wage increases in British Columbia, Ontario, Quebec, Saskatchewan and the Yukon Territory; new paid general holidays in Alberta and Prince Edward Island; new business hours for retail commercial establishments in Quebec; and an amendment to pay equity legislation in Nova Scotia.

In the field of industrial relations, amendments to the general collective bargaining legislation have been made in Prince Edward Island and proposed in Quebec; and, with respect to the public sector, Quebec has passed orders in council relating to sanctions for illegal strikes in the health and social services sector; Alberta has modified the collective bargaining rules applying to college teachers; British Columbia has passed a new law requiring the disclosure of information by the parties during negotiations; and Newfoundland and New Brunswick have introduced changes to the legislation under which public sector employees negotiate, notably to revise the essential services provisions. During the period covered by this report, the federal government, Ontario and Quebec have adopted emergency laws, and Newfoundland has passed an emergency resolution, to ensure the resumption of certain services affected by labour conflicts. Moreover, changes have been made in Alberta, Quebec, New Brunswick and Newfoundland to the legislation covering the construction industry.

Finally, several jurisdictions have made changes to their occupational safety and health legislation. Among these changes, Prince Edward Island has modified the role of its Occupational Health and Safety Council; the federal government has brought changes to regulations issued under the Canada Labour Code; and Ontario has adopted important amendments to its occupational health and safety law. In addition, the Northwest Territories have adopted regulations establishing the requirements of the Workplace Hazardous Materials Information System; and Newfoundland has amended its regulations on the same subject. Other changes include new training requirements for loggers in Ontario, a law protecting non-smokers in the workplace also in Ontario as well as regulations on the same subject at the federal level, and revised legislation protecting young workers in Prince Edward Island.

L EMPLOYMENT STANDARDS

A. Minimum Wages

In <u>British Columbia</u>, the minimum wage rate payable to persons 18 years of age and over was increased to \$4.75 per hour, effective October 1, 1989, and was further increased to \$5,00 per hour, effective April 1, 1990. The rate payable to persons under 18 was increased to \$4.25 per hour, effective October 1, 1989 and was further increased to \$4.50 per hour, effective April 1, 1990. Live-in homemakers, domestics, farm workers or horticultural workers paid on a basis other than on an hourly or piece-work basis were entitled to \$38 for each day or part of a day worked, effective October 1, 1989, and, effective April 1, 1990, are entitled to \$40 per day or part of a day. The minimum wage for a resident caretaker was set at \$285 per month plus \$11.40 per unit, where the apartment building contains from 8 to 60 residential suites, and \$968 per month if there are 61 units or more, effective October 1, 1989. Effective April 1, 1990, these rates were increased to \$300 per month, plus \$12.00 per unit, if there are from 8 to 60 residential suites, and \$1 020 per month, if there are 61 or more. Also effective October 1, 1989 and April 1, 1990, there have been increases in the minimum wages for farm workers employed on a piece-work basis to hand harvest certain fruit, vegetable or berry crops, by gross volume or weight picked.

In <u>Saskatchewan</u>, the general minimum wage rate has been increased to \$4.75 per hour, effective January I, 1990 and to \$5.00 per hour, effective July I, 1990.

In addition, the <u>Yukon Territory</u> has established the minimum hourly rate at \$5.97, effective April 1, 1990.

In <u>Quebec</u>, the Minister of Manpower, Income Security and Vocational Training has announced that, effective October 1, 1990, the general minimum wage rate will be increased from \$5.00 to \$5.30 per hour, and that the rate that applies to employees who usually receive gratuities will go up from \$4.28 to \$4.58 per hour. Effective on the same date, domestics who reside at their employer's home will receive at least \$202 per week.

In Ontario, the Minister of Labour has announced an increase in the general minimum wage rate from \$5.00 to \$5.40 per hour, effective October 1, 1990. On the same date, employees serving alcoholic beverages in licensed establishments will be entitled to at least \$4.90 per hour, and the minimum rate for students under 18 who work not more than 28 hours in a week or during a school holiday will become \$4.55 per hour. There will also be an increase in the minimum wage rate payable to fruit, vegetable and tobacco harvesters from \$5.00 to \$5.40 per hour, effective January 1, 1991. The maximum deductions for room and board that will be in force on October 1, 1990 (or on January 1, 1991 for harvest workers) will be as follows:

- 1. Room: \$25.00 a week if the room is private, and \$12.50 a week if it is not.
- 2. Meals: \$2.00 a meal and not more than \$42.00 a week.
- 3. Both room and meals: \$67.00 a week if the room is private and \$54.50 a week if it is not.

- 4. Serviced housing accommodation for harvest workers: \$78.30 a week.
- 5. Housing accommodation for harvest workers: \$57.80 a week.

B. General Holidays

In <u>Alberta</u>, the Family Day Act became effective on February 19, 1990. It provides that in recognition of the importance of the family, the 3rd Monday in February in each year must be observed as a public holiday and known as "Alberta Family Day". The Employment Standards Code has been amended to add this holiday to the list of paid general holidays it contains.

In <u>Prince Edward Island</u>, amendments to the Labour Act, that became effective April 26, 1990, provide for the inclusion of Labour Day and, beginning in 1991, Canada Day to the list of paid holidays.

C. Commercial Establishments' Business Hours

On June 22, 1990, Quebec enacted Bill 75, the Act respecting hours and days of admission to commercial establishments.

The legislation replaces the former Act respecting commercial establishments business hours, and establishes as a general rule that retail commercial establishments may open to the public between 8:00 a.m. and 7:00 p.m. on Mondays and Tuesdays, between 8:00 a.m. and 9:00 p.m. on Wednesdays, Thursdays and Fridays and between 8:00 a.m. and 5:00 p.m. on Saturdays, and consequently may not open on Sundays.

However, there are exceptions to this rule. For example, establishments will be permitted to open to the public between 8:00 a.m. and 5:00 p.m. on Sundays in December before Christmas, from 8:00 a.m. until 9:00 p.m. on Mondays and Tuesdays in December before Christmas, from 8:00 a.m. until 5:00 p.m. on December 24 and 31 and from 1:00 p.m. until the normal closing time on December 26, when either of these last three dates fall on any other day than Sunday. There is also the usual prohibition from opening on specified holidays such as December 25 and January 1.

Certain establishments, such as restaurants, gas stations, drug stores, arts and antique shops, flower shops and stores selling second hand merchandise are allowed to open at any time provided they satisfy certain conditions relating mainly to the type of products sold. This also includes establishments which principally offer foodstuffs or alcoholic beverages for consumption outside the commercial establishment, provided that no more than four persons are required to work outside the normal opening hours. This number excludes, amongst others, the person operating the commercial establishment or a representative who usually manages the establishment.

