



## Labour

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# Archived - Highlights of Major Developments in Labour Legislation (1990-1991)

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## INTRODUCTION

Between July 1, 1990 and June 30, 1991, many significant changes were made in the different areas of labour legislation in Canada.

With respect to labour standards, the most significant changes and proposed changes include: amendments to the *Unemployment Insurance Act* with respect to parental leave benefits, which has resulted, so far, in amendments to employment standards legislation giving access to those benefits in Manitoba, Ontario, Quebec, British Columbia, New Brunswick, Prince Edward Island, the Northwest Territories and Nova Scotia; minimum wage increases in New Brunswick, Prince Edward Island, Manitoba, the Northwest Territories, the Yukon, Nova Scotia, Ontario and Quebec; and improvement of the wage recovery mechanisms at the federal level, in Ontario, in Manitoba, and in Quebec.

In the field of industrial relations, amendments to the general collective bargaining legislation have been made in Manitoba, Quebec and Newfoundland, and, in the case of Newfoundland, additional changes have been proposed. With respect to the public sector, the changes are as follows: various amendments have been made to the New Brunswick public sector collective bargaining statute; the seniority of employees of the health and social services sector in Quebec, which was lost in a 1989 work stoppage, has been restored; laws providing for wage restraint in the public sector have been passed in British Columbia, Newfoundland, Quebec, Nova Scotia and Manitoba; and significant amendments have been proposed for the federal *Public Service Staff Relations Act*. During the period covered by this report, the federal government has adopted an ad hoc emergency law, and, in the construction industry, Newfoundland has issued orders with respect to a special construction project under its **Labour Relations Act, 1977**.

In addition, several jurisdictions have made changes to their occupational safety and health legislation. Among these changes are the proclamation of Bill 208 in Ontario, and the proclamation of British Columbia's **Mines Act**; the administrative reform of Acts administered by the Minister of Labour in Alberta, through the adoption of the *Safety Codes Act*; new provisions regulating radiation protection in Alberta; new regulations respecting the hazards associated with asbestos in Prince-Edward Island; and a new law protecting employees who give information respecting infractions to environmental protection laws from retaliation in the Northwest Territories.

## I. EMPLOYMENT STANDARDS

### A. Maternity and Parental Leave and Other Employment Standards

The **federal government** has adopted the **Act to amend the Unemployment Insurance Act and the Employment and Immigration Department and Commission Act**.

This Act includes, among other things, a revision of the provisions of the Unemployment Insurance Act dealing with special benefits. Effective November 18, 1990, the benefits provided are as follows:

- 15 weeks of maternity benefits in the period surrounding the birth of a child;
- 10 weeks of parental benefits, available to natural or adoptive parents, to either the mother or the father, or shared between them as they deem appropriate; and
- 15 weeks of benefits for illness as prescribed by regulation.

More than one type of the benefits mentioned above may be claimed within the same benefit period, up to a cumulative maximum of 30 weeks. In addition, claimants can receive parental benefits in combination with regular benefits, but the total cannot exceed 30 weeks or the maximum regular benefit entitlement, if it is greater.

The 10 weeks of parental benefits are extended to 15 weeks if a child is six months of age or older at the time of arrival at a claimant's home or actual placement for adoption, and a medical practitioner or the agency that placed the child certifies that the child suffers from a physical, psychological or emotional condition that requires an additional period of parental care.

The Act provides various transitional provisions concerning the entitlement of claimants to the new parental benefits. These apply to claimants who have established a benefit period before November 18, 1990, which continues after that date.

**Manitoba** has amended its **Employment Standards Act** to abolish paternity and adoption leave and has created a parental leave of 17 weeks, available to each natural or adoptive parent who has completed a minimum of 12 consecutive months of employment with the same employer. An application in writing must be submitted to the employer at least four weeks before the day on which the employee intends to commence his or her leave as indicated in the application. The leave must commence within a year from the date of birth or adoption of the child or the day the child has come into the actual care and custody of the employee. Seniority, pension and other benefits do not accumulate during the leave period. When an employee intends to take both maternity leave and parental leave, the total leave period must be continuous unless the parties agree otherwise or a relevant collective agreement provides otherwise. Transitional provisions provide for retroactive application of the Act to parents who were on maternity, paternity or parental leave pursuant to the unamended provisions as of December 14, 1990, the date on which the Act came into force.

**Ontario** has adopted **An Act to amend the Employment Standards Act with respect to Pregnancy and Parental Leave**. This Act amends the Employment Standards Act to change the scheme for pregnancy leave and to introduce a scheme for parental leave.

Important changes regarding pregnancy leave are the following: the qualification period has been reduced from 12 months and 11 weeks to a minimum of 13 weeks; the earliest date at which pregnancy leave may be commenced has been moved up from 11 weeks to 17 weeks prior to the expected date of delivery; seniority rights and some benefits (e.g., pension plans, life insurance plans, accidental death plans, extended health plans and dental plans) are continued during the pregnancy leave. Moreover, the right of an employer to require a pregnant employee to commence an early pregnancy leave has been repealed. Also, the provisions of the Human Rights Code, which now prevail, require employers to accommodate the needs of pregnant employees, unless to do so would cause undue hardship to the business.

An unpaid parental leave of up to 18 weeks is introduced for employees who have been employed at least 13 weeks. The term "parent" has been defined as including adoptive parents as well as persons who have a lasting relationship to a parent of a child and intend to treat the child as their own. The leave must begin within 35 weeks after the child is born or comes into the care of a parent for the first time. Seniority rights and benefits continue to accumulate during the leave and an employee has the right to return to his or her previously held position, as in the case of pregnancy leave.

This Act came into force on December 20, 1990 and applies retroactively to November 18, 1990, the date on which the new Unemployment Insurance parental benefits came into force.

In **Quebec**, **An Act to amend the Act respecting labour standards and other legislative provisions** came into effect for the most part on January 1, 1991 and made significant changes with respect to the following:

#### **Parental Leave and Maternity Leave**

- The requirement for a period of uninterrupted service in order to be entitled to maternity leave has been abolished.
- Each mother and father is entitled to a parental leave not exceeding 34 consecutive weeks, to be taken during the year following the birth or adoption of a child which has not yet reached the age of compulsory school attendance.
- An employee has the right to return to his or her previously held position at the end of a maternity leave or a parental leave not exceeding 12 weeks. If the parental leave exceeds 12 weeks, the employee has the right to be reinstated in a comparable position.
- The Act allows the government to set by regulation the benefits to which an employee may be entitled during parental leave, as well as the

duration of maternity leave or any extension where applicable, the time at which it can be taken, the notices that must be given and requirements for special cases specified in the Act.

- An employee has the right to be absent without pay for medical examinations related to pregnancy.
- Every employee has the right to be absent for five days at the birth of his or her child or at the adoption of a child. The first two days of absence must be paid if the employee has completed 60 days of uninterrupted service.
- A parent has the right to be absent without pay for five days per year when, due to unforeseeable circumstances, his/her presence is required to assist a child who is a minor.
- Also, an employee has a recourse to a labour commissioner, in certain circumstances, when he/she has been penalized on the ground that the employee has refused to work beyond the regular hours of work in order to fulfil parental obligations towards a child who is a minor.

### **Bereavement Leave**

- The Act expands the right to bereavement leave which includes the right for an employee to be absent from work for one day, without pay, by reason of the death or the funeral of a son-in-law, daughter-in-law, one grandparent or grandchild, or the father, mother, brother or sister of a spouse.

### **Part-Time Employees**

- Certain provisions prohibit an employer from paying an employee a lower salary or a reduced period of annual leave or the indemnity pertaining to it for the sole reason that he/she usually works less hours each week than another person performing the same tasks in the same establishment. These provisions will apply to part-time employees in 1992, when their remuneration does not exceed twice the minimum wage.
- The government may determine by regulation a later date for the application of these provisions to certain categories of part-time employees.
- The government may also, by regulation, suspend the application of these provisions in respect of certain categories of employees and employers, determine a later date for their application, or provide for a progressive adjustment of the rate of pay, the length of the annual leave or the indemnity relating to it.

