



Labour

Archived - Highlights of Major Developments in Labour Legislation (1991-1992)

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INTRODUCTION

Between July 1, 1991 and June 30, 1992, many significant changes were made in the different areas of labour legislation in Canada.

With respect to labour standards, the most significant changes have been the extensive reviews of Newfoundland's, Prince Edward Island's and Yukon's legislation. Alberta has also undertaken a major review of its employment standards provisions. Nova Scotia has amended its Labour Standards Code to provide, among other things, parental leave and extend the benefits of the *Unemployment Insurance Act* in this respect. Moreover, Ontario has adopted its Employee Wage Protection Program and the federal government has increased the protection of the wage claim in cases of bankruptcy and insolvency under the *Bankruptcy Act*. Changes were made relative to Sunday shopping in New Brunswick and in Ontario. In addition, the general minimum wage rates of Alberta, British Columbia, Nova Scotia, Ontario and Quebec were increased during the period under review.

In the field of industrial relations, amendments to the general collective bargaining legislation have been made in Manitoba, Newfoundland and the federal jurisdiction, and an important reform has been proposed in Ontario. Changes have also been made with respect to the public sector, such as new wage restraint laws in New Brunswick, Newfoundland and Quebec, measures to repeal legislation dealing with compensation guidelines and regulations in British Columbia, and significant amendments to the federal *Public Service Staff Relations Act*. Also, during the period covered by this report, three ad hoc emergency laws were passed at the federal level. Other changes affecting specifically the construction industry were adopted in Newfoundland, Ontario and Quebec, and were proposed in Prince Edward Island. Lastly, a federal law, which has not yet taken effect, was passed to establish a framework for collective bargaining between professional artists, who are independent contractors working in the federal jurisdiction, and producers.

Among important changes to occupational safety and health legislation are: amendments to the level of sound provisions under the Canada Occupational Safety and Health Regulations in the federal jurisdiction, a review of the General OSH Regulation in New Brunswick, a review of mining safety regulations in Ontario, and the adoption of measures concerning asbestos and silica dust in the Northwest Territories. In addition, Ontario has announced its intent to review specific occupational exposure limits listed in the **Regulation respecting Control of Exposure to Biological or Chemical Agents** and in certain designated substance regulations.

I. EMPLOYMENT STANDARDS

A. Legislation of General Application

Nova Scotia has adopted **An Act to Amend Chapter 246 of the Revised Statutes, 1989, the Labour Standards Code**. The main thrust of this Act is to make the provincial legislation compatible with the federal Unemployment Insurance Act provisions respecting parental leave. The Act provides up to 17 weeks parental leave upon the birth or adoption of a child, available to both parents, regardless of the entitlement of the other parent. The leave is provided to any employee covered by the Labour Standards Code who has completed one year's service with the same employer. The parental leave is provided in addition to the existing maternity leave. The Act requires that where a mother takes the 17 weeks maternity leave already provided under the Act, as well as the parental leave, the two periods of leave must be taken consecutively to one another for a combined unbroken period of up to 34 weeks. A natural father or adoptive parents may take the parental leave at anytime within one year after the child's birth or arrival in the home. One interruption in the period of parental leave is permitted where the child is hospitalized for a period exceeding or likely to exceed one week. An employee on pregnancy or parental leave has the option of maintaining, at her/his own cost, any benefits or pension plan in which the employee was participating before taking the leave.

The Act also provides bereavement leave of up to three days without pay, in the case of the death of a member of the immediate family, or one day in the case of other relatives, as well as such leave as may be required for jury duty or to appear as a witness.

The Act abolishes the Minimum Wage Board and transfers to the Provincial Cabinet the Board's regulation-making functions. An annual review of the minimum wage rates is required. The requirement is for an annual review, and not necessarily for an annual increase. The provision permitting the adoption of separate minimum wage rates for male and female employees has been removed.

Important amendments, which deal with the recovery of unpaid wages, ensure greater protection of the claim for wages and increase the effectiveness of the statutory recovery mechanisms. The Act provides greater powers for the Labour Standards Director to force employers to comply with the Act. The Director is authorized to deal with an employer's creditors to ensure the salaries and benefits owed to employees are paid. Claims for wages are given first priority under the legislation, ahead of other creditors' claims on the assets of an employer.

Finally, the Act extends the full benefit of annual vacations with pay to part-time workers. Part-time workers in Nova Scotia were previously normally entitled to only the vacation pay, and not the leave.

This Act came into force on July 11, 1991, the date of assent.

Pursuant to last year's changes to the **Labour Standards Act**, the **Northwest Territories** adopted the **Pregnancy and Parental Leave Regulations** under that Act. These regulations repeal and replace the Maternity Leave Regulations and provide that before an employee is entitled to maternity or parental leave he or she must have been employed for 12 consecutive months with the same employer.

Newfoundland recently adopted **An Act to Amend the Labour Standards Act**. This Act makes various amendments concerning vacation pay, public holiday pay, parental leave, bereavement leave and sick leave. It will also replace the Labour Standards Tribunal with a system of single adjudicators to whom complaints are referred by the Minister of Employment and Labour Relations. The Act, except for the provisions respecting the adjudication system, came into force on the date of assent, June 11, 1992.

Vacation pay is payable to an employee who has been terminated within one week (down from two weeks) of the termination.