In addition, when all their establishments are closed on a day of the week other than a Sunday by reason of religious beliefs, establishments' operators may apply for permission to open on Sundays provided certain conditions are met, including the requirement that no more than four persons attend the operation of each establishment between 8:00 a.m. and 5:00 p.m.

on Sundays. The Act contains other relief provisions for commercial establishments situated in a municipality near the territorial limits of Quebec, for those establishments situated in tourist areas and for any establishment on the occasion of a special event, such as a fair or an exhibition.

The Act provides that the enforcement of these legislative measures be entrusted to both the Minister of Industry, Trade and Technology and to the municipalities. The penalties under the Act depend on the type of offence committed. There is no maximum fine when a person operating a commercial establishment has admitted members of the public to the establishment outside permitted hours or days. In that case, in determining the fine the court may take into account the advantages gained and revenue derived by the person convicted of the offence. Owners of buildings that contain commercial establishments not operated by themselves, and employees of operators, can also be held liable for infractions of the Act and to the fines contained therein. Penal proceedings for an offence under this Act may be brought before a municipal court. The fines and costs imposed by the municipal court, with one exception, belong to the municipality.

D. Pay Equity

In <u>Nova Scotia</u>, An Act to Amend Chapter 337 of the Revised Statutes, 1989, the Pay Equity Act, was assented to on June 19, 1990.

Effective on that date, the Act adds universities, municipalities and municipal enterprises to the pay equity process and allows the addition of other public-sector corporations and bodies to the pay-equity process by regulation. Additional changes allow the Pay Equity Commission to permit employers to file reports less frequently than monthly and reduce the reporting requirement of the Commission to the Minister from twice to once a year. A further amendment requires the Commission to respect requests for privacy in respect of confidential or personal information and enables an order of the Commission to be enforced as an order of the Supreme Court of Nova Scotia. Finally, the Act indicates the dates on which the pay equity process begins for the newly added classes of employers and creates a new schedule identifying the universities to which the Act applies. This schedule can be amended by regulation so that other public-sector corporations and bodies may be added to the pay-equity process.

E. Recovery of Unpaid Wages

In <u>Prince Edward Island</u>, an amendment to the Labour Act has increased from \$2 000 to \$5 000 the maximum amount that an inspector may require an employer to pay to him or her in trust in respect of unpaid wages, overtime pay or vacation pay owing to an employee. It has also strengthened the priority for unpaid wages in the event of receivership of a business.

F. Other Changes

In <u>Manitoba</u>, the Minimum Wages and Working Conditions Regulation, issued under the Employment Standards Act, was amended to require that, where an employee begins or ends a work shift between midnight and 6:00 a.m., the employer must provide adequate transportation to or from the place of employment to or from the place of residence.

During the month of April 1990, <u>Ontario</u> brought into force Bill 92, An Act to amend Fines and Terms of Imprisonment contained in certain Acts. This amendment has increased the maximum fines contained in a variety of laws, including some pertaining to labour standards. For example, the maximum fine for violations of the Employment Standards Act has been increased from \$10 000 to \$50 000, and the maximum fine for contraventions of the One Day's Rest in Seven Act has been increased from \$100 to \$25 000.

Finally, in <u>Saskatchewan</u>, a regulation under the Labour Standards Act has exempted noon-hour supervisors and school bus drivers employed by a board of education from the provisions respecting call-in pay. This regulation came into force on March 30, 1990.

IL INDUSTRIAL RELATIONS

A. <u>Legislation of General Application</u>

In <u>Prince Edward Island</u>, a law amending the Labour Act was enacted on April 26, 1990. Among other things, it has expanded the jurisdiction of the Labour Relations Board with respect to unfair labour practices complaints, particularly where an employer, without the consent of the bargaining agent, alters terms or conditions of employment following certification but before a collective agreement is signed or the parties have acquired the right to strike or to lock out.

In <u>Quebec</u>, Bill 81, An Act to amend the Labour Code, was recently tabled by the Québec Minister of Labour. It gives exclusive jurisdiction to the labour commissioners to rule, upon the request of an interested party, on any matter relating to the application of section 45 of the Code which deals with the transfer from an employer to another employer of rights and obligations provided by a certification or a collective agreement. It also specifies the various powers made available to them to settle any matter arising out of the application of that section.

A further object of the Bill is to make additional public services subject to those provisions of the Labour Code respecting the maintenance of essential services in case of strike or lockout. These public services are those provided by a firm operating or maintaining a waterworks, sewer, water purification or water treatment system as well as by a firm performing refuse incineration.

B. <u>Public and Parapublic Sectors</u>

In <u>Quebec</u>, following illegal strikes by employees in the health and social services sector represented by various labour organizations, certain orders in council were adopted for the application of sanctions provided in the Act to ensure that essential services are maintained in the health and social services sector. Generally speaking, these sanctions and orders in council were as outlined below.

<u>Sanction</u>: the modification of collective agreements binding the employers and unions concerned, notably to facilitate the reorganization of work and the hiring of replacement personnel.

Orders in council: the orders in council specified the modifications as well as their period of application from a specific date until the labour organizations complied with the law. They were ceasing to apply upon the parties reaching an agreement.

<u>Sanction</u>: the deduction from the salaries earned after the illegal strikes of an amount equivalent to the salaries the employees would have received if they had worked during the period of absence or suspension of services caused by these strikes.

Orders in council: orders in council were adopted to designate the charitable organizations to which the deducted sums were paid.

<u>Sanction</u>: the loss of one year of seniority for each day or part of a day during which any employee was absent from work or ceased to carry on his or her ordinary activities because of an illegal strike.

Orders in council: orders in council set dates on which this sanction started to apply to various groups of employees.

In <u>Alberta</u>, Bill 27, the Advanced Education Statutes Amendment Act, 1990, was assented to on July 5, 1990. Among various amendments, the Bill brings changes to the Colleges Act which modify the collective bargaining legislation that covers the academic staff employed by colleges.

The new legislation stipulates that an agreement with respect to the employment of academic staff members must contain procedures for the negotiations of future agreements, including procedures for the final resolution of disputes that may arise during those negotiations. If compulsory arbitration is among those procedures, an agreement must deal with permission for either party to initiate binding arbitration for the final resolution of disputes.

If an agreement does not contain the required provisions, as mentioned above, it is deemed to contain provisions specified by the Colleges Act in respect of those for which it is silent. The provisions provided in the Act are as outlined below.

On or after the expiry of an agreement, either party may notify the other in writing of its desire to submit a dispute to arbitration. If the parties are unable to agree on a person who could act as a single arbitrator, either party may request that the Minister of Advanced Education appoint one. If the arbitrator is unable to bring about an agreement between the parties, he or she must, within 20 days of the appointment or within a longer period agreed on by the parties or fixed by the Minister, make an award in writing concerning all the matters in dispute. The parties agree to share equally the arbitration costs, and the award of the arbitrator is final and binding on the parties.