### **Other Amendments**

The Act proposes other changes to labour standards, in particular:

- by adding July 1 as a statutory holiday;
- by gradually reducing from ten to five the number of years of service required for an employee to be entitled to three weeks' annual leave; and
- by allowing the employer to replace the payment of overtime by paid leave equivalent to the overtime worked plus 50%, at the request of the employee or in the cases provided by a collective agreement or decree.

Moreover, the amendments include the following changes relating to complaints made under the Act:

- the number of years of service required for an employee to have a right of recourse in cases of dismissal made without good and sufficient cause is gradually reduced from five to three;
- the field of prohibited practices by employers is broadened to include discriminatory practices, reprisals or any other sanction for motives prohibited by the Act;

- effective June 1, 1991, the jurisdiction to investigate complaints of illegal or unjust dismissal is transferred to labour commissioners;
- employees filing a complaint are given the right to ask for an administrative review when the Labour Standards Commission (Commission des normes du travail) refuses to pursue an inquiry;
- a right of recourse is granted, in certain circumstances, when there is a suspension, transfer or dismissal as a result of an illness or accident that is not work related and continues for 17 weeks or less;
- organizations dedicated to the defence of employees' rights are allowed to file a complaint with the Labour Standards Commission on behalf of employees who give their explicit consent;
- the Labour Standards Commission is given the right to exercise the legal recourse of an employee against the directors of corporations;
- the Labour Standards Commission can accept on behalf of an employee who gives his/her consent, or a group of employees who are parties to a claim when a majority of them so consent, partial payment of the amounts owed by the employer.

In addition, effective April 1, 1991, the scope of the Act is expanded and includes the employees of the government and related bodies as well as those of small farms; however, managerial personnel are excluded from its provisions, except for those relating to certain family leaves. Nevertheless, the employees of small farms remain excluded from the application of the provisions dealing with wages and the regular workweek; employment standards concerning these subjects may be prescribed by regulation.

Moreover, changes to the definitions of "consort", "domestic" and "uninterrupted service" have extended the application of the Act to employees not previously covered.

Lastly, the Act contains many amendments relating to the composition, functions and representativeness of the Labour Standards Commission.

**British Columbia's Employment Standards Amendment Act, 1991**, which was assented to and became effective March 22, 1991, has created a parental leave of 12 consecutive weeks for each parent and has extended the job protection provisions which already existed for maternity leave to parents using their parental leave. In cases of maternity leave and parental leave, a written application must be made for the leave at least four weeks before the proposed commencement date of the leave. This application must be accompanied by a certificate from a doctor stating the (probable) date of birth of the child, or a letter from a child placement agency providing evidence of the adoption of the child. Where a new born or adopted child is at least six months of age at the time he/she comes into the custody of the mother or father and a medical practitioner or the agency that placed the child certifies that additional care is needed because the child suffers from a physical, psychological or emotional condition, the parental leave may be extended up to five consecutive weeks. However, an employee's combined leave under the Act may not exceed a total of 32 weeks.

**New Brunswick** has similarly amended its **Employment Standards Act** to provide a child care leave without pay of 12 consecutive weeks. This leave is available to one of the parents or may be shared between them as they see fit. It is available to both natural and adoptive parents. It may commence no earlier than the date on which the child came into the care and custody of the employee. Certain requirements must be met, such as timely notice to the employer of the intention to take leave and of the anticipated date of commencement of the leave. In addition, prescribed certificates must be provided, in the case of birth as well as in the case of adoption. A maximum extension of five weeks is possible, if the appropriate authority has certified that a child who has attained the age of six months before coming in the employee's care and custody suffers from a physical, emotional or psychological condition that requires parental care. The original and extended child care leave may end no later than 52 weeks after the child came into the employees' care and custody. If the employee has taken maternity leave, the child care leave must follow immediately thereafter. The protection of position and benefits which applies to maternity leave applies with the necessary changes to child care leave. The previous provisions regarding leave of a father in the event of death of the mother of a newborn child and the provisions regarding adoption and parenthood leave have been repealed. Finally, the Act contains transitional provisions which provide for retroactive application of the child care leave entitlement to the date parents became entitled to child care benefits under the amended Unemployment Insurance Act. This Act came into force on May 9, 1991.

In **Prince Edward Island, An Act to amend the Labour Act**, assented to and effective April 9, 1991, obliges an employer to provide every employee, except those excluded by the regulations or those covered by a collective agreement pursuant to Part I (Industrial Relations (general)) or Part II (Industrial Relations (construction)) of the Labour Act, with a rest period of at least twenty-four consecutive hours in every period of seven days. Whenever possible this rest period should include Sunday. In addition, the Act creates a right to a parental leave period of 17 weeks for each natural mother, natural father or person who adopts a child under the law of a province, provided that certain conditions have been complied with, most importantly that a period of employment of twelve consecutive months with an employer must have been completed.

The previous adoption leave provision has been repealed. A person exercising his or her right to parental leave has the same protection against dismissal and the same right to reinstatement upon return as that extended by the Act to a person who has been on pregnancy leave.

Finally, the Act authorizes an inspector to bring court action on behalf of employees for recovery of unpaid wages and vacation pay. The status of an inspector to do so was the subject of an adverse comment in a recent P.E.I. Supreme Court case.

The **Northwest Territories** have recently adopted an **Act to Amend the Labour Standards Act, No. 1**. The purpose of this Act is to amend the Labour Standards Act to extend unpaid parental leave to parents of new-born children or who are adopting children.

An employee who has worked for the same employer for the period specified in the regulation is entitled to parental leave without pay of 12 consecutive weeks, if the employee intends to remain at home to care for a new-born or adopted child.

The period of leave may be extended to 17 weeks if the child being adopted is six months of age or older on the day the child arrives at the employee's home, or if a new-born or adopted child suffers from a physical, psychological or emotional condition that requires an additional period of parental care.

Where an employee plans to adopt more than one child and their arrival occurs at the same or substantially the same time, the period of leave is of 12 weeks, as if the children were considered a single child for the purposes of these provisions. The employee has the option of taking this leave at any time within the period commencing on the date the first child arrives and ending one year after the last child arrives.

Where an employee takes parental leave in addition to pregnancy leave, the employee must begin the parental leave immediately following the expiry of the pregnancy leave, or begin on the day the child arrives at the employee's home, unless the employee and employer agree otherwise.

The 12 weeks of parental leave must be extended to an employee who has adopted a child and the child arrives sooner than expected. In all other circumstances where the request for parental leave has not been made in accordance with the provisions of the Act, for example, where the four-week notice was not given, the employee requiring the leave suddenly is nonetheless entitled to six weeks of parental leave.

The period of leave may be shortened and the employee may resume employment sooner than the anticipated date of return, with the consent of his or her employer.

The employee must be re-instated in the same position, or in a comparable one, at no less than the wages, benefits and seniority accrued to the date the pregnancy or parental leave began, and with all increments to wages and benefits to which the employee would have been entitled had the leave not been taken. An employer who has suspended operations during an employee's period of pregnancy or parental leave, and has not resumed the operations at the time the period of leave expires, cannot refuse to re-instate the employee, or to comply with the provisions respecting the reinstatement, upon resuming operations.

An employer cannot change a condition of employment without the written consent of the employee, or terminate the employee's employment because of the pregnancy or because the employee has requested or has taken pregnancy or parental leave.

The onus is on the employer to establish that any contravention to the provisions dealing with re-instatement, changes in the conditions of employment or termination of employment is not related to the employee's pregnancy, or the fact the employee has requested or taken pregnancy

or parental leave.

This Act came into force on July 15, 1991.

**Nova Scotia's Labour Standards Code** will be amended by Bill 197 which was assented to on July 11, 1991 and will come into force on a date to be set by proclamation. The main thrust of the Bill will be to provide 17 weeks of parental leave available to either parent, whether natural or adoptive, in addition to the 17 weeks maternity leave already provided under the Act. The Bill will also abolish the Minimum Wage Board and transfer its regulatory functions over to the provincial Cabinet. Other reforms will include: greater protection for employees against reprisals after having lodged a complaint under the Act or for testifying against an employer; a first priority for employees' claims for wages, in certain circumstances, payable before any other creditor's claim is met; bereavement leave as well as court-related leave; and extension of full vacations with pay provisions to part-time workers.