An employer who requires an employee to work on a paid public holiday must pay to the employee twice his/her regular wages. If the employee works for a number of hours that is less than his/her normal working hours for one day, the employer must pay the employee one full day's pay plus his/her regular rate for all hours worked. Employees who have been absent from work, except on leave provided in this Act, for more than 15 days within the 30 days preceding the holiday are not entitled to be paid for the holiday.

The Act provides employees with an unbroken rest period of one hour after each five consecutive hours of work. However, the terms of a collective agreement or of a written contract of employment may vary that period. Previously, employees other than those employed in retail or wholesale undertakings were entitled to a rest period of one-half hour only.

The provision allowing for the adoption of special minimum wage rates for disabled persons is repealed. A new provision allows for the adoption of special minimum wage rates for apprentices or inexperienced employees.

A period of 17 weeks of maternity leave is available to a pregnant employee who has been employed for at least 20 consecutive weeks with the same employer and has given two weeks' notice to the employer of when the leave is to begin and a medical certificate stating the estimated date of birth. The notice and the certificate must be provided within two weeks of stopping work if an employee has stopped work because of complications caused by her pregnancy or because of a birth, still-birth or miscarriage that happens earlier than the expected date of birth. A minimum of 6 weeks of leave must follow the birth, still-birth or miscarriage if an employee is not entitled to the parental leave described below. If necessary, the 17 weeks' maternity leave must be extended in such a case.

A period of 17 weeks' adoption leave is available to an employee who has been employed for 20 consecutive weeks and has given two weeks'

notice to the employer. Where the child comes into the actual care and custody of an employee sooner than expected, the notice must be given within two weeks of stopping work.

A period of 12 weeks' parental leave is available to an employee who has been employed for 20 consecutive weeks and has given two weeks' notice to the employer following the birth or adoption of a child. The leave is to begin no later than 35 weeks after the child is born or comes into the care or custody of the parent for the first time. However, in the case of an employee who takes maternity leave, the parental leave must begin when the maternity leave ends, except if the child has not yet come into the care and custody of the parent. If the child has come into the care and custody of the parent sooner than expected, the two weeks' notice must be given within two weeks of the day the employee stops working.

Notices given may be changed, provided the employer disposes of two weeks before the leave begins. The maternity, adoption or parental leaves may be shortened, provided the employee gives the employer a four week notice of the date the employee intends to return to work.

The terms of the contract of employment must be resumed at the end of the leaves, in such a way that the wages, duties, benefits and position of the employee are not less beneficial than those that subsisted before the leave began. Unless the employer and employee agree, the application of rights, benefits and privileges conferred by this Act do not accrue during these periods of leave.

An employer cannot dismiss or give notice of dismissal to an employee for the reason only that the employee informs the employer that she is pregnant, or that the employee intends to take or has taken maternity, adoption or parental leave. The onus of proof that the reason for dismissal is unrelated to maternity, adoption or parental leave rests with the employer.

Bereavement leave of one day of paid leave and two days of unpaid leave must be given to an employee who has been employed for at least one month in the event of the death of the employee's spouse, child, mother, father, brother, sister, grandparent, mother-in-law, father-in-law, brother-in-law, or sister-in-law.

Sick leave of five unpaid days per year must be granted to an employee who has been employed for six months or more, upon the presentation of a medical certificate.

An employer cannot dismiss or give notice of dismissal to an employee by reason of sick leave or bereavement leave. The onus of proof rests with the employer.

Where an employer terminates or lays off an employee employed in a remote site, the employer must provide transportation without cost to the employee to the nearest point at which regularly scheduled transportation services are available.

As mentioned above, this Act will replace the Labour Standards Tribunal with a system of single adjudicators. These provisions will come into force on a date fixed by proclamation. The Lieutenant-Governor in Council will appoint a panel of six persons from which the Minister may appoint single adjudicators to dispose of any complaint under the Act. When holding a hearing, an adjudicator will be vested with the powers conferred on a commissioner under the Public Enquiries Act. An adjudicator will be empowered to consider, review, hear and decide upon a matter referred to him or her by the Director of Labour Standards, a person aggrieved by a determination of the Director, or by the Minister upon receiving a request to do so from a person alleging a breach by an employer or employee of a provision of Parts I to IX of the Act or of the regulations. Many other changes to the Act will become effective consequentially to this amendment.

Finally, the Director is empowered to effect a wider range of settlements when dealing with a matter. Other powers and duties of the Director are clarified, such as the power to appeal a decision of an adjudicator to the court, and the fact that the Director does not act on behalf of a complainant when referring matters to an adjudicator or appealing to the court. The Director or an officer must provide any person affected by an investigation an opportunity to be heard. A complaint to the Director may not be made after the expiry of six months from the event giving rise to it.

Prince Edward Island recently adopted a new **Employment Standards Act**, which will repeal and replace Part III of the Labour Act. It will generally improve the clarity of the employment standards legislation and will make notable substantive changes. The Act will modify the composition of the Employment Standards Board, bringing the number of its members from five to seven, and will enable the Board to establish panels of three members to deal with complaints under the Act.

An employer will be obliged to give an employee the vacation he or she has earned after four months, reduced from 10 months, after the anniversary date of employment. The qualifying period for maternity, parental or adoption leave will be reduced from 12 months to 20 weeks.

New provisions will provide for bereavement leave of up to three days upon the death of a member of the employee's immediate family. "Immediate family" means the spouse, common-law spouse, child, parent, brother or sister of an employee.

New sexual harassment provisions stipulate that every employee will be entitled to employment free of sexual harassment and that every employer must make every reasonable effort to ensure that no employee is subjected to sexual harassment. The employer will have the obligation to issue a policy statement respecting harassment, after consultation with the employees, consistent with the provisions of this Act.