On July 26, 1990, <u>British Columbia</u> passed Bill 79, the Public Sector Collective Bargaining Disclosure Act. This Act applies to a broadly defined public sector which includes the provincial government, municipalities, school boards, post-secondary educational institutions, community care facilities, hospitals, Crown corporations and various public sector boards, commissions, councils and authorities. It will come into force on a date to be announced by the government.

The Act provides for the appointment by the Lieutenant-Governor in Council of a public sector bargaining registrar with whom a public sector employer and/or a trade union will file various documents. These documents include any existing or new collective agreement and, within two days after a first bargaining session, a summary of all matters that each of the parties considers will be in dispute as well as their respective positions on these matters and any supporting documentation. In addition, at the time strike or lockout notice is given or received, a public sector employer and a trade union will be required to file a summary of all matters on which agreement has been reached and of those matters on which there is no agreement as well as a statement of their respective positions on these matters. A strike or lockout will not be permitted unless both parties have complied with the filing requirements. A party that is prevented from striking or from locking out because of the other party's failure to comply with these requirements will be able to apply to the Supreme Court for remedy.

The registrar will summarize material filed by the parties at the beginning of negotiations and when there is a strike or lockout notice, and a copy of the summaries will be available free of charge. Copies of filed documents will be available upon the payment of a fee. Also, the summaries of material submitted when there is an impending strike or lockout will be published in a newspaper circulated throughout the province.

After receiving material filed when there is a strike or lockout notice, the registrar will organize a prestrike or prelockout public sector bargaining disclosure meeting. No strike or lockout will be permitted until this meeting has occurred. The particulars of the meeting will be published in a newspaper of the area where the meeting is held, and representatives of the media will be permitted to attend. At the meeting, each party will present a summary of the settled and unsettled matters as well as their respective positions.

In <u>Newfoundland</u>, Bill 32, An Act to amend the Labour Relations Act, 1977, was introduced on April 30, 1990. The proposed legislation contains two major changes. First, it would rescind the Public Service (Collective Bargaining) Act, 1973 and bring public service employees (including hospital employees and employees of certain Crown corporations) under the Labour Relations Act, 1977. Secondly, it would provide a new mechanism for determining what constitutes an essential service and the number of employees necessary to maintain such services during a strike or lockout. "Essential service" would be defined as a service that must be maintained at a minimum level to safeguard the health, safety or security of the public.

An Essential Services Panel (E.S.P.) would be established consisting of a chairperson, a vice-chairperson, three representatives of employers and three representatives of employees. Before making these appointments, the Lieutenant-Governor in Council would consult with employers and representatives of employees and would ensure that all segments of the public service are represented on the panel. Upon receipt of an application under the new essential services legislation, the chairperson would select a representative of employers and a representative of employees to act with him or her or with the vice-chairperson.

The E.S.P. or a sub-panel would approve agreements between the parties with respect to essential services, and modify these agreements as it considers necessary. If an employer and a bargaining agent are unable to conclude an essential services agreement, the E.S.P. or a sub-panel would determine the essential services. They would have the power to conduct investigations and hold hearings in relation to essential services, and enforce, during a strike or lockout, the provisions of essential services agreements or decisions they have rendered.

When the parties are unable to conclude an essential services agreement within the prescribed time limits, the matter would be referred to the appropriate sub-panel. The sub-panel would then, within 60 days, determine which of the services provided by the employer, if any, are essential services and the number and classification of employees necessary to maintain them; establish a formula dividing the work considered necessary among those employees in the affected bargaining unit who are qualified; and for the purpose of maintaining an equitable balance between the union and the employer during a strike or lockout, determine who may, with respect to work ordinarily done by unionized employees, do that work. An order of a sub-panel would be binding on the parties as if it were an order of the Labour Relations Board. An application to modify an essential services agreement or an order of a sub-panel could be presented to the chairperson of the E.S.P. by either party.

A bargaining agent would not be permitted to take a strike vote and a strike or lockout could not be declared before an essential services agreement has been concluded by the parties or the E.S.P. or a sub-panel has issued an order with respect to essential services. If one third or more of all the employees covered by a collective agreement must maintain essential services, the bargaining agent would then be entitled to request the Labour Relations Board to refer any matter in dispute to binding arbitation.

After complying with the conditions for legal strikes contained in the Act, a bargaining agent would be required to provide at least 72 hours' notice to the employees of any strike vote. The vote would be by secret ballot and would be decided by a majority of those voting. In addition, a bargaining agent would be required to give a strike notice of at least seven days to the employer and the Minister of Employment and Labour Relations; and, if there is no strike on the date specified, the bargaining agent wishing to declare a strike would be required to give another notice, except during negotiations when the parties agree otherwise. In the health care sector, rotating strikes would continue to be prohibited.

Finally, the power of the House of Assembly to delare a state of emergency in certain circumstances would remain. If a strike is or could become injurious to the health and safety of persons or to the security of the province, the Assembly would keep the power to pass a resolution forbidding a strike, setting a date for any return to work and referring unsettled issues to binding arbitration.

On June 13, 1990, Bill 44, An Act to amend the Public Service Labour Relations Act, was tabled in <u>New Brunswick</u>. The proposed legislation would modify the collective bargaining legislation applying to public servants, hospital employees and teachers in public schools. The Bill contains many modifications including those described below.

An amendment provides that orders of the Public Service Labour Relations Board (PSLRB) may be enforced by filing a copy in the Court of Queen's Bench.

Another change introduces a new process for designating essential services that will replace the present procedure for designating essential employees. The employer may, within twenty days after the certification of the bargaining agent or during the term of a collective agreement or arbitral award but not during the last six months of operation, give notice to the PSLRB and the bargaining agent of the services it considers essential to public health. safety or security. Within seven days after receipt of the notice, the PSLRB will in consultation with the parties establish time limits within which they will attempt to reach an agreement on essential services, the level of services to be maintained and the positions to be designated. If an agreement is reached, the PSLRB will issue an order making it binding on the parties. If an agreement cannot be reached within the time limits, the PSLRB, after allowing the parties an opportunity to present evidence and make representations, will determine the matters. On the application of either party made within prescribed time limits, and after hearing the parties, the PSLRB will be authorized to modify its decision or an agreement on essential services. No employee affected by a notice given by the employer with respect to essential services or by an application to modify a decision or agreement on essential services may participate in a strike until the parties have agreed on or the PSLRB has determined the positions to be designated and the employees in those positions have been so informed by the Board.