## B. Other Changes to the Legislation of General Application

**Nova Scotia** has repealed and replaced its General Regulations under the **Labour Standards Code**. The new regulations cover a variety of topics, the most important of which are the following:

Certain individuals or groups have been fully or partially exempted from the application of the Act or certain sections thereof. Domestic servants in private homes and duly qualified practitioners or students while engaged in training for certain professions, including architecture, dentistry, law and medicine, have been fully exempted from the application of the Act. Full exemption has also been extended to workers engaged in "The Unemployment Insurance Job Creation Program".

Certain classes of employees have been excluded from the application of certain sections of the Act. For example, certain farm workers are exempted from the application of the "hours of work" and "holidays with pay" provisions of the Act; real estate salespersons, automobile salespersons, non-travelling salespersons who receive commissions as all or part of their remuneration and persons working on fishing vessels are exempted from the application of the provisions concerning "vacations with pay", "holidays with pay", "minimum wages", "hours of work" and "termination of employment", and employees covered by a collective agreement are exempted from the application of "holidays with pay" and "termination of employment" provisions.

Also, with respect to "termination of employment", it is provided that the length of the notice of individual or group termination required under the Act does not include any week of vacation, unless the employee, after receiving the notice, agrees to take the vacation during the period of the notice.

Finally, the regulations address the "protection of pay" issue, by requiring that an employer must, when making payment of wages, provide an employee with a statement in writing setting out the period for which payment of wages is made, the number of hours for which payment is made, the rate of wages, details on deductions made and the actual sum being received by the employee.

These regulations came into force on November 30, 1990.

**British Columbia's Job Protection Act**, which became effective April 12, 1991, has introduced a number of measures designed to minimize job loss and consequent destabilization of regional or local economies and to enhance the competitiveness of businesses in the province and in the global market place.

To this end, the Act has, among other things, amended the Employment Standards Act, by creating an advance notice requirement in cases of termination of employment of 50 or more employees at a single location within any 2 month period. The parties which must be given written notice include the Minister of Labour and Consumer Services, the trade unions concerned and all affected employees. The notice must indicate the number of employees to be terminated, the effective date of termination and the reasons for termination. The length of the notice depends on

the number of employees whose employment will be terminated: if the number of employees does not exceed 100, the notice must be given at least eight weeks before the effective date of the first termination; if the number of employees exceeds 100 but does not exceed 300, the notice must be given at least 12 weeks before the first termination; and if the number of employees exceeds 300, a 16 weeks notice must be given.

No notice needs to be given to certain employees under certain prescribed circumstances, including an employee who: is discharged for a just cause; is employed for a definite term or for a specific job to be completed in a period not exceeding 12 months; is employed in the construction industry; has been offered but has refused reasonable alternative work or employment by the employer; or who is terminated or laid off as a result of a normal seasonal cycle.

The Minister may require the establishment of a joint adjustment committee of management and worker representatives, charged with the development of an adjustment program to eliminate the necessity for the termination of employment or to minimize the impact of such termination on affected employees and to assist those employees in obtaining other employment.

**Prince Edward Island** has amended its Minimum Wage Order 1/85 under the **Labour Act** to exclude from its application persons covered by a collective agreement under Parts I and II of the Act.

The regulation specifies that the rates provided apply with respect to a maximum workweek of 48 hours, or, in the case of persons employed as heavy equipment operators and in seasonal highway construction, for a maximum workweek of 55 hours.

All hours in excess of the prescribed maximum are to be remunerated at a rate not less than one and one-half times the employee's regular rate. The following exceptions are provided:

1. ambulance drivers, who get paid time and-a-half after 12 hours of overtime worked;
2. employees in the fishing or fish processing industry, and truck drivers, who are entitled to one and one-half times the minimum wage after 48 hours in a week; and
3. night shift employees of community care facilities, who must be paid for a minimum of eight hours at the minimum rate for any 10-hour shift worked between the hours of 8 p.m. and 8 a.m.

This regulation came into force on June 8, 1991.

Effective July 26, 1991, **Manitoba** has amended its **Employment Standards Act**, among other things:

- a. to provide that, where parties to a collective agreement agree, an arrangement allowing maximum standard hours of work to be exceeded without payment of overtime is valid, and does not require Labour Board approval;
- b. to require the Labour Board to review every two years their hours of work orders;
- c. to increase the time limitation to file a complaint for failure to give proper notice of termination from 90 days to six months; and
- d. generally to make the exemptions from the individual notice of termination provisions more consistent with those from group notice of termination provisions.

The **federal** jurisdiction has amended the Canada Labour Standards Regulations under the **Canada Labour Code**. The most significant amendments include:

- the provision for payment of reporting pay of three hours at the regular rate of pay;
- the requirement to post a summary of the Canada Labour Code with a clause emphasizing the confidentiality of inquiries;
- the requirement to post the sexual harassment policy;



- the tightening of administrative procedures in the case of averaging of hours of work and the payment of unclaimed wages;
- the removal of the Minister's authority to reduce minimum wages for trainees; and
- the updating of the list of industrial establishments for purposes of group termination.

These regulations came into force on September 2, 1991.

## C. Minimum Wages

**New Brunswick** has increased its minimum wage rates. Effective October 1, 1990, the general minimum wage rate was increased to \$4.75 per hour. It will further be increased to \$5.00 per hour, effective October 1, 1991. Employees whose hours of work per week are unverifiable and who are not strictly employed on a commission basis are entitled to at least \$209.00 per week, effective October 1, 1990 and to at least \$220.00 per week, effective October 1, 1991. The minimum wage payable for time worked in excess of the maximum number of hours of work is established at \$7.13 per hour, effective October 1, 1990, and at \$7.50 per hour, effective October 1, 1991.

In **Prince Edward Island**, an amendment to the Minimum Wage Order provided that the minimum wage rate payable to workers 18 years of age and over increased to \$4.75 per hour, effective April 1, 1991. On the same date, the rate payable to workers under 18 increased to \$4.35 per hour.

In addition, a modification has been made with respect to overtime. Effective April 1, 1991, the minimum overtime rate is one and one-half times the employee's regular rate of pay instead of one and one-half times the minimum wage rate.

**Manitoba** provided an increase in the general minimum wage from \$4.70 to \$5.00 per hour. Maximum deductions for meals provided by the employer have increased from 50 cents to \$1.00 for each meal and maximum weekly deductions for lodgings provided by the employer went up from \$5.00 to \$7.00. The minimum hourly wage for employees under 18 years has been repealed. Consequently, the new minimum hourly wage of \$5.00 applies to all age groups. The regulations respecting these conditions of work came into force on March 1, 1991.

In **Newfoundland**, the general minimum wage rate applying to employees who are 16 years of age or over has been increased from \$4.25 to \$4.75 per hour as of April 1, 1991. This does not apply to casual baby sitters. Also, there is no longer a special minimum wage rate for domestics in a private home who are 16 years of age or over.

A new minimum wage for workers in the **Northwest Territories** came into effect April 1, 1991. For workers living along the N.W.T. Highway System, the new minimum wages are \$6.50 per hour for those aged 16 and over, and \$6.00 per hour for workers under the age of 16. The minimum rates for workers everywhere else in the N.W.T. are \$7.00 per hour for those aged 16 and over, and \$6.50 per hour for those under the age of 16.

Effective April 1, 1991, in the **Yukon Territory**, the minimum wage rate has been increased from \$5.97 to \$6.24 per hour.

Also, **New Brunswick** has set the minimum wage for counsellors and program staff employed at residential summer camps at \$209.00 per week, effective June 12, 1991. The minimum wage for these employees will be increased to \$220.00 per week, effective October 1, 1991.

**Nova Scotia** has repealed and replaced the minimum wage orders under the **Labour Standards Code** for various categories of employees with the following orders: General, Beauty Parlours, Road Building and Heavy Construction Industry, and Logging and Forest Operations Employees. Although the orders have been entirely repealed and replaced, only the minimum wages and maximum rates for board and lodging have been altered.