Notice of termination provisions will provide that an employee with more than six months of service, but less than five years, will be entitled to two weeks' notice, and an employee with more than five years of service will be entitled to four weeks' notice. The employee will not be able to terminate his or her employment without giving the employer one week's notice, where the employee has been employed for more than six months, but less than five years, or two weeks' notice, if employed for more than five years. The existing notice of termination provisions require that one week's notice be given to an employee with three months of service or more, and an employee cannot terminate his or her employment without giving the employer a similar notice.

The recovery of unpaid wages provisions will provide, as they now do, that an employee may lodge a complaint with an inspector, who will inquire into the matter and determine whether a provision of this Act has been contravened. The inspector will also be empowered to inquire where he or she has reasonable grounds to believe that there has been a failure to comply with the Act. The order of an inspector will be limited to directing a defaulting employer to pay any unpaid wages, overtime pay, or vacation pay not exceeding \$5,000 owing to an employee and/or any benefits to which an employee is entitled, but which are not required to be paid directly to the employee. The Act will also provide that an appeal of the inspector's decision could be lodged with the Employment Standards Board, in much the same way that an appeal is allowed to the Employment Standards Advisory Board under the existing provisions.

The new Act provides that the inspector will be vested with the power to bring any action in any court to pursue any claim for unpaid wages or other amounts due under this Act, on behalf of the Board, any employee or any group of employees. An inspector or the employee or group of employees could enter with the Registrar of the Supreme Court an order issued by an inspector or by the Board. The order thus will become enforceable as if it were an order of the Supreme Court.

In addition, the amount set out in the order of an inspector will constitute a lien, charge and secured debt in favour of the inspector against all real and personal property of the defaulting employer, including amounts due or accruing due to the employer from any source. This amount will be protected by a super-priority, payable and enforceable in priority to all liens, judgements, charges, or any other claims or rights, including those of the Crown, whether made or created before or after the date the wages or benefits were earned or became payable.

The inspector will also be empowered to issue third party demands against persons owing money to a defaulting employer. A registered letter, or a letter served personally to the third party, demanding that the amounts due to the defaulting employer be paid in trust to the inspector is all that will be required to accomplish this. A person making a payment in trust to the inspector will be discharged from the original liability to the extent of the payment. If a person does not comply with a third party demand, that person will become liable to pay an amount equal to the amount that was owing to the defaulting employer, or the amount of unpaid wages or benefits.

The Act also provides for the declaration of other provinces to become reciprocating provinces for the purpose of reciprocal enforcement of orders.

This Act, which received royal assent on May 6, 1992, will come into force on a date fixed by proclamation.

Quebec adopted **An Act to amend the Act respecting labour standards and other legislative provisions** to provide that, where July 1 falls on a Sunday, the paid general holiday is given on July 2. This amendment precludes giving the holiday on the Monday preceding or following July 1st, as provided under the former provision. The Act respecting hours and days of admission to commercial establishments is also amended for the same purpose.

In addition, this Act makes certain housekeeping amendments destined to simplify the administration of the Act respecting labour standards and provides for the appointment of a Vice-chairperson to the Labour Standards Commission and defines his/her duties.

Finally, the Act amends the National Holiday Act to increase the amount of the prescribed fines. This Act came into force on the date it received royal assent, June 23, 1992.

Quebec also adopted a regulation suspending the application of Section 41.1 of the **Act respecting labour standards** for employees working in an establishment whose principal activity is the wholesale or retail trade of food products or the storage of such products, effective January 1, 1992. Section 41.1 of the Act, which also became effective on January 1, 1992, provides that no employer may pay an employee who earns twice the minimum wage or less a lower rate of pay than that granted to other employees performing the same tasks in the same establishment for the sole reason that the employee usually works less hours each week.

The **Yukon Territory** adopted **An Act to Amend the Employment Standards Act**, which gives effect to a major review that began last fall. The Act makes a number of substantive changes and brings greater clarity to certain provisions. For example, the definitions of "employer", "wages" and "week" are amended to make the Act simpler to apply. In addition, the Employment Standards Act will apply to government employees by January 1, 1995.

With respect to hours of work provisions, employees may refuse to work overtime unless the employer gives 24 hours' notice or if there is an emergency. The employee can also be exempted from working overtime where proper notice has been given if the employee has an emergency. Employers and employees can enter into a written agreement for compensatory time off in lieu of overtime pay. Each overtime hour worked must be compensated at a rate of one and one-half hours of paid time off work, given within the following 12 months. Compressed work-weeks arrangements are made more flexible, by spreading working time over a two week period. Variances to hours of work provisions can be approved by the Director of Employment Standards, to accommodate the extension of split shifts over longer periods than 12 hours, where the employer and employee agree.

Employees are entitled to a third week of paid vacation after five years of continuous employment with the same employer. After five years, employees are entitled to 6 per cent of their wages as vacation pay.

Any employee may be required to work on a holiday. In such a case, the employer must pay the employee his/her regular rate for the day, plus his/her regular rate for all hours worked and a day off without pay, or give the employee his/her regular pay plus another day off with pay. This provision previously applied only to workers employed in custodial work, essential services or continuous operations.