A change will also be made to the criteria that an arbitration tribunal must consider when the parties agree to submit a dispute to binding arbitration. The criteria will now include the following: wages and benefits in the private and public sectors as well as in unionized and non-unionized employment; the continuity and stability of private and public employment, including employment levels and incidence of layoffs; and the fiscal policies of the government of New Brunswick.

C. Emergency Legislation

In the last 12 months, the federal government, Ontario, Quebec and Newfoundland have adopted special measures to ensure the resumption of certain services affected by labour conflicts.

In Ontario, the Toronto Transit Commission Labour Disputes Settlement Act, 1989 provided for the settlement of labour disputes between the Toronto Transit Commission and its employees represented by three unions. Effective October 16, 1989, it ordered the termination of any strike or lockout, the return to work of every employee and the resumption of normal operations. Except in accordance with the Act or with the consent of both parties, there could not be any alteration in the rates of wages or in any other term or condition of employment in operation at the time the collective agreements expired, or concerning any right, privilege or duty provided for in these agreements.

The dispute related to staffing (including the use of part-time workers) between the Toronto Transit Commission and Local II3, Amalgamated Transit Union was referred to a fact-finder who was to review the relevant matters and make a report together with any recommendations to the parties and to the Minister of Labour. Unless the parties agreed on a settlement of the issues under investigation, the fact-finder's report and recommendations, if any, were to be submitted by June 30, 1990 or a later date allowed by the Minister.

All other matters remaining in dispute between the Toronto Transit Commission and the unions were referred to binding arbitration. Employees were awarded a 5% increase in wages retroactive to the expiry of their respective collective agreements. This could be increased by the arbitrator. The collective agreements between the parties were for 2-year terms.

Fines were provided for cases of contravention of the legislation. In the case of an individual, the maximum fine was \$1 000 per day, while in the case of the employer or a union, it could reach \$10 000 per day.

On December 15, 1989, the <u>federal government</u> passed the Government Services Resumption Act.

This law was adopted to bring an end to a dispute between the federal government represented by the Treasury Board and hospital employees and ships' crews represented by the Public Service Alliance of Canada. Effective December 16, 1989, the employer was to ensure that the government services provided by the employees were resumed, and every employee concerned had to perform his or her duties when so required. The expired group specific agreements and the applicable provisions of the master agreement were considered to be in effect until a date fixed by the conciliation board established by the legislation in

respect of each bargaining unit. The terms and conditions of employment contained in these agreements, as modified during the process of dispute resolution prescribed in the legislation, were made binding on the parties.

The legislation provided for the establishment by the Chairperson of the Public Service Staff Relations Board (PSSRB) of two conciliation boards, a hospital services conciliation board and a ships' crews conciliation board. All matters in dispute relating to the amendment or revision of a group specific agreement and the master agreement were referred to these boards. Within 90 days after it had been established, or a longer period allowed by the Chairperson of the PSSRB after consultation with the parties, each conciliation board was to attempt to mediate all matters referred to it. If the board was unable to bring about agreement in respect of any matter, it had the responsibility to hear the parties and to render a decision on the matter. In addition, it had to fix the date of expiry of the agreements which was not to be earlier than June 21, 1991 in the case of the hospital employees, or June 30, 1991 in the case of the ships' crews. Once a new group specific agreement and a master agreement were 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 bargaining agent (from \$50 000 to \$100 000). These fines were applicable to each day or part of a day during which the offence continued.

In <u>Quebec</u>, An Act to ensure continuity of electrical service by Hydro-Québec became law on May 4, 1990.

The purpose of this law was to terminate a dispute between Hydro-Québec and associations representing most of its employees and to ensure the continuity of electrical service.

The last collective agreements negotiated by the parties and expired since December 18, 1988 were renewed with modifications for a period of four years. Salary increases of 4%, 5.13% and 4% were made applicable for each of the first three years. However, provision was made for a possible further increase not exceeding 1% for the third year, depending on the increase of the consumer price index. With respect to the last year of the agreements, the salary rates and scales are scheduled to increase by a percentage equal to the basic rate applicable in 1992 to public and parapublic sector employees.

From 8:00 a.m. on May 4, 1990, the employees concerned had to resume their functions without stoppage, slowdown, reduction or alteration in activities.

If during the period of application of the Act an association of employees does not comply with the prohibition regarding strikes and certain concerted actions, Hydro-Québec must suspend the check-off of union dues for 12 weeks for each day or part of a day during which the infraction continues. The government may also ask Hydro-Québec to take such a measure if it is of the opinion that the number of employees who are complying with the Act is insufficient to ensure continuity of electrical service.

Moreover, it is specified that an employee who contravenes the Act may not be remunerated for the period in which the contravention occurs, and that the salary to be paid to him or her for work done after the contravention is reduced by an amount equal to the remuneration that would have been received in respect of each period of contravention. Any disagreement as to the application of this sanction must be referred to arbitration as if it were a grievance.

In addition, penal proceedings may be brought and substantial fines may be imposed for cases of contravention of the Act by an employee, a person who is not an employee, an employer or union officer or representative, or an association of employees.

In <u>Newfoundland</u>, by virtue of the powers it can exercise under the Public Service (Collective Bargaining) Act, 1973 when a strike is or will be injurious to the health or safety of people in the province, the House of Assembly has passed a resolution forbidding a strike by certain groups of hospital employees and ordering them to return to their duties as of June 22, 1990. The employees participating in the strike were support staff and laundry employees represented by the Newfoundland Association of Public Employees.

D. <u>Construction Industry</u>

In <u>Alberta</u>, amendments have been made to the Construction Industry Transitional Regulation adopted under the Labour Relations Code. They provide that for the round of negotiations in the construction industry that cover, in whole or in part, the period prior to May 1, 1991, the Labour Relations Board may determine which registered employers' organizations and which groups of trade unions are to be consolidated notwithstanding that the round of negotiations may have commenced. In particular cases related to the transition process, the Board may provide that the time restrictions under the Labour Relations Code do not apply.

During the summer of 1989, the government of <u>Quebec</u> established an inquiry commission on the stabilization of employment and income in the construction industry under the Act respecting public inquiry commissions.

The terms of reference of the commission were to develop a system for the stabilization of employment and income in the construction industry and to make legislative or regulatory proposals for the implementation of such a system.

In carrying out its inquiry, the commission was notably to take into account the planning of construction projects, the incentives for contractors to hire workers steadily employed in the industry, the incentives for employees to declare the hours worked so as to eliminate undeclared work, as well as the stabilization of activities in the industry.

The order in council that set up the commission provided that it had to submit its report and recommendations to the government by February 28, 1990. That date was later changed to June 30, 1990.