The general minimum wage rate as well as that for experienced beauty parlour employees, road building and heavy construction industry employees, and forestry and logging operations employees will be increased from \$4.50 to \$4.75 per hour, effective October 1, 1991, and further

increased to \$5.00, effective January 1, 1992. Underage employees and inexperienced employees will be entitled to \$4.30 (up from \$4.05), effective October 1, 1991, and to \$4.55, effective January 1, 1992. Inexperienced employees of beauty parlours will be entitled to \$3.60, for the first three months, \$3.95, for the second three months, and \$4.30 for the third three months, effective October 1, 1991. Effective January 1, 1992, they will be entitled to \$3.85, for the first three months, \$4.20, for the second three months, and \$4.55, for the third three months.

Maximum deductions for board and lodging will also be increased from \$41.35 to \$43.65 per week, for board and lodging; from \$33.40 to \$35.25 per week, for board only; from \$9.35 to \$9.85 per week, for lodging only; and from \$2.15 to \$2.25 for single meals, effective October 1, 1991. These rates will further be increased, effective January 1, 1992, to \$45.90 per week, for board and lodging; \$37.10 per week, for board only; \$10.35 per week, for lodging only; and \$2.35 for single meals. Such rates apply under the general and the beauty parlour minimum wage orders. In the case of forestry and logging operations, the employer who furnishes board and lodging to an employee will not be permitted to deduct more than \$7.00 per day from the minimum wage fixed by this order, effective October 1, 1991, and no more than \$7.35 per day, effective January 1, 1992.

Both **Quebec** and **Ontario** have announced increases in their minimum wage rates but, breaking with the pattern generally followed since 1986, they will not be implementing the new rates on the same date, and the rates will no longer be established at comparable levels.

**Ontario** has adopted a policy that will bring the level of the minimum wage to 60 per cent of the average wage by 1995. The current minimum wage represents 48 per cent the 1989 average wage. Ontario's general minimum wage rate will be increased to \$6.00 an hour, from \$5.40 an hour, effective November 1, 1991. The November date is designed to permit most seasonal employment to be completed at one rate. The lower rate payable to students under 18 years of age working not more than 28 hours in a week or during a school holiday, will be phased out by 1992. This rate will increase from \$4.55 to \$5.55 November 1, 1991. The current liquor-servers differential, which allows employers to pay this category of employees 50 cents less than the general minimum wage, will remain but will be reviewed in the coming year. Half- and full-day minimum wage rates for hunting and fishing guides will be increased from \$27 and \$54 to \$30 and \$60. Certain harvest workers will also be entitled to \$6.00 per hour, but this increase will become effective on January 1, 1992. Room and meal allowances, which may be deducted from the minimum wage earnings where lodging and meals are provided to employees, will be raised by the same percentage increase in the minimum wage. For example, room and meals will cost no more than \$74.00 per week, up from \$67.00, where a private room is provided.

**Quebec** will increase its general minimum wage rate from \$5.30 to \$5.55 per hour, effective October 1, 1991. Employees who usually receive tips will be entitled to \$4.83 per hour, up from \$4.58, and domestic workers residing at the employer's residence will receive a minimum of \$215.00 per week, up from \$202.00.

## D. Recovery of Unpaid Wages

Bill C-22, which enacts the **Wage Claim Payment Act** and amends the *Bankruptcy Act*, was introduced in first reading by the **federal** Minister of Consumer and Corporate Affairs on June 13, 1991, after a long series of consultations and previous attempts to amend the *Bankruptcy Act*. Bill C-22 provides that employees' claims for unpaid wages would be covered to a maximum of 90 per cent of the amount of wages due, including vacation pay, up to \$2,000 in cases of bankruptcies or insolvencies. Similarly, a travelling salesperson's expenses would be covered to a maximum of 90 per cent of the amount due, up to \$1,000. In addition, a special payroll tax would be imposed on employers to fund this new program. Bill C-22 also provides that the Crown would become subrogated in all the rights of compensated employees. The Bill is scheduled to come into force in January, 1992.

Effective July 26, 1991, **Manitoba's Payment of Wages Act** has been amended to provide for the following measures:

- a. the payment of a deposit of up to \$300 per employee by an employer requesting a referral to the Labour Board of the decision rendered by the Director of employment standards on a claim for unpaid wages;
- b. to limit the liability for unpaid wages to directors only, rather than to directors and officers of a corporation;

- c. to change the definition of "employee" to exclude from it expressly the director of a corporation;
- d. to limit the payment of a claim for unpaid wages to wages owed in the six months preceding the lodging of the claim; and
- e. to allow for the adoption of reciprocal enforcement agreements for payment of wages orders with other Canadian jurisdictions.

On June 5, 1991, **Ontario's** Minister of Labour announced amendments to Bill 70, introduced on April 11, 1991, which would establish the Employee Wage Protection Program. The main purpose of the program is to help workers recover unpaid wages when their employer is bankrupt, insolvent or when the employer does not pay because of other circumstances. Unpaid workers would be required to file a complaint with the Employment Standards Branch and, once the validity of the claim is determined, an order to pay, which would be limited to a maximum of \$5,000, would be issued against the defaulting employer. If the employer fails to pay and does not appeal the order, the claimant would be reimbursed by the program. Where an employer appeals, the program would pay out only after a worker's entitlement to compensation is established. The Branch, which would become subrogated in all the rights of the employee to recover the unpaid wages, would then attempt to recover the money paid out from the employer or directors, using the liability provisions of this Bill. The amendments concerning the liability of directors and officers, not-for-profit organizations and the speed of the appeals procedures under the program presented in first reading will be reviewed. In particular, the proposed amendments would remove the liability for wages and vacation pay owing to workers from officers of a company, so that the liability remains only for directors and are made more consistent with existing provisions of the **Business Corporations Act**. Directors, except volunteer directors of not-for-profit corporations, would be responsible for wages and vacation pay that came during the tenure of their directorship, removing any liability due after the director is no longer a director. In addition, the appeal process would be revised to ensure that employers, directors and employees not become tied up in lengthy and protracted recovery procedures.

## II. INDUSTRIAL RELATIONS

### A. Legislation of General Application

In **Manitoba**, effective March 31, 1991, the **Labour Relations Amendment Act** repealed the provisions of the Labour Relations Act providing for the application of the final offer selection process during labour disputes. This arbitration process applied at certain times before or after a strike or lockout when a vote of affected employees was in favour.

In **Quebec**, **An Act to amend the Labour Code**, which was passed on December 20, 1990, has given 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 when an owner disposes of an undertaking, either in whole or in part. The labour commissioners may determine the applicability of section 45, issue any order deemed necessary to effect the transfer of rights and obligations, and settle any matter arising out of the application of that section.

A further object of the Act was 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 notably those provided by a firm operating or maintaining a sewer, water purification or water treatment system as well as by a firm performing refuse incineration. In addition, the time during which the government may issue an order making the provisions applicable has been lengthened.

On May 31, 1991, **Newfoundland** passed **An Act to amend the Labour Relations Act, 1977 (No. 2)**. The purpose of this amendment is to confirm that decisions of the construction industry panel or other panel of the Labour Relations Board are not invalid or ineffective by reason only of a defect in the constitution of the panel.

Also in Newfoundland, on May 13, 1991, the Minister of Employment and Labour Relations tabled Bill 26 which would modify the **Labour Relations Act, 1977**. The most notable proposed changes include the following:

- to provide that either party may apply to the Labour Relations Board for the determination of a jurisdictional dispute between unions by a jurisdictional umpire appointed as a member of the Board by the government (if the relevant collective agreement provides for a dispute resolution mechanism for jurisdictional disputes, this provision will not apply unless both parties give their approval);
- to provide for compulsory multi-trade bargaining in the industrial and commercial sector of the construction industry in the province between a council of trade unions and an accredited employers' organization composed of the unionized employers in the sector (these provisions could be extended to other sectors of the construction industry by order of the Minister; however, they will not apply to special projects for which an order has been made under the Act);
- to provide that an application may be made to the Board in the event of a **proposed** sale, lease, transfer or disposition of a business;
- to require that an employer, purchaser, lessee, or transferee provide the Board, when ordered to do so, with all facts within his/her knowledge relating to the actual or proposed sale, lease or transfer of a business; and
- to give the Labour Relations Board the power to declare corporations, partnerships, persons or associations of persons, under common control or direction, carrying on associated or related activities, to be a single employer for the purposes of the Act.