Employees who have worked for an employer for 12 months or more and give him/her at least four weeks' notice are entitled to take 17 weeks of unpaid parental leave. The leave is to be taken within 52 weeks of the birth or adoption of a child, or the date the child comes into the actual care and custody of the parents. Both parents can take the leave. If they work for the same employer, the leave cannot be taken at the same time, or exceed a total combined period of 17 continuous weeks. Employees are required to give at least four weeks' notice to their employer of their date of return to work. Employees who fail to give the notice are presumed to have terminated their employment. Parental leave provisions also apply to common-law and same-sex couples.

An employee who has completed six consecutive months of employment or more, but less than one year, is entitled to one week of notice of termination of employment; an employee with one year or more, but less than three years, is entitled to two weeks' notice; an employee with

three years, but less than four, to three weeks' notice; an employee with four years, but less than five, to four weeks' notice; an employee with five years, but less than six, to five weeks' notice; an employee with six years, but less than seven, to six weeks' notice; an employee with seven years, but less than eight, to seven weeks' notice; and an employee with eight years or more is entitled to eight weeks' notice of termination.

An employee who has been employed six months or more, but less than two years, must give his or her employer at least one week's notice before terminating his or her employment; an employee with two years of service, but less than four, must give two weeks' notice; an employee with four years, but less than six, three weeks; and an employee with six years or more of service must give at least four weeks' notice.

Unpaid sick leave can accrue to 12 days in a year, an increase from six days. Bereavement leave provisions have been amended to increase from three days to up to one week the duration of the unpaid leave, and to expand the list of relatives whose death gives rise to the leave. The list now includes the spouse (including a common-law or same-sex spouse), parent, child (including a foster parent's child), brother, sister, father of the spouse, mother of the spouse, step-mother, step-father, grandparent, grandchild, son-in-law, daughter-in-law, and any other relative permanently residing with the employee. The bereavement leave provisions also apply in cases of First Nations employees to let them prepare for funerals and potlaches according to clan customs. A new provision of the Act provides for the adoption of regulations respecting family responsibility leave. No such regulations have, as yet, been adopted.

Record-keeping rules have been clarified. Employers are now required to keep complete and accurate records concerning an employee for up to one year after the last day worked. Wages must be paid within ten days after the regular pay period, and seven days after termination (up from seven and three days, respectively). Termination pay may be paid in instalments. Deductions from wages are prohibited, except for statutory deductions and garnishments. However, written assignment of wages may be honoured by the employer.

The limitation period for filing a complaint is shortened from one year to six months. The rules for non-certificate appeals and referrals to the Employment Standards Branch have been clarified. Employers are required to deposit \$250 on appeal.

The number of members of the Employment Standards Board is increased from five to seven. The powers of the Board have been somewhat increased. The Board can award interest on the amounts set out in a certificate. It can also determine the number of hours of work for which an employee claims to be unpaid, up to 10 per day, 60 per week, or those alleged by the employee, in the absence of records or where both parties' records are not credible. The Board may impose a penalty of up to \$1,000 in cases where this is warranted. Board members now also enjoy immunity from legal action.

Finally, with respect to the fair wages provisions, the schedule to the Act is clarified and provision is made for the adoption of regulations. If an employer is convicted of multiple offences to the Fair Wage Schedule, his privilege to bid on government contracts may be withdrawn.

This Act received royal assent on June 2, 1992 and will come into force upon proclamation, except section 6, which provides that the Act applies to the Government and its employees. Section 6 will come into force on January 1, 1995, or on the date of the signing of the next collective agreement, whichever is sooner.

Alberta has undertaken a review of its employment standards legislation. The government released a discussion paper in November, 1991 and a series of public consultation seminars were held in the province during December, 1991 and January, 1992, in order to obtain views on updating the provisions of the **Employment Standards Act**.

Ontario will amend the **Employment Standards Act** with respect to employment rights in certain contracting-out of services situations and termination of employment provisions.

These proposed changes, contained in Bill 40, An Act to amend certain Acts concerning Collective Bargaining and Employment, are described hereafter in Part II, Section A.

B. Minimum Wages

Alberta amended its **Minimum Wage Regulation**, in order to increase the minimum wage rates, effective April 1, 1992. The general rate was increased from \$4.50 to \$5.00 an hour. The rate payable to an employee under 18 years of age who attends school and who is employed outside his or her normal school hours or on a weekend, a vacation period or any other day that the school is officially closed passed from \$4.00 to \$4.50 an hour. The rate payable to various categories of salespersons was increased from \$180.00 to \$200.00 a week. Deductions for board and lodging were amended as follows: a) \$1.65 for a single meal (up from \$1.50); and b) \$2.20 a day for lodging (up from \$2.00). This regulation came into force on April 1, 1992.

British Columbia repealed and replaced parts of the **Minimum Wage Regulation** to provide various increases in the minimum wages, effective February 1, 1992. The minimum wage payable to persons 18 years of age and over has been increased to \$5.50 per hour, up from \$5.00. The rate payable to persons under 18 was increased from \$4.50 to \$5.00 per hour. Live-in homemakers, domestics, farm workers or horticultural workers paid on a basis other than on an hourly or piece-work basis increased from \$40 to \$44 per day or part of day worked. The minimum wage for a resident caretaker was set at \$330 per month, plus \$13.20 per unit, where the apartment building contains from 8 to 60 residential suites, and at \$1,120 per month, where the apartment building contains 61 units or more. Also effective February 1, 1992, 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 **Nova Scotia**, the second part of a two stage increase described in the last issue of the *Highlights* became effective on January 1, 1992. The general minimum wage rate was raised from \$4.75 to \$5.00 an hour, and the rate payable to employees 14 to 18 years of age passed from \$4.30 to \$4.55 an hour.