Also in Quebec, the Construction Decree, which was expiring on April 30, 1990, was extended twice. It was first extended until May 21, 1990, and when negotiations between the parties failed, the government extended it until April 30, 1993. Many changes were made to the

decree notably with respect to salaries which in general were increased by 4.5%, 4.5% and 5% for each of the three years of its duration. In addition, effective October 28, 1990, there will be an increase of 1% in the contributions made by the employers to the employees' fringe benefits. An increase in employers' contributions is also scheduled with respect to the pension plan in order to allow for the lowering on January 1, 1991 of the retirement age down to a minimum of 55 years.

In <u>New Brunswick</u>, a regulation issued under the Industrial Relations Act has designated the Belledune 450 MW Generating Station as a major project under that Act. As a result, special collective bargaining provisions will apply to that construction project. The designation does not cover activities of Shell Canada Products Limited and of the Canada Ports Corporation, work carried out by the New Brunswick Electric Power Commission and the building of a spur line by the Canadian National Railway Company.

In <u>Newfoundland</u>, Bill 56, An Act to amend the Labour Relations Act, 1977 (No. 2), which was enacted on June 13, 1990, has modified certain provisions of the Labour Relations Act, 1977 dealing with special construction projects. It provides that the Lieutenant-Governor in Council may by order declare an undertaking that conforms to the definition of "special project" under the Act to be a special project, or declare that an agreement reached between an employer and a representative of workers for a term of more than three years, that is signed on or before the date of the declaration and that relates to a special project, is an agreement relating to a special project for the purposes of the Act. The Lieutenant-Governor in Council may, with respect to a declaration, prescribe the geographic site to which it relates as well as the employers and the trade unions who may be involved in collective bargaining relating to employment on the special project.

III. OCCUPATIONAL SAFETY AND HEALTH

A. <u>Proclamation of Occupational Health and Safety Provisions</u>

In Alberta, sections 8 and II of the Occupational Health and Safety Amendment Act, 1983 and sections 3 to 7, 9 to 12, 13(a) to (c) and 14 of the Occupational Health and Safety Amendment Act, 1988 have been proclaimed in force on September I, 1989. Occupational Health and Safety Amendment Act, 1983 provides at section 8 that a person who is about to begin a new project may be required to file notice in accordance with the regulations, and provides at section 11 that an employer or principal contractor, if required by regulation, must state his or her policy in writing for the protection and maintenance of the health and safety of workers, state the arrangements to implement that policy, and, as far as is reasonably practicable, inform the workers of the policy. The Occupational Health and Safety Amendment Act, 1988, dealt principally with establishing the WHMIS in Alberta, which was implemented on October 31, 1988. The above-mentioned provisions provide for employer-paid medical examinations of workers, the obligation of an employer or of a principal contractor to ensure that a code of practice required to be established is readily available to the workers and that those to whom it applies receive appropriate education, instruction or training so that they can comply with its requirements, the complaint and appeal procedures in the case of the investigation of a situation of imminent danger, as well as various other matters of an administrative nature.

B. <u>Legislation of General Application</u>

In <u>Prince Edward Island</u>, amendments to the Occupational Health and Safety Act, which were enacted on April 26, 1990, have changed the role of the Occupational Health and Safety Council. They have removed provisions relating to the development by the Council of occupational health and safety programs and legislative recommendations, and have left it with an advisory role only.

At the <u>federal</u> level, two regulations have replaced parts of the Canada Occupational Safety and Health Regulations established under the Canada Labour Code.

The first regulation has replaced Part XV of the Canada Occupational Safety and Health Regulations, respecting hazardous occurrence investigation, recording and reporting. Various sections of the regulation have been rewritten to clarify the previous requirements. However, except for the following amendments, Part XV remains unchanged.

The amendments extend the period of time that employers are obliged to keep required reports and records from two to ten years, and require employers to advise a safety officer by telephone or telex respecting hazardous occurrences that result in the loss by an employee of a body member or part thereof or in the complete loss of the usefulness of the body member or in the permanent impairment of a body function of the employee.

The retention period for record keeping is extended to ensure that hazard occurrence records remain available in situations where it is subsequently learned that the occurrence is potentially more hazardous to the workers' health than initially understood, or where an occupational disease resulting from an occurrence has a long latency period.

The obligation respecting the telephone or telex reports by employers is expanded to include hazardous occurrences resulting in the loss by an employee of a body member or permanent impairment of a body function to enable the safety officer to monitor that adequate measures are taken by the employer to prevent reoccurrence. Such reports must be made as soon as possible, but not later than 24 hours after the results of the hazardous occurrence are known.

This regulation also contains in its schedules the "Hazardous Occurrence Investigation Report" and the "Employer's Annual Hazardous Occurrence Report".

The second regulation has replaced Part VI of the Canada Occupational Safety and Health Regulations respecting lighting. The amendments it contains generally decrease the minimum levels of lighting for office, industrial and other areas, reflecting current national and international norms as well as concerns about energy conservation. New minimum levels of lighting are established for industrial loading and checking areas, covered parking areas, work stations on aerodrome aprons and aircraft stands, for areas in which artefactual exhibits and archival materials are stored or handled, as well as for work on video display terminals (VDTs). The regulation also provides maximum levels of lighting for VDT work, to reduce excessive lighting and glare and better control occupational stress and eye strain associated with them. This regulation came into force on October 26, 1989.

On June 19, 1990, Ontario passed Bill 208, the Occupational Health and Safety Statute Law Amendment Act, 1990, containing amendments to the Occupational Health and Safety Act and to the Workers' Compensation Act. The Act is scheduled to come into force on a day to be fixed by proclamation.

In general, the amendments provide employees and employers with greater joint responsibility for health and safety in the workplace. The amendments aim to maximize the quality of this increased authority through education and training of labour and management. Also, the amendments provide for stricter enforcement of the Act by workplace parties and the Ministry of Labour in a number of ways, including an increase - from \$25 000 to \$500 000 - of the maximum fine for contraventions of the Act and regulations by corporations.

Joint Health and Safety Committees

The exceptions to an employer's obligation to establish a joint health and safety committee have been reduced. Instead of exempting any constructor or employer who undertakes to perform work or supply services on a construction project, only "a constructor at a project at which work is expected to last less then three months" will be exempted. Also, instead of naming specific additional classes of exempt employers in the Act, the amended Act gives the Lieutenant Governor in Council the power to make regulations prescribing employers or workplaces or classes thereof which would be exempt from the obligation to establish joint health and safety committees. Consequently, until the creation of such regulations, and apart from the exemption mentioned above, no employer will be exempt from the obligation to establish a joint health and safety committee, provided that one of the following basic conditions has been met: the workplace employs twenty or more workers on a regular basis, the workplace is one in respect of which an order of a Director of the Occupational Health and Safety Division of the Ministry of Labour is in effect concerning the presence of toxic substances, or the workplace, other than a construction project employing fewer than twenty

workers on a regular basis, is one in respect of which a regulation concerning designated substances applies.