## B. Public and Parapublic Sectors

In **New Brunswick, An Act to amend the Public Service Labour Relations Act** was adopted on June 20, 1990.

This Act modifies the collective bargaining legislation applying to public servants, hospital employees and teachers in public schools. It contains many modifications including those described below.

An amendment provides that orders of the Public Service Labour Relations Board (PSLRB), which are not complied with within the time prescribed, may be enforced by filing a copy in the Court of Queen's Bench.

Another change, that came into effect on June 17, 1991, introduces a new process for designating essential services. According to this procedure, the employer may, within twenty days after the certification of a bargaining agent or during the term of a collective agreement or arbitral award but not during the last six months of the term, give notice in writing to the Public Service Labour Relations Board (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 in consultation with the parties establishes time limits within which they will attempt to reach an agreement on the services that are or will be essential, the level of service to be maintained and the positions to be designated. If an agreement is reached, the PSLRB issues 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, determines the matters. On the application of either party made within prescribed time limits, and after hearing the parties, the PSLRB is 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.

Modifications have also been made to the criteria that an arbitration tribunal must consider when the parties agree to submit a dispute to binding arbitration. The criteria 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.

Moreover, effective January 10, 1991, changes were made with respect to the sharing of the cost of grievance adjudication. The Public Service Labour Relations Act stipulates that both the employer and the bargaining agent must pay one-half of the remuneration and expenses of an adjudicator or the chairman of an adjudication board, if one is established. In the case of a board of adjudication, each party must also pay the remuneration and expenses of its nominee.

Lastly, by virtue of a new section, which came into force on January 10, 1991, an employee, who is not included in a bargaining unit, has access to a procedure for the settlement of grievances with respect to discharge, suspension or a financial penalty.

Another amending law adopted on May 9, 1991, has brought a number of further modifications to the Public Service Labour Relations Act. The modifications, which took effect on May 16, 1991, include those described below.

Within 15 days after collective bargaining has ceased, and when a commissioner has not been appointed under the Act, the Chairman of the Public Service Labour Relations Board has discretion to appoint a conciliation board, whether this is done at the request of either party or on his/her own initiative.

When the Chairman is authorized to appoint a conciliator under the Act, he/she may instead appoint a commissioner upon the request of either party. If the chairman decides to appoint a commissioner and the parties agree on a person who could act as commissioner, that person must be appointed. Within a period of five days that may be extended to eight days by the Chairman, the commissioner will confer with the parties and endeavour to assist them in reaching agreement, and will inquire into the dispute. The commissioner reports, within 30 days after being appointed or a longer period specified by the Chairman, his/her findings and recommendations for the settlement of the dispute. The report of a commissioner has the same effect as that of a conciliation board.

An employee is not entitled to refer a grievance to adjudication unless the concerned bargaining agent signifies in writing its approval and its willingness to represent the employee. However, an employee may refer to adjudication a grievance over a discharge, suspension or financial penalty if the bargaining agent refuses to give its approval, but in that case the employee will pay the bargaining agent's share of the costs in relation to the adjudication. These rules apply with the necessary modifications to the presentation of a grievance under a collective agreement or arbitral award at any level prior to its submission to adjudication.

In **Quebec, An Act respecting the restoration of the seniority of certain employees of the health and social services sector** was assented to and came into force on June 20, 1991.

The purpose of this law is to permit, according to the terms and conditions determined by agreement, restoration as of July 1, 1991 of the seniority lost by an employee as a result of a work stoppage that occurred in 1989 in the health and social services sector. Restoration will not have retroactive effect.

The law also provides that, except as determined in such an agreement, certain proceedings cannot be instituted or continued before a court or grievance arbitrator by an employee, an association of employees or a group of such associations bound by an agreement.

On March 22, 1991, **British Columbia** passed the **Compensation Fairness Act**.

The 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 is deemed to have come into force on January 30, 1991.

The Act provides for the appointment of a Compensation Fairness Commissioner who, among other things, monitors the development of all compensation plans in the public sector, and determines whether or not the parties to a compensation plan or the public sector employer establishing the plan have complied with an obligation to give paramount consideration to the ability to pay of the public sector employer. The commissioner is given powers of investigation to obtain the information that is necessary to the performance of his/her duties.

The Cabinet has the responsibility to issue compensation fairness guidelines to establish fair compensation plans for public sector employers and employees. Among other things, these guidelines may specify in respect of whom, when and in what manner compensation will be maintained or reduced, or increases will be limited. The compensation guidelines may be made applicable as of a date earlier than January 30, 1991, and as of different dates for different groups of public sector employees.

Within 30 days after the date the Act received royal assent or within a further period of time permitted by the commissioner, every public sector employer must register with him/her, in the prescribed form and manner.

On his/her own initiative or at the request of either party, the commissioner may direct a Compensation Mediator he/she has appointed to provide mediation or fact finding services to assist the employer, employees or representatives to reach or establish a compensation plan in accordance with the requirements of the Act. When such services are provided and the commissioner approves, the mediator may issue written recommendations to the parties with respect to the terms of a compensation plan. Terms recommended by the mediator are not binding on the commissioner.

The commissioner reviews all compensation plans required to be filed under the Act and determines whether they are within the guidelines. Where the commissioner determines that a compensation plan is outside the guidelines, he/she must notify the public sector employer and any other person the commissioner considers appropriate, and may advise them of the maximum allowable compensation considered to be within the guidelines for that compensation plan. The commissioner must provide an opportunity to the parties (or in the case of an award, to either or both the parties and the arbitrator or arbitration board) to reach or establish a compensation plan that is within the guidelines.

Notwithstanding the above, where a compensation plan is determined to be outside the guidelines, the commissioner may, on his/her own initiative or at the request of a party to the plan, order that the plan be subject to compensation regulations adopted under the Act.

Compensation regulations may, among other things, prescribe limitations on increases in compensation, require reductions in compensation or prohibit any increase in compensation for public sector employees generally or groups of public sector employees.

Where a compensation plan is subject to compensation regulations, the commissioner must order that the public sector employees under that plan are subject to any prescribed limitations on increases, reductions in compensation and prohibitions against increases in compensation from a date specified in the regulations or determined by him/her. Such an order of the commissioner may be made applicable as of a date earlier than January 30, 1991, and as of different dates for different groups of public sector employees.

The commissioner reviews a compensation plan that is subject to compensation regulations and determines whether the plan complies with them. Where the commissioner determines that a compensation plan is outside the compensation regulations, he/she must notify the public sector employer and any other person the commissioner considers appropriate, and must advise them of the maximum allowable compensation considered to be in compliance with the regulations for that compensation plan. In addition, the commissioner must provide an opportunity to the parties (or in the case of an award, to either or both the parties and the arbitrator or arbitration board) to reach or establish a compensation plan that is within the regulations.

Notwithstanding any law or agreement to the contrary, after 14 days have elapsed since the giving of a notice in respect of a compensation plan that is outside the compensation regulations, the commissioner may fix the terms of the compensation plan in accordance with the maximum allowable compensation mentioned in the notice.

The commissioner is given enforcement powers that can be used if a public sector employer implements or is likely to implement a compensation plan that does not comply with the compensation regulations.

A decision or order made by the commissioner under the Compensation Fairness Act is final and binding, and may be enforced by filing a copy in the Supreme Court of British Columbia.

No compensation plan may be implemented until the commissioner has completed his/her review of it and has determined that the plan is within the guidelines or, where applicable, the compensation regulations. However, on written application by a public sector employer, the commissioner may approve the implementation of an increase in compensation for a group of public sector employees before determining whether the final compensation plan is within the guidelines.

The Act repeals the **Public Sector Collective Bargaining Disclosure Act** which had taken effect, for the most part, in September, 1990.

Cabinet has issued compensation guidelines under the Compensation Fairness Act as well as compensation regulations which the commissioner may make applicable to compensation plans that are outside the guidelines. Under the regulations, a change in the level of compensation is valid only if it is within the public sector employer's ability to pay and is based on settlements or awards in the provincial private sector.

In **Newfoundland**, the **Public Sector Restraint Act** was passed on April 18, 1991.

This Act applies to a broadly defined public sector, including the provincial government, Crown agencies, boards and commissions, Crown corporations, hospitals, school boards and post-secondary educational institutions. However, it does not apply to municipalities or cities.