Ontario has raised its minimum wage rates in accordance with the announcement reported in last year's issue of the *Highlights*. A regulation amending the **General Regulation under the Employment Standards Act** became effective November 1, 1991. The general rate has been increased from \$5.40 to \$6.00 per hour. The rate applicable to students under 18 employed for not more than 28 hours in a week or during a school holiday has been increased from \$4.55 to \$5.55 per hour. Employees who serve liquor are entitled to \$5.50 per hour, up from \$4.90. Hunting and fishing guides are entitled to \$30 for less than five consecutive hours in a day, and to \$60 for five or more hours in a day, whether or not the hours are consecutive. These amounts have been increased from \$27 and \$54, respectively.

In addition, this regulation establishes, effective November 1, 1991, the maximum amount at which are valued meals and/or rooms, if these have been taken into account by an employer in calculating the minimum wage of an employee, as follows:

- Room: \$27.80 a week if the room is private and \$13.90 a week if it is not.
- Meals: \$2.20 a meal and not more than \$46.20 a week.
- Both room and meals: \$74.00 a week if the room is private and \$60.10 a week if it is not.

Similarly, the **Fruit, Vegetable and Tobacco Harvesters Regulation under the Employment Standards Act** was amended to increase the minimum wages payable to these categories of workers, effective January 1, 1992. The rate payable to students under 18 employed for not more than 28 hours in a week or during a school holiday has been increased from \$4.55 to \$5.55 per hour. The rate payable to all other employees falling within these categories has been increased from \$5.40 to \$6.00 per hour.

The maximum deductions for room and/or board under this regulation have been increased, effective January 1, 1992, to the same levels as those reported above. Those for housing accommodation have been increased as follows:

- Serviced housing accommodation: \$87 per week.
- Housing accommodation: \$64.20 per week.

On July 31, 1992, Ontario's Minister of Labour, the Honourable Bob Mackenzie, announced the general minimum would increase to \$6.35 an hour, effective November 1, 1992. This represents a 5.8 per cent increase that matches the rise in the average wage and maintains the minimum wage

at about 51 per cent of the average wage. In order to support two hard-hit sectors, the hospitality and retail sectors, the wage differential for students will be retained and the minimum wage for liquor servers will be frozen at \$5.50 an hour. The student minimum wage will also be increased by 35 cents, to \$5.90 an hour. The room and meal deductions will be increased by the same percentage increase in the general minimum wage. Effective January 1, 1993, harvest workers will be entitled to the minimum wage of \$6.35 an hour, and hunting and fishing guides will receive the same percentage increase in their daily and half-day rates. Mr. Mackenzie indicated that the pace and the level of future minimum wage increases will continue to be decided in the context of prevailing economic conditions and in keeping with other government initiatives benefiting lower-paid workers.

Quebec has published a draft regulation announcing its intention to amend the minimum wage provisions of the **Regulation respecting labour standards**, effective October 1, 1992. The general rate will be increased from \$5.55 to \$5.70 an hour. The rate payable to employees who usually receive gratuities will be raised from \$4.83 to \$5.00 an hour. Domestic workers who reside in the employer's home will be entitled to \$221 per week, up from \$215 per week.

In addition, maximum deductions for a room and meals will be as follows:

- \$1.25 per meal, up to \$16.78 per week;
- \$16.78 per week for a room;
- \$33.56 per week for a room and meals.

C. Sunday Shopping

In November, 1991, **New Brunswick** amended its **Regulation under the Days of Rest Act** in order to permit Sunday shopping in most retail establishments in the period between November 3, 1991 and December 31, 1991.

Also in New Brunswick, an **Act to Amend the Days of Rest Act** received royal assent and came into force on May 20, 1992. This Act provides greater discretion to allow retail establishments to open on Sundays. Regulations may be made to exempt specified retail establishments, on specified Sundays. Where such regulations are adopted, the permits previously issued by the Municipal Affairs Board would be superseded to the extent of the provisions of the regulations. The Act also empowers the Minister of Municipal Affairs to issue a permit exempting all retail establishments located in the area where a festival or special event is to be held from closing on specified Sundays and on Holidays.

In Ontario, the **Retail Business Establishments Statute Law Amendment Act, 1991**, which received royal assent on November 25, 1991, amended the Retail Business Holidays Act and the Employment Standards Act to permit retail business establishments to be open on the Sundays in December preceding Christmas Day, while allowing at least thirty-six consecutive hours off work every week and enabling employees to refuse Sunday work which they deem unreasonable. Employees are awarded increased protection under the Employment Standards Act for their participation in any public hearing respecting a proposed municipal by-law concerning Sunday shopping in December, or in any appeal or court challenge of the by-law.

On June 3, 1992, Ontario introduced a Bill entitled **An Act to amend the Retail Business Holidays Act in respect of Sunday Shopping**. This Bill will enable retail establishments to open on Sundays. Easter Sunday and other holidays which fall on a Sunday will remain as retail business holidays. The Bill also specifies that terms in leases requiring Sunday openings will be of no effect. The Bill will come into force retroactively to June 3, 1992.