The Minister may exempt the employer or constructor from the obligation to establish a joint health and safety committee where a committee of like nature, giving workers equal or greater protection, was already present at the workplace when the original Act came into effect.

The minimum size of joint health and safety committees, where there are more then fifty workers in the workplace, has been increased to a minimum of four members, two of which will have to be workers' representatives.

One of the more important provisions of the amended Act requires that at least one member of the joint health and safety committee representing the workers and one representing the employer be trained and certified by a new Workplace Health and Safety Agency, which is to take a lead role in educating and training workers and employers in effective health and safety practices. The certification requirement does not apply to construction projects where less then fifty workers are regularly employed or which last less than three months.

The committee members representing the workers are given certain new powers under the amended Act, such as the right to inspect the workplace at least once a month, unless otherwise required by a regulation or by an order of an inspector. If monthly inspections would not be practical, the amendments provide for the possibility of monthly inspections of part of the workplace, provided that the whole workplace will be inspected at least once a year. It is indicated that if possible the inspection should be carried out by a certified member. The member is to inform the committee of situations that may be a source of danger or hazard to workers and the committee must consider such information within a reasonable period of time. A constructor or employer must respond in writing within twenty-one days to written recommendations from a committee. The response must contain a time table for implementation of accepted recommendations, as well as reasons for the rejection of others, if any.

In addition, a worker trades committee will have to be established by the joint health and safety committee at every construction project where more then fifty workers are regularly employed, provided the project is expected to last more then three months. The workers trade committee must inform the joint health and safety committee of the health and safety concerns of the workers employed in the trades at the workplace.

Health and Safety Representative

At any workplace where a joint health and safety committee is not required, the employer or the constructor at a project will now be obliged to ensure the selection of a health and safety representative from amongst the workers if the number of employees regularly present at the workplace exceeds five. The amended Act thus extends this obligation to employers - whereas it was previously restricted to project constructors - and significantly increases the number of organizations affected, as the minimum number of employees required has been reduced from twenty to five.

Unless otherwise required by regulation or by an inspector's order, health and safety representatives will now have the right to inspect the workplace, at least once a month. The frequency of inspections may be adjusted for reasons of practicality. Monthly inspections must, however, take place in parts of the workplace, while the whole workplace must be inspected at least once a year. The previous legislation stated that inspections could take place, but "not more often than once a month or at such intervals as a Director may direct".

In addition, health and safety representatives have been granted powers similar to those of health and safety committee members, such as the right to obtain information with respect to the identification of potential or existing hazards and with respect to the testing of any equipment or material for the purpose of occupational health and safety. The new legislation also imposes an obligation on the employer to respond within twenty one days to the written recommendations of a health and safety representative. This response must contain a timetable for implementing the recommendations or reasons why the employer or constructor does not accept certain recommendations.

Workplace Health and Safety Agency

The Advisory Council on Occupational Health and Occupational Safety has been replaced by a new Workplace Health and Safety Agency ("the Agency"). The Agency is to provide an overall structure to facilitate joint labour - management involvement in the design and operation of the new occupational health and safety management system. In addition to training and education of employers and workers, the functions of the Agency will include: advising the Minister of Labour, certifying members of joint health and safety committees, funding of occupational health and safety research, and supervising, funding and directing the operation of any occupational health and safety medical clinics, safety and accident prevention associations and occupational health and safety training centres as may be designated by regulation.

The Agency will be composed of a board of directors appointed by the Lieutenant Governor in Council, composed of equal representation from labour and management. There will be two full-time vice chairpersons, one representing each constituent group. The chairperson will be a candidate recommended by the Minister and selected from a list of candidates provided jointly by the vice chairpersons. An executive director will be selected in consultation with other members of the board and will handle the day to day administrative duties. The bulk of the funding of the Agency will be obtained from the Workers' Compensation Board.

Additional duties for employers and other persons

Additional duties imposed by the amended Act on employers, with respect to a workplace where six or more workers are regularly employed, include the obligation to prepare and review on a yearly basis a written occupational health and safety policy and to develop and maintain a program to implement that policy. Also, employers are now obliged: to provide the joint health and safety committee or the health and safety representative with reports on occupational health and safety in the workplace; to establish a medical surveillance program for the benefit of workers where prescribed by regulation; to provide for safety

related medical examinations and tests for workers as may be prescribed by regulation; and to provide certain training programs for workers as prescribed by regulation.

New duties imposed on construction project owners include the preparation of a list of designated substances present at the project site. This information must be part of the tendering information and as such must be made available to constructors, who will, in turn, need to make the same information available to the contractors and the subcontractors. Owners and constructors will be liable to their contract partners for any loss or damage which may result from their non-compliance with these provisions.

Directors and officers of corporations will have the duty to take reasonable care to ensure that the corporation complies with its obligations as created in and pursuant to the Act. Non-compliance can result in a maximum fine of \$25 000 per offence, or a prison term not exceeding one year.

Right to refuse or to stop work

The amended Act now grants the right to refuse work that is likely to endanger the worker himself or a co-worker to members of those classes of professions who previously had no, or only a limited right to refuse work, such as police officers, fire fighters, persons employed in the operation of a correctional institution, ambulance drivers and nurses. Instead of the exclusions or specific limitations of the right to refuse to work, the amended Act now prohibits the refusal when the dangerous circumstances described in the Act are inherent in the worker's work or a normal condition of the workers employment or when the worker's refusal to work would directly endanger the life, health or safety of another person.

Another important change to the Act concerns the creation of a bilateral or unilateral right of certified members of the joint health and safety committee to direct the employer or constructor to stop the work or to stop the use of any part of a workplace or of any equipment, machine, device, article or thing. This right is, however, not extended to workplaces where police officers or fire fighters are employed, nor to persons employed in detention centres or other types of correctional institutions. Persons employed on the operation of health oriented institutions as listed in the Act, including hospitals, homes for persons with behaviourial or emotional problems or an ambulance service, will only have the right to direct a work stoppage to the extent that this would not directly endanger the life, health or safety of another person.

The normal - bilateral - procedure requires several steps, including the accord between a certified member representing management and one representing the workers that the dangerous circumstances as described in the Act exist, before the stop work direction to the employer can be issued. In case of disagreement between two certified members, an inspector will investigate the matter and provide the certified members with a written decision. The certified members who have issued the direction may jointly cancel it or it may be cancelled by an inspector. The employer may request such cancellation after the dangerous circumstances have been remedied.