Notwithstanding any collective agreement, the Act provides for no increase in the pay scales of public sector employees during fiscal year 1991-1992. If a collective agreement provides for increases in pay scales after the restraint period, the first increase must be applied to those pay scales in effect on March 31, 1991. Each subsequent increase must be applied to the re-calculated pay scales in effect immediately prior to the date it becomes effective. A bargaining agent may elect to extend for one year a collective agreement in force on April 1, 1991 with the pay scales scheduled to take effect after March 31, 1991 to become effective one year later than the planned date.

The Lieutenant-Governor in Council may set aside or modify arbitration awards that do not comply with the intent and purpose of the Act.

Finally, the Act provides that, notwithstanding any provision of a collective agreement, no pay equity agreement may contain a provision which implements that agreement retroactively.

The Act is deemed to have come into force on March 31, 1991.

On July 10, 1991, **Quebec** gave royal assent to **An Act respecting the placing of a temporary ceiling on remuneration in the public sector**.

This Act applies to public bodies, including among others government departments and agencies, school boards, colleges, universities and health care establishments.

Its purpose is to defer by six months the date of revision of the salary rates and scales, and premiums applicable to employees of public bodies. The date of expiration of every collective agreement which does not already so provide is deferred by six months and, during that period, the rates, scales, and premiums in force on the original date of expiration of the collective agreement remain effective.

In addition, the Act provides that the ceiling placed on the remuneration also applies to administrators of state, chief executive officers, members of public bodies and to the managerial staff and other staff members of public bodies who do not belong to a bargaining unit. The same applies to judges, Members of the National Assembly and health professionals.

On July 11, 1991, **Nova Scotia** adopted the **Public Sector Compensation Restraint Act** which is in effect retroactively to May 14, 1991.

Generally speaking, this law provides for a two-year freeze in the compensation rates of public employees. These include civil servants, employees of government agencies, judges, municipal employees, employees of school boards and post secondary educational institutions, employees of hospitals and of licensed residential care facilities and nursing homes as well as officers and staff of the House of Assembly. If a compensation plan was finalized before May 14, 1991, the plan is extended for a period of two years with no increase in compensation rates, after which it continues to apply for the time that remains or may be renegotiated at the request of the bargaining agent. If a compensation plan expired before May 14, 1991 and no revision was finalized before that date, the legislation provides for one or more adjustments of the compensation rate, on the basis of five per cent per year, before the freeze takes effect.

A two-year freeze also applies to the remuneration of municipal councillors, village commissioners, members of service commissions and school

boards, and to fees or other system of payment for insured medical services or prescription drugs. The Act enables the government to designate, by regulation, compensation plans to which the application of the legislation is extended.

Indemnities, allowances and salaries paid to Ministers of the Crown and members of the House of Assembly are continued without change until January 1, 1994.

Pay equity adjustments to which an employee is entitled on September 1, 1991 will not be made until April of 1992, but will be retroactive to September 1, 1991.

The Act provides for the administration and enforcement of the restraint measures by a Board to be established by regulation.

In **Manitoba**, the **Public Sector Compensation Management Act** was adopted on July 26, 1991. The Act extends for one year without change those collective agreements in the public sector that expired between September 1, 1990 and September 1, 1991 (or a later date prescribed by the government), and had not been renewed by June 3, 1991.

These collective agreements cover the civil service, hospitals, personal care homes, child and family services agencies, and crown corporations with a few exceptions. The Act does not affect nurses, government employed doctors, laboratory and X-ray technicians, teachers, school and university employees, municipal employees and judges. Members of the Legislative Assembly are also excluded as they are covered by other restraint legislation.

The Act enables the government to extend the application of the legislation to doctors' fee schedules (notwithstanding any arbitration procedure) and to include, by regulation, any groups not specifically mentioned in the legislation, but does not allow for any collective agreement to be extended for more than a single 12-month period. Also, it does not allow any new group to be brought within the scope of the legislation after December 31, 1992.

The legislation is deemed to have taken effect on September 1, 1990.

At the **federal** level, Bill C-26, the **Public Service Reform Act**, which received second reading on February 24, 1992, provides, among other things, for various amendments to the *Public Service Staff Relations Act*. The most significant changes include those described below.

- A fair representation clause will be added to the Act. It will stipulate that no bargaining agent may act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any employee in the bargaining unit.
- In determining whether a group of employees constitutes a unit appropriate for collective bargaining, the Public Service Staff Relations Board (PSSRB) will establish bargaining units coextensive with the classes, groups or subgroups established by the plan of classification for positions in the Public Service, unless any such unit would not permit satisfactory representation of the employees and for that reason would not be appropriate for collective bargaining.
- A new clause will provide that the employer and a bargaining agent may jointly elect to engage in collective bargaining with a view to the conclusion of a single collective agreement binding on two or more bargaining units. Such a decision will be irrevocable until the single collective agreement is entered into.
- In certain circumstances, when a request is presented by either party, the PSSRB will appoint a fact finder after the parties have been consulted. Negotiations between the parties may continue during the period of appointment of a fact finder, but the bargaining agent may not seek an alternate dispute resolution process (as outlined in the next point), and neither party may request arbitration or conciliation before the fact finder has submitted his/her report. The fact finder will confer with the parties, inquire into the matters in dispute, and make a report to the parties including any recommendations for the settlement of the dispute.

A party will be required to provide the fact finder with any information directly relevant to the matters in dispute that he/she requests and that is in that party's possession.



The report of the fact finder must be submitted within 30 days after the date of appointment or such other period agreed on by the parties. If the employer and the bargaining agent conclude a collective agreement within 15 days after they have received a copy of the fact finder's report (or within a longer period set by the PSSRB with the agreement of the parties), the report will not be made public. If an agreement is not reached, the PSSRB will make the report public.

- At any time during negotiations, a bargaining agent for which the process for resolution of a dispute is by the referral of the conflict to conciliation will be permitted to refer, if the employer approves, any term or condition of employment that may be included in a collective agreement to final and binding determination by whatever process the parties agree to. Such a decision will be irrevocable until the determination is made.
- Upon receiving a request for conciliation, the Chairperson of the PSSRB will appoint a conciliation commissioner if any conciliator has made a final report of his/her inability to assist the parties in reaching agreement, and both parties agree to such an appointment. However, the Chairperson may decide not to appoint a conciliation commissioner if, after consulting the parties, he/she is of the opinion that the appointment is unlikely to assist the parties in reaching agreement. Also, no conciliation commissioner will be appointed until the process of designating positions having duties necessary to the safety or security of the public is completed.
- Where the bargaining agent for a bargaining unit has chosen conciliation as its method of dispute resolution, the parties will meet and review the position of each employee in the bargaining unit to determine if it has safety or security duties. If the parties disagree on whether any positions have safety or security duties, the employer will, within prescribed time limits, refer the positions in dispute to a designation review panel consisting of three persons (one representative of each party and a chairman selected by them or appointed by the PSSRB). The functions of the designation review panel will be to review only the positions in dispute and to make written non-binding recommendations to the parties as to whether these positions have safety or security duties.

If, after considering the recommendations of a designation review panel, the parties continue to disagree on whether any positions have safety or security duties, the employer will, within the prescribed limitation period, refer the positions in dispute to the PSSRB. The Board will review the positions in dispute and, after giving the parties an opportunity to make representations, will determine if they have safety or security duties.

A procedure will permit either party to notify the other in writing that they must meet and review any position to determine if it has, or does not have, safety or security duties. Such a review may only take place one year or more after a previous review under the Act.

- If a legal strike occurs (or may occur) during the period following the dissolution of Parliament for a general election and, in the opinion of the Governor in Council, it adversely affects (or would adversely affect) the national interest, he/she may delay any strike action until 21 days following the date fixed for the return of the writs.

## C. Emergency Legislation

On June 14, 1991, the **federal government** adopted the **British Columbia Grain Handling Operations Act**.

This law affects two collective bargaining disputes at the ports of Vancouver and Prince Rupert in British Columbia. It contains two parts.