D. Recovery of Unpaid Wages

Ontario adopted the **Employment Standards Amendment Act (Employee Wage Protection Program), 1991**. 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 (which includes the case of "walk-aways"). Unpaid workers are required to file a complaint with the Employment Standards Branch and, once the validity of the claim is determined, an order to pay, which is limited to a maximum of \$5,000, is issued against the defaulting employer. If the employer fails to pay and does not appeal the order, the claimant is reimbursed by the program. Where an employer appeals, the program pays out only after a worker's entitlement to compensation is established. The Branch, which becomes subrogated in all the rights of the employee to recover the unpaid wages, then attempts to recover the money paid out from the employer or directors, using, among other things, the liability provisions of this Act.

Amendments were made to the Act during passage which removed the proposed liability of officers of a company for wages and vacation pay owing to workers, so that the liability remains only for its directors. In addition, the appeal process has been revised during passage to ensure that employers, directors and employees not become tied up in lengthy and protracted recovery procedures.

This Act came into force on October 18, 1991, except for section 6, which was proclaimed into force on January 20, 1992.

This section provides that directors are jointly and severally liable to the employees up to a maximum of the equivalent of six months' wages and 12 months' vacation pay. An employment standards officer who makes an order for wages against an employer is empowered to make, at the same time or subsequently, an order against all or some of the directors of the employer. A director who fails to comply with an order to pay wages is guilty of an offence and is liable upon conviction to a fine not exceeding \$50,000. A director cannot contract out of liability under the Act but the employer may indemnify a director in respect of any proceeding to which the person, in his or her capacity as director, is a party. All civil remedies that a person may have against a director or that a director may have against any person are not affected by these provisions.

Ontario also adopted the **Employee Wage Protection Program Regulation under the Employment Standards Act**. This regulation makes clear what types of claims for wages are eligible under the Program and the manner in which they are to be apportioned. Compensation from the Program is to first be attributed to regular wages (including commissions, overtime wages, vacation pay and holiday pay), to amounts owing resulting from the application of the equal pay for equal work provisions of the Act, and amounts still due with respect to a Non-Payment Order issued by an Employment Standards Officer. If the maximum compensation has not been reached, compensation is attributed to severance pay. If the maximum has still not been reached, compensation is attributed to termination pay (i.e. pay in lieu of notice). If any amount of compensation then remains outstanding, additional payments can be made with respect to various benefit plans, namely, pension plans, life insurance plans, accidental death plans, extended health plans, dental plans and disability plans.

In addition, where a multi-employer collective agreement applies in the construction industry, and the collective agreement establishes a benefit plan, the trustees of the plan may request, under certain conditions, that part of the compensation extended to an employee be diverted to the plan. However, the amount thus assigned cannot exceed the amount that the employee would have received in accordance with the apportionment of compensation described above.

Overpayments may be recovered by the administrator of the Program, in cases where he is of the opinion that the repayment would not impose undue hardship upon the beneficiary, or the administrative costs of recovering the overpayment do not exceed the amount of the overpayment.

This regulation came into force on October 18, 1991.

The **federal** government gave royal assent to Bill C-22, **An Act to amend the Bankruptcy Act and to amend the Income Tax Act in consequence thereof**, on June 23, 1992. Among other things, this Act increases from \$500 to \$2,000 the amount of the preferred claim for unpaid wages provided in section 136(1)d) of the Bankruptcy Act. This modification came into force on August 1, 1992.

Manitoba has repealed its **Wages Recovery Act**. This Act provided a summary proceeding before a justice of the peace permitting employees to claim up to \$500 in unpaid wages. The Law Reform (Miscellaneous Amendments) Act, which was assented to on June 24, 1992, made the repeal effective on the date of assent.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

On December 5, 1991, the **federal government** adopted Bill C-44, **An Act to amend the Canada Labour Code (geographic certification)**, which came into force on the same date.

This Act has modified section 34 of the Canada Labour Code. Section 34 permits the Canada Labour Relations Board (CLRB) to grant a geographic certification to a trade union representing employees of two or more employers in a given geographic area in the longshoring industry, provided that the employers draw their employees from a common labour pool.

When the CLRB grants a geographic certification, the employers of the employees in the bargaining unit are required to appoint an agent to act on their behalf and to authorize the agent to discharge the duties and responsibilities of an employer under Part 1 of the Code (Industrial Relations).

The Act provides for the appointment of an employer representative by the CLRB should the employers affected by a geographic certification order fail to do so. No appointment is made until the employers have had a reasonable opportunity to make representations.

An employer representative is required to discharge all the duties and responsibilities of an employer under Part 1 of the Code on behalf of all the employers of the employees in the bargaining unit, and has, among other things, the power to conclude a collective agreement.

Moreover, the CLRB is given the power to decide any question that arises concerning the application of section 34.

The Act imposes upon an employer representative the duty to fairly represent the employers on whose behalf he/she acts. An employer who believes that the employer representative has acted in a manner that is arbitrary, discriminatory or in bad faith in the carrying out of his/her duties and obligations may file a complaint with the CLRB which has the power to issue remedial orders, as necessary.

On December 11, 1991, **Newfoundland** passed Bill 47, **An Act to amend the Labour Relations Act, 1977 (No. 3)**. The most notable changes include the following:

1. to provide that a unionized employer, a trade union or an organization representing either of them 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 does not apply unless both parties give their approval);
2. 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 can be extended to other sectors of the construction industry by order of the Minister of Employment and Labour Relations; however, the compulsory multi-trade bargaining process does not apply to special projects for which an order has been made under the Act);
3. to give the Labour Relations Board the power to declare corporations, partnerships, persons or associations of persons carrying on associated or related activities or businesses, under common control or direction in the construction industry, to be a single employer for the purposes of the Act; (The Board may issue such a declaration only when it considers it necessary to preserve bargaining rights held by a trade union or to prevent an employer from avoiding the application of the Act.); and
4. to require that an employer, purchaser, lessee, or transferee provide the Labour Relations Board, when ordered to do so, with all facts within his/her knowledge respecting the alleged sale, lease or transfer of a business.