Certified members or inspectors who believe that the bilateral procedure would not sufficiently protect the workers from dangerous circumstances, may apply to an adjudicator

appointed under the Act, for a declaration that an employer or constructor will instead be subject to the unilateral procedure for stopping work, or may ask the adjudicator for a recommendation to the Minister that an inspector be assigned to oversee the health and safety practices of the constructor or employer at the workplace at the employer's expense. The adjudicator will, amongst other things, have to consider if the employer or constructor has demonstrated a failure to protect the health and safety of workers. The above mentioned unilateral procedure may also apply when an employer or constructor has advised the joint committee in writing that he or she has adopted the unilateral work stoppage procedures voluntarily.

Once a certified committee member has issued a unilateral stop work direction, a constructor or employer who does not agree with the certified member that dangerous circumstances exist, having first complied with the direction and investigated the matter in the presence of a certified member, may ask an inspector to investigate the matter and provide the parties with a written decision. After the dangerous circumstances have been remedied, an employer may request, and the certified member or the inspector may grant, a cancellation of the stop order. Should there be reasonable grounds to believe that a certified member has recklessly or in bad faith exercised or failed to exercise a power relating to the bilateral or unilateral right to issue a direction to stop work, a complaint may be filed with the adjudicator within fourteen days after the event to which the complaint relates. The adjudicator has the authority to order the decertification of a member and his or her decision is final.

The adjudicator will be appointed by the Lieutenant Governor in Council and will carry out the duties described above. In addition, the adjudicator will hear appeals from an order of an inspector, a responsibility which, prior to the amendments, was held by the Director of Appeals.

Enforcement

The powers of inspectors have been expanded and will notably include the authority to direct in writing a health and safety representative or a member of a joint health and safety committee representing the workers to inspect all or part of the workplace at specified intervals. Also, in order to make compliance orders more effective, an inspector has been given the authority to direct the employer to submit a compliance plan to the Ministry, specifying how and when the employer intends to comply with the order.

An employer who has received a stop work order from an inspector pending compliance with an order to comply with a provision of the Act or regulations, will not be able to continue work until an inspector has withdrawn or cancelled the order after an inspection. Nevertheless, an employer who has issued a notice of compliance with respect to a stop work order may resume work, pending the investigation by the inspector, if a member of a joint health and safety committee representing workers, or a health and safety representative, advises the inspector that in his or her opinion the inspector's order has been complied with. Employers will have to post in the workplace, for fourteen days, the notice of an inspector to comply or to stop work together with the employer's notice of compliance and an attached statement of agreement signed by a member of the joint committee representing workers or by a health and safety representative as the case may be. If the member or representative does not agree, a statement will have to be attached to the employers notice to that effect.

Additional powers obtained by inspectors include the power to obtain testing reports at the expense of the employer, the right to obtain information on training programs, and the authority to seize documents as evidence of offences under the Act.

Confidentiality of information

The employee's right to privacy is further protected by including in the Act a provision that no information can be obtained with respect to their health record without their prior written consent, unless said information is required pursuant to another Act such as the Workers' Compensation Act.

Finally, the amended Act specifies that the operation of the Health and Safety Agency and the operation and the effectiveness of the bilateral and unilateral right to issue directions to stop work will be reviewed three years after the coming into force of the section containing the review requirement.

C. Hazardous Materials and Controlled Products

In <u>Newfoundland</u>, Workplace Hazardous Materials Information System (WHMIS) Regulations, 1989 were adopted under the Occupational Health and Safety Act. These regulations are a revised version of the WHMIS Regulations adopted in 1988. They notably contain the following modifications:

- l. a definition of the terms "laboratory sample" is given;
- 2. an exemption from supplying a workplace label for decanted products is provided, where the controlled product originates from a laboratory supply house;
- 3. where a claim or portion of a claim for an exemption to disclose confidential business information is granted, the MSDS and the label must specify, in addition to the information previously required, the registry number assigned to the claim under the Hazardous Materials Information Review Act, and
- 4. transition periods have been revised to ensure that there is no interruption of the supply of controlled products from secondary suppliers.

The 1988 WHMIS Regulations were repealed and replaced by these regulations which were brought into force on November 21, 1989. On the same date, the provisions providing for transition periods were repealed.

In the <u>Northwest Territories</u>, Mine Hazardous Materials Information System Regulations were adopted under the Mining Safety Act. These regulations have established the requirements of the Workplace Hazardous Materials Information System (WHMIS) specially adapted to mining operations. They provide all the essential elements of the WHMIS:

l. worker education and training with respect to the proper use, storage and handling of controlled products;

- 2. the disclosure to workers of all hazard information concerning controlled products through the appropriate use of labels, placard identifiers, etc., and the preparation and maintenance of material safety data sheets;
- 3. the protection of confidential business information by enabling managers to apply for an exemption from the requirement to disclose information with respect to a controlled product; and
- 4. the disclosure of information, including confidential business information, to a medical doctor or a nurse who requests it for rendering treatment to a person during an emergency.

Periods of exemption respecting certain obligations were granted in order to provide a transition period. However, this regulation is fully operative since October 1, 1989.

D. Mining

In the <u>federal</u> jurisdiction, new Coal Mines (CBDC) Occupational Safety and Health Regulations were established under the Canada Labour Code. These regulations revoke and replace previous Coal Mines (CBDC) Safety Regulations, and apply in respect of coal mines under the authority of the Cape Breton Development Corporation. Amendments to the Canada Labour Code, Part II, received Royal Assent in June 1984 and July 1988, and made it necessary to revoke and replace them with new regulations compatible with the amended enabling legislation. Effective February I, 1990, the amended Canada Labour Code provides for the establishment of a Coal Mining Safety Commission and removes the use of discretionary powers by a safety officer. The Commission has been given the power to vary or exempt the application of regulations and approve mining equipment, procedures and standards. Nonetheless, to reflect these changes, these new regulations provide no discretionary powers for a safety officer but contain provisions requiring the employer to make application to the Commission, for their approval, with respect to specific matters. In addition, the language and the structure used makes them easier to comprehend.

These regulations govern the use, storage and handling of explosives and detonators, the safe occupancy of the workplace, underground transportation and hoisting, ventilation, explosion and fire protection, development plans, strata control plans and mine survey plans, hazardous occurrences, as well as the keeping of records, reports, plans and procedures.

Coal Mining Safety Commission Regulations also adopted under the Canada Labour Code establish the manner of selection and term of office of the members of the Coal Mining Safety Commission. The Commission is composed of two representatives for the employer (CBDC), two representatives for the non-supervisory employees and a chairperson. The employer and the trade unions are required to submit, in the prescribed manner, to the Minister of Labour for his approval, the names and qualifications of persons they recommend to be appointed to the Commission. The term of office of the chairman of the Commission is two years, and for the other members, it is one year. Members may be reappointed for more than one term.