Part I deals with a dispute between the B.C. Terminal Elevator Operators' Association and the Grain Workers Union, Local 333. At the time the law was passed, a lockout was in effect. The legislation provides for the resumption of grain handling operations in the port of Vancouver, and entails the appointment of a mediator-arbitrator to deal with all matters remaining in dispute between the parties. The term of the collective agreement has been extended to include the period from January 1, 1990 to December 31, 1992.

Part II of the Act deals with a dispute between Prince Rupert Grain Ltd. and the Grain Workers Union, Local 333, which, at the time the law was adopted, was at the conciliation officer stage of the negotiations. If proclaimed into force, Part II would provide for an extension of the collective agreement from January 1, 1990 to December 31, 1992, and for the resolution of the issues in dispute through the appointment of a mediator-

arbitrator.

Nothing in the legislation restricts the rights of the parties to agree to amend any provision of the collective agreement, other than a provision relating to its term.

Fines are provided for a contravention of the Act by an individual (maximum: \$1,000), by an officer or representative of one of the parties (maximum: \$50,000) and by the employer or bargaining agent (maximum: \$100,000). These fines are applicable to each day or part of a day during which the offence continues.

Part I of the Act came into force on June 15, 1991. Part II can be proclaimed into force by the Governor in Council.

## D. Construction Industry

In **Newfoundland**, a Special Project Order was issued in September 1990 under the **Labour Relations Act, 1977**

The order declares as a special project the work on the combined Gravity Base Structure Construction, Topsides Assembly and Platform Hook-Up taking place in the Great Mosquito Cove, Bull Arm area of Trinity Bay, Newfoundland. This covers the onshore, atshore and inshore locations and other associated offshore sites that the Lieutenant-Governor in Council may include.

The parties to any collective agreement entered into in relation to the work at the site or sites of the special project are prescribed to be the Hibernia Employers' Association Inc., representing the principal contractors and all sub-contractors, and the Newfoundland and Labrador Oil Development Allied Trades Council (Trades Council) acting on behalf of all affiliated unions representing employees working at the site or sites.

The declaration of this undertaking as a special project is subject to the following conditions:

1. in accordance with the Canada-Newfoundland Atlantic Accord Implementation (Newfoundland) Act and the corresponding federal legislation, residents in the province must be given first consideration for training and employment on the special project; and
2. in any collective agreement entered into in relation to the special project, preference in hiring for work on the special project may be given only to qualified union members resident in the province who were registered members of the appropriate union as of July 5, 1990 or who joined the union after that date and remained members for at least two years; and
3. provided condition (1) is complied with, any hiring procedure for the special project contained in a collective agreement must enable all qualified workers (other than qualified union members residing in the province, as mentioned in condition (2)) to be hired on a "first come first served" basis, and where an individual qualified to work on the special project is required to be a member in good standing of a union belonging to the Trades Council, he or she must be so considered when the individual is or becomes a member of a union in the Trades Council, or pays a nominal one-time permit fee (not exceeding \$25.00) to that union and authorizes dues deduction in accordance with the Rand formula.

The declaration enables representatives of the government to ascertain compliance with the conditions mentioned above.

For the purposes of the declaration, a resident in the province is a Canadian or landed immigrant who has resided in the province for a period of six months immediately preceding employment.

In May 1991, another order filed under the Labour Relations Act, 1977 has declared that the offshore site of the Hibernia Production Platform in position at the Hibernia field together with any associated floatel is included as an associated offshore site for the purposes of the Special Project Order.

## III. OCCUPATIONAL SAFETY AND HEALTH

### A. Proclamations

**Ontario's Occupational Health and Safety Statute Law Amendment Act, 1990**, Bill 208 described in last year's report, came into force during the past year. Certain provisions were proclaimed on August 18, 1990, while the remainder of the Act was brought into force on January 1, 1991. This Act, among other things, established the Workplace Health and Safety Agency, empowered a certified member of joint health and safety committees to unilaterally issue a stop work order where the member believes the bilateral procedure would not sufficiently protect the workers from dangerous circumstances, and increased fines for contraventions to the Act and regulations from \$25,000 to \$500,000.

In **Prince Edward Island**, the **Youth Employment Act**, also described in last year's report, was brought into force on November 1, 1990. This Act prohibits or restricts the employment of young persons in dangerous or potentially dangerous occupations or workplaces, and prescribes maximum hours of work for youth attending school.

### B. Legislation of General Application

**Ontario** has adopted a Regulation under the *Occupational Health and Safety Act*, which exempts every class of workplaces from the requirement set forth in section 8(5f) of the Act that a constructor or employer must ensure that at least one member of the joint health and safety committee representing the employees and at least one member representing the employer is a certified member as defined in the Act. This exemption is a temporary measure designed to give the Workplace Health and Safety Agency sufficient time to establish certification standards and to develop training required for certification.

In **Manitoba**, an amendment to the Workplace Health Hazard Regulation under the **Workplace Safety and Health Act** contains, among others, the following changes. It obliges the Chief Occupational Medical Officer to review on a regular basis the list of controlled products attached to the regulation as Schedule B in order to determine whether some products could be taken off the list or others added on to it. The regulation also eliminates the requirement that the employer consult with a safety and health officer in setting the occupational exposure limit (OEL) for controlled products for which no TLV is identified in Schedule C to the regulation, other than a designated material; instead, the procedure which normally applies in case of a disagreement between an employer and a worker safety and health representative or a member of the workplace safety and health committee in respect of the OEL set by the employer, has now also been made applicable to OEL levels set by the employer for this group of controlled products. Finally, the regulation prescribes that "personal monitoring" will use the methods and equipment prescribed in the NIOSH manual of Analytical Methods, as indicated in Schedule F to the regulation.

**Newfoundland** has amended its *Occupational Health and Safety Act* to provide authority to the government to enter into agreements with governments of other Canadian jurisdictions or a national or provincial body or organization, so that persons employed by those governments or organizations will be able to serve as occupational health and safety officers under the Act.

**Prince Edward Island** has modified its **Occupational Health and Safety Act Regulations** in order to add to it a new part dealing with traffic control. This new part contains requirements for employers and signallers when employee safety is endangered by vehicle traffic. The amended regulation became effective April 27, 1991.

The **Yukon** made changes to its *Occupational Health and Safety Act* to provide, among other things, that at workplaces where no joint health and safety committee is required, employers will be obliged to cause the selection of one or more health and safety representatives who do not exercise managerial functions. This obligation and the date on which it goes into effect will depend, however, on the hazard classification of the workplace in the regulations and on the number of workers regularly employed at the workplace. Where no committee has been established and where no representative has been selected, the chief industrial safety officer and the chief mines safety officer retain their authority to order an

employer to cause the selection of a health and safety representative from among the workers. In addition, the Act requires employers to provide orientation to the co-chairpersons of health and safety committees and health and safety representatives to their duties as health and safety officers within the prescribed time, and to permit them to participate, during regular working hours, in designated training courses. The Act also substantially increases the penalties for contraventions to the legislation, and establishes a system, similar to ticketing, for levying administrative penalties instead of prosecuting in Court.

This Act came into force on May 29, 1991, except for the provisions respecting the obligation to select safety representatives, which will progressively come into force on January 1, 1992, January 1, 1993 and January 1, 1994.

In **New Brunswick**, the **Act to amend the Occupational Health and Safety Commission Act**, which was assented to May 9, 1991, will change the composition of the Occupational Health and Safety Commission (the Commission). Its membership will be increased from seven to nine. Four persons must be representative of employers, four of workers, and one person must be representative of neither group and will be appointed chairperson. The maximum term of office of the chairperson will be reduced from ten to six years and the maximum terms of office for the members will be repealed. The quorum, at Commission meetings will be a majority of its members, provided that at least one member representative of employers and workers is present as well as the chairperson or vice-chairperson. The chairman of the Workers' Compensation Board will continue to be an ex officio member of the Commission, but will in addition have the function of vice-chairperson of the Commission. The Act or any of its provisions will come into force by proclamation.

**Alberta** recently adopted the *Safety Codes Act* which repeals and replaces the **Fire Prevention Act**, the **Uniform Building Standards Act**, the **Electrical Protection Act**, the **Elevator and Fixed Conveyances Act**, the **Gas Protection Act**, the **Plumbing and Drainage Act**, and the **Boilers and Pressure Vessels Act**. The new Act generally assumes the same objects and ambits of the repealed acts.