These amendments took effect on December 11, 1991 for change number 1 and on February 1, 1992 for changes number 3 and 4. The other change will come into force by proclamation.

In **Quebec**, **An Act to amend the Act respecting the Conseil consultatif du travail et de la main-d'oeuvre and other legislation** was assented to and came into force on December 18, 1991.

This Act provides that the Advisory Council on Labour and Manpower must release the general policy taken into consideration for the purpose of advising the Minister of Labour in respect of the list of disputes arbitrators who may be appointed when the parties agree to refer a labour conflict to arbitration but disagree on the choice of the arbitrator. This policy may include criteria for the appraisal of the arbitrators' qualifications and conduct.

The Council is authorized to examine the complaints it receives concerning the remuneration paid to and the expenses claimed by the arbitrators whose names appear on the list as well as those concerning their conduct and qualifications. It also examines any complaint concerning an arbitrator submitted to it by the Minister. The Council attempts to settle complaints to the satisfaction of the complainant and the arbitrator and, if no settlement is reached, it transmits its findings together with the recommendations it considers appropriate to the Minister of Labour.

The Act specifies that the members of the Council may not be prosecuted by reason of any act done in good faith in the performance of their duties.

Moreover, it requires that the Council be consulted before the adoption of any regulation on the remuneration and expenses to which interest and grievance arbitrators are entitled.

In **Manitoba**, Bill 85, the **Labour Relations Amendment Act**, was adopted on June 24, 1992. It contains a number of changes to the Labour Relations Act. The objectives of modifications, which came into force on June 24, 1992, are as follows:

- to repeal a provision of the Act which deemed certain statements by an employer during the certification process to be an unfair labour practice (this is replaced with the previously existing general prohibition on the use of intimidation, coercion, threats, undue influence and interference with the formation or selection of a trade union);
- to recognize the employer's right to communicate to employees statements of fact or opinions reasonably held about the business, subject to the general prohibition mentioned above; and
- to prohibit an employer, a trade union or any person acting on their behalf to distribute printed material or engage in electioneering at the place of work or polling place on the day of a certification or decertification vote for the purpose of influencing the vote.

The objectives of other modifications, which will take effect on January 1, 1993, are as follows:

- to provide that an application to the Labour Board to settle the content of a first collective agreement may be made only after a conciliation officer has given notice (between 90 and 120 days after his/her appointment) that the parties have not been able to reach a settlement, or after 120 days have elapsed since that appointment;
- to permit the use of an arbitrator to settle the provisions of a first collective agreement where both parties agree;
- to expand the use of a secret ballot vote on applications for certification to situations when between 40% and 65% of the employees in the proposed bargaining unit have signed membership cards (the current range for automatic votes is between 45% and 55%);
- to require unions to provide information to concerned employees during certification drives with respect to initiation fees and regular membership dues; and to specify that the Labour Board will not accept the membership of an employee in the union as evidence during certification proceedings if the employee did not receive this information.

On June 4, 1992, the **Ontario** Minister of Labour tabled Bill 40, **An Act to amend certain Acts concerning Collective Bargaining and**

Employment. Following is a summary of the most important changes to the Labour Relations Act contained in the Bill.

In order to state explicitly the objectives of the Act, the Bill proposes:

- to add a purpose clause to the Labour Relations Act stating the objectives of the Act (e.g. to ensure that workers can freely exercise the right to organize, and to encourage the process of collective bargaining so as to enhance:
 1. the ability of employees to negotiate improved terms and conditions of employment,
 2. the extension of co-operative approaches between the parties in adapting to changes in the economy, developing work force skills and promoting workplace productivity, and
 3. increased employee participation in the workplace).

In order to facilitate the process for the certification of trade unions, the Bill proposes:

- to remove the exclusion from the Act of domestics, certain categories of professionals and classes of agricultural or horticultural workers prescribed by regulation; and to eliminate the requirement for security guards to only join trade unions which represent security guards exclusively (at the request of either party, the Ontario Labour Relations Board (OLRB) would place security guards in a different bargaining unit than other employees if their monitoring duties would give rise to a conflict of interest);
- to provide for faster Board processes to deal with complaints arising from the disciplining or discharging of employees, or the imposition of other penalties, during organizing campaigns;
- to allow organizing activity on third-party property to which the public normally has access, but only at or near (but outside) the entrances and exits to a workplace (e.g. in front of a shop in a shopping center) (the OLRB could restrict such activity if it causes undue disruption);
- to eliminate the one dollar minimum membership fee that employees must pay on signing a membership card in order to be considered members of a trade union;
- to consider evidence of membership in a trade union only as of the date of application for certification;
- to modify the existing OLRB power to certify a trade union in order to remedy an unfair labour practice by removing the "adequate membership support" requirement (i.e. certification could be granted if the OLRB considers that the true wishes of the employees concerning representation by a trade union are not likely to be ascertained due to the unfair labour practice);
- to provide that the level of membership in a union required to make a representation vote mandatory be from 40% to 55% (currently from 45% to 55%);
- to require the OLRB to include full-time and part-time employees in the same bargaining unit in defined circumstances (this would not apply to craft units, or units in the construction industry) (the Board would separate full-time and part-time employees where there was insufficient support for certification in the combined unit);
- to give the OLRB the power to consolidate, at the request of either party, two or more bargaining units, if the same union represents separate groups employed by the same employer (the OLRB would notably take into consideration the advantages of stable collective bargaining and the potential for serious labour relations problems, and would be directed not to combine units if this would unduly interfere with the employer's ability to maintain significant operational or production differences between two or more geographically separate facilities) (an application for consolidation could be joined to an application for certification) (the construction industry would be exempted from this provision).