In addition, the federal government has modified the Canada Occupational Safety and Health (COSH) Regulations to exclude concentrations of carbon dioxide or respirable dust, as well as of methane gas, in an underground portion of a coal mine from the requirements of Part X of the COSH regulations, which prescribe the maximum concentrations of airborne chemical agents to which an employee can be exposed. In addition, these regulations exempt the coal mining sector from the application of Part XV, respecting "Hazardous Occurrence Investigation, Recording and Reporting", except for section 15.10 which requires the employer to submit to the Minister of Labour each year a report on the number of all such incidents that occurred in the previous year.

In the <u>Northwest Territories</u>, the Mining Safety Regulations under the Mining Safety Act were amended to make reference to CSA Standard CAN3-M42l-M85, "Use of Electricity in Mines", as amended from time to time. The amendment specifies that electrical apparatus, installations and procedures at a mine must comply with the requirements and standards set out in this CSA Standard.

E. Logging

In Ontario, an amendment to the Industrial Establishments Regulation under the Occupational Health and Safety Act became effective on October 1, 1989. It requires that every worker employed in a logging operation take part in a training program. Workers must choose between "The Cutter Program" or "The Skidder Operator Program", according to which is most appropriate for their duties, and must complete this training within one year of the coming into force of this regulation or of the date of their hiring.

F. Smoking in Workplaces

The <u>federal</u> government has adopted the Non-smokers' Health Regulations under the Non-smokers' Health Act.

These regulations restrict smoking to designated smoking rooms and areas, if the employer decides to establish them. The prohibition from smoking contained in the Act otherwise applies to all workplaces under federal jurisdiction. Designated smoking rooms must be enclosed, be clearly identified as such, be separately ventilated if the building is built in 1990 or after by means of a ventilation system that meets the requirements of ASHRAE Standard 62-1989, "Ventilation for Acceptable Indoor Air Quality", and be equipped with ashtrays or other suitable receptacles.

Every employer must inform all employees, by notice in writing or by posting clearly visible signs (which are depicted in Schedule I of the regulations), that smoking is prohibited except in designated smoking rooms, and of the location of all such rooms. In addition, signs must be posted in areas to which the public has access to inform the members of the public who enter the premises that smoking is prohibited or is permitted only in designated smoking rooms.

The restrictions also generally apply, with some adaptations, to trains, ships and aircraft, as well as to airport terminals, marine passenger terminals, bus stations and railway stations. However, in the case of passenger aircraft, airlines will be allowed to continue designating

smoking areas for international flights of a scheduled duration of more than six hours and for specified international flight segments until July I, 1993. Airlines are required to reduce the overall proportion of seats for smokers from May 1990 levels by 25% beginning July 1, 1990 and by the same percentage annually to July I, 1993, when smoking will no longer be allowed.

These regulations also set the fines for failing to comply with the Act or regulations. In general, employees and individuals are subject to fines of \$50.00 for a first offence, \$75.00 for a second offence and \$100.00 for each subsequent offence, whereas employers are subject to fines of \$500.00 for a first offence, \$1 000.00 for a second offence and \$10 000.00 for each subsequent offence. In addition, fines of \$250.00 for a first offence, \$500.00 for a second offence and \$1 000.00 for each subsequent offence may be imposed for failing to provide reasonable assistance to inspectors or for wilfully obstructing an inspector in the performance of his or her duties.

Finally, Schedule III of the regulations sets out the form in which a ticket or an information must substantially be represented.

These regulations came into force on December 29, 1989, except for the provisions applicable to the airline industry as described earlier.

In <u>Ontario</u>, the Smoking in the Workplace Act, 1989 was brought into force on January I, 1990. This Act prohibits smoking in enclosed workplaces, except in designated smoking areas, in areas used primarily by the public or for lodging and in a private dwelling. "Enclosed workplace" means a building or structure in which an employee works and includes a shaft, tunnel, caisson or similar enclosed space.

An employer may designate one or more locations in an enclosed workplace as smoking areas. The total space for designated smoking areas at an enclosed workplace cannot exceed 25% of the total floor area of the workplace. An employer must consult with the joint health and safety committee or the health and safety representative, if any, before establishing a designated smoking area. Signs complying with any specifications set by regulations must be posted in order to identify designated smoking areas in a workplace.

An employer must make every reasonable effort to ensure compliance with this Act and to accommodate employees who request that they work in a place separate from a designated smoking area.

An inspector appointed under the Occupational Health and Safety Act may inspect workplaces to determine whether this Act is being complied with. The Act confers to inspectors all the necessary powers of inspection and enforcement to enable them to carry out their duties. When an infraction has been found, an order may be issued by an inspector indicating in a general way the nature and, where appropriate, the location of the non-compliance. Such an order may be appealed to the Director of the Occupational Health and Safety Division of the Ministry of Labour.

No employer, or person acting on behalf of an employer, can: a) dismiss or threaten to dismiss an employee; b) discipline or suspend an employee or threaten to do so; c) impose

a penalty upon an employee; or d) intimidate or coerce an employee, because the employee has acted in accordance with or has sought the enforcement of this Act.

Every person who smokes in a prohibited area, every employer who fails to carry out the obligations established in this Act, and every person who causes, authorizes, permits or participates in an offence is guilty, upon summary conviction, of an offence and is liable to a fine of not more than \$500, or, if that person is an employer, to a fine of not more than \$25 000.

In the event of conflict between this Act and another Act, a regulation or a municipal by-law respecting smoking in a workplace, the most restrictive provision prevails. Nothing in this Act prevents a municipality from passing by-laws respecting smoking in workplaces, or derogates from the right of an employer to prohibit smoking in a workplace or from the right of an employee to a smoke-free workplace. This Act binds the Crown.

G. Youth Employment

On April 26, 1990, Prince Edward Island passed the Youth Employment Act. This Act replaces the Minimum Age of Employment Act. It prohibits employment of young persons under the age of sixteen years in the construction industry, during certain times of the day, such as during normal school hours and during the night, and if such employment would be harmful to the health, safety, moral or physical development of the young person. Maximum hours of employment are prescribed per school day, per non-school day and per week. The inspector of labour standards may exempt young persons from the limitations on allowed hours of work, provided certain conditions are met. The Director of Occupational Health and Safety and occupational health and safety officers may inspect any workplace in which young persons are employed to ensure compliance with the provisions of the Act. In the case of certain industries, an order prohibiting or restricting employment of young persons in a workplace may be issued if a toxic substance or a piece of machinery, which could be potentially dangerous to young persons, is found. Employers are required to supervise young persons, inform them of potentially dangerous situations and provide adequate training prior to authorizing them to perform unsupervised work. A maximum fine of \$1 000 is imposed for violations of the Act by employers and for non-compliance with an order made under the Act. The Act is scheduled to come into force on a day to be fixed by proclamation.