The purpose of the Act is to coordinate and encourage the safe management and control of fire prevention measures as well as the design, manufacture, construction, installation, operation and maintenance of:

- a. buildings;
- b. electrical systems;
- c. elevating devices;
- d. gas systems;
- e. plumbing and private sewage disposal systems; and
- f. pressure equipment.

The Minister, to be designated by order-in-council (all the repealed acts were administered by the Minister of Labour), is responsible for the administration of the Act, but its day-to-day administration is to be carried out by municipalities and corporations specially accredited by the Minister to serve the particular needs of various regions or localities. Safety Codes Officers employed by the accredited municipalities and corporations, and who hold appropriate certification, are named to carry out the inspection and enforcement functions of all or part of this Act which they are authorized to administer.

Among other things, the Officers have the power to:

- a. order the closure of all or part of any premises for 48 hours, or such longer period as may be prescribed by a justice of the peace, where a dangerous or emergency situation occurs and the action is necessary for safety or to preserve evidence;
- b. take any action necessary to remove or reduce the danger, where the officer is of the opinion that there is an imminent serious danger to persons or property;
- c. and to allow variances with established standards, provided equivalent or greater safety performance is achieved through the variances.

For the purpose of safe management and control of any thing or process covered by this Act, an owner, occupier, vendor, contractor, manufacturer or designer of such a thing or process may be required to maintain a quality management system. In certain circumstances, designs of things or processes covered by the Act must be registered, and certificates of competency could be required, as well as permits for the sale, construction, control or operation of the things or processes.

This Act, which received royal assent on June 25, 1991, will come into force on a date fixed by proclamation.

## C. Asbestos

**Prince Edward Island** has adopted an amendment to its general occupational safety and health regulations, which became effective September 8, 1990. The amendment establishes new rules on asbestos which apply to employers and employees engaged in various repair, alteration, maintenance and demolition activities as well as to any other workplace where material containing asbestos is likely to be handled, dealt with, disturbed or removed. It contains certain prohibitions with respect to the use of asbestos, and provides safety and health rules on various subjects, including assessment of exposure or likelihood of exposure, exposure limits, monitoring of exposure levels, protective clothing, respiratory protective equipment, hygiene practices and facilities, prevention of release of fibres in the workplace, removal procedure, decontamination and record keeping for each employee (i.e. physician's report, work history and training records).

## D. Mining

**British Columbia** proclaimed in force its new **Mines Act**, which was passed in 1989, on July 15, 1990. Among others, it contains strengthened enforcement provisions with respect to occupational health and safety in mines.

## E. Radiation Protection

In **Alberta**, the **Radiation Protection Act** was brought into force by proclamation on January 1, 1991. The purpose of the Act is to provide for general protection from radiation hazards. A provision states that if there is a conflict between the Act and the *Occupational Health and Safety Act*, the latter prevails. Among others, the Act provides that every person owning, installing, supplying, operating or servicing a radiation facility, radiation equipment or a radiation source, as defined, must take all reasonable precautions to protect persons from radiation. Employers have an obligation to ensure that workers who are likely to be exposed to radiation are informed of the potential hazards and the precautions to be taken. In turn, workers must take all reasonable precautions, including the use of protective clothing, equipment and devices provided by the employer, to ensure their own safety. The Director of Radiation Health may require an owner or an employer to establish an appropriate code of practice. The Radiation Health Advisory Committee is continued under the Act. The Committee, among other things, has jurisdiction to hear appeals of decisions relating to registration certificates for designated radiation equipment and directives from a radiation health officer. The former Radiation Protection Act and the Radiological Technicians Act are repealed.

In addition, Alberta adopted the Radiation Protection Regulation, which prohibits the use of certain items of radiation equipment and sets maximum exposure limits for ionizing and for non-ionizing radiation emitted by radiation equipment the use of which is not prohibited. The owners and/or operators of the equipment have the responsibility to ensure that the limits set are not exceeded. Special exposure limits apply in respect of pregnant employees. The limits set for ionizing radiation do not apply in case of medical or dental radiation when the person is a patient or in case of natural background radiation. The exception for medical or dental radiation when the person is a patient also applies in case of non-ionizing radiation. Also exempted are persons using tanning equipment to expose their skin to ultra violet radiation in a commercial tanning establishment which complies with the operational requirements for tanning equipment as set out in the regulation, or in a private residence.

Part 2 of the regulation designates certain types of radiation equipment, the installation, operation or modification of which are prohibited

without a registration certificate obtained from the Director of Radiation Health in accordance with the procedure contained in the regulation. In issuing a registration certificate, the Director may prescribe any conditions and restrictions that he thinks are necessary to ensure the safe operation of the equipment. These conditions must be communicated to the workers who operate the equipment, either by posting a copy or a record of the certificate in the workplace or otherwise.

Part 3 of the regulation indicates which protective measures have to be taken by the owner of ionizing radiation equipment during installation and by the employer during operation of the equipment. With respect to certain types of ionizing radiation equipment, the regulation simply incorporates by reference safety standards which already exist elsewhere for that type of equipment.

Part 4 of the regulation prescribes protective measures for the use of non-ionizing radiation and ultra sound equipment. In respect of commercial tanning establishments, the legislation requires employers to train operators of tanning equipment in the proper operation of this equipment and to ensure that they understand the effects and potential hazards of ultra violet radiation. Operators must also be made aware of their responsibilities and duties under the Act and the regulation. Finally, Part 4 contains various requirements for the operation of tanning equipment. Compliance has to be ensured by the employer. The owners of commercial tanning equipment must ensure that the proper ancillary equipment is present, such as appropriate shielding around each piece of tanning equipment, protective eyewear, proper timers, etc.

This regulation repeals the Regulations respecting the installation and use of medical, dental, veterinary and paramedical X-ray equipment and the Regulations respecting the protection of persons from the hazards of laser operation. It came into force on January 1, 1991.

#### F. Construction

**Manitoba** has amended a regulation adopted in 1985 dealing with safety and health in the construction industry. The title of the regulation is changed to Construction Industry Safety Regulation, and new requirements are added concerning the rollover protective structure of specified mobile equipment.

**Ontario** has adopted the Regulation on construction projects under the *Occupational Health and Safety Act*. Effective August 1, 1991, the new regulation replaces a previous regulation on the same subject. The new regulation contains five parts. Part I, which applies with respect to all construction projects, deals with such topics as alternative methods and materials, registration and notices, accident notices and reports, and general requirements. The other parts deal with the following subjects: general construction (Part II), excavations (Part III), tunnels, shafts, caissons and cofferdams (Part IV), and work in compressed air (Part V).

### G. Whistle Blowing

The **Northwest Territories** adopted the **Environmental Rights Act**, which came into force on November 11, 1990. The purpose of this Act is to provide environmental rights for the people of the Northwest Territories. It provides for access to environmental information in the possession of or under the control of a minister of the Government. Moreover, the Act provides for a right to apply to the Minister charged with its administration for an investigation of an alleged or likely release of a contaminant into the environment. Also, any resident of the Territories who, on reasonable grounds, believes that an offence has been committed under an Act listed in the Schedule to this Act (Environmental Protection Act, Forest Protection Act, Pesticides Act, Public Health Act, Territorial Parks Act, Transportation of Dangerous Goods Act and the Wildlife Act) may give information in writing and under oath before a justice and prosecute the offender based on the information provided. Finally, every person resident in the Territories has been granted the right to protect the environment and the public trust from the release of contaminants by commencing an action in the Supreme Court against any person releasing any contaminant into the environment.

The Act protects employees from any disciplinary action directed against them for exercising their rights under this Act or for reporting or proposing to report to the appropriate authority any release, or any likely release of a contaminant into the environment. This protection does not, however, apply when the employee's primary purpose was to intimidate, coerce or embarrass his or her employer or any other person for any improper purpose. Persons convicted of contravening this section are liable to a maximum fine of \$5000 or imprisonment for a maximum

term of 90 days, or both. In addition, a judge may order what action an employer must take, or refrain from doing, which may include an order to reinstate the employee with compensation for loss of wages and other benefits.

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Date Modified: 2011-10-12