In order to correct perceived problems in the collective bargaining process, the Bill proposes:

- on application to the Minister by either the employer or trade union, to provide for the settlement of a first collective agreement by private arbitration where the parties have been in a legal strike/lockout position for 30 days or more, and have been unable to reach an agreement

(any strike or lockout would then be terminated) (the current provisions for application to the Board for a direction to settle a first collective agreement by arbitration would be maintained);

- to prohibit an employer from using employees in the bargaining unit or replacement workers (except managers, other excluded persons, and employees not in the bargaining unit, who work at the place of operations and give their consent) to perform the work of striking or locked-out employees at the establishment affected by a labour dispute or the work of managers and other excluded persons replacing these employees (employers would continue to have the right to shift work to another location); to make this legislation applicable to lockouts and legal strikes authorized by at least 60% of those in the bargaining unit who participated in a secret ballot; and to provide a number of exceptions to ensure the delivery of specified essential services and to prevent danger to life, health or safety, the destruction or serious deterioration of property or severe environmental damage;
- to require employers to continue employment benefits (including coverage under insurance plans, but excluding pension benefits) during a legal strike or lockout if the trade union makes payments sufficient to maintain them;
- to provide employees with just cause protection in cases of disciplinary action or dismissal following certification or voluntary recognition, under a collective agreement (subject to the right of the parties to agree to limit the application of this protection to probationary employees), or during a dispute to renew a collective agreement (until it is settled or the right of the union to represent the employees is terminated);
- to repeal the existing limitations on the right to return to work during a strike, and to provide that, if after a lockout or legal strike the parties do not reach an agreement on reinstatement, returning employees must be given priority for the positions they held when the work stoppage began, and that, if there is insufficient work for all these employees, they be reinstated as work becomes available according to seniority (as defined in recall provisions of a collective agreement if any) unless during the starting up of the employers' operations employees are not able to perform the work required;
- to permit individuals to picket on third-party property to which the public normally has access, during a lockout or legal strike, but only at or near (but outside) the entrances and exits to the operations at which the work of the struck or locking out employer is carried on (such union activity could be restricted by the OLRB if it causes undue disruption);
- to provide the OLRB with the power to settle one or more of the terms of a collective agreement when the existing duty to bargain in good faith has been violated and the Board considers that other remedies are insufficient;
- to require that every collective agreement contain a consultation provision if a party so requests during the negotiation period (such provision would provide that the parties consult regularly during the term of the agreement about pertinent workplace issues).

In order to increase protection for bargaining rights while a collective agreement is in force, the Bill proposes:

- to make the purchaser of a business party to any proceedings before the OLRB under any Act, that affect employees in the business or their bargaining agent, including bargaining notices, conciliation, mediation and OLRB proceedings;
- to extend the protection of bargaining rights and collective agreements to situations in which the sale of a business causes a transfer from federal to provincial jurisdiction;
- to protect bargaining rights and collective agreements for workers employed by a building owner or manager, or a contractor, to provide services on the premises (e.g. building cleaning, food services and security services) when the employer ceases, in whole or in part, to provide the services, and substantially similar services are subsequently provided at the premises under the direction of another employer (this would not apply to construction, production or manufacturing activities) (amendments to the Employment Standards Act would give employment rights to workers in these services when, without there being a sale of the business, their employer ceases to provide the services after June 4, 1992, and another employer begins to provide substantially similar services on the same premises).

In order to improve the administration and enforcement of the Labour Relations Act by the OLRB, the Bill proposes:

- to give the OLRB the power to issue orders on an interim basis on application in a pending or intended proceeding;

- to make the grievance arbitration process more effective and expeditious, notably by giving arbitrators additional procedural powers and ensuring that they can decide all issues before them;
- to provide that the parties may, at any time, agree to refer one or more grievances to a mediator-arbitrator, despite any provision included or deemed to be included in a collective agreement, for the purpose of resolving the grievances in an expeditious and informal manner.

In order to assist adjustment and change in the workplace, the Bill proposes:

- to enable the Minister of Labour to establish an advisory service whose purpose is to assist employers, trade unions and employees to respond to changes in the work force, in technology and the economy through co-operation and innovation;
- to create a statutory duty for employers to bargain in good faith with concerned unions towards a labour adjustment plan whenever an employer is giving notice of closure or termination of 50 or more employees (the OLRB would not have the power to determine an adjustment plan in case of failure to comply with this provision; a negotiated adjustment plan would be enforceable as if it were part of the collective agreement or, if no agreement is in effect, any difference relating to it could be referred to a single arbitrator at the request of either party); and to specify that the purposes of committees established under the Employment Standards Act in cases of termination of employment would be to consider alternatives to the terminations and to facilitate the adjustment process.

B. Public and Parapublic Sectors

In **Saskatchewan**, the **Police Act, 1990** was proclaimed into force on January 1, 1992. It contains provisions dealing with collective bargaining for members of municipal or regional police services. These provisions bring changes with respect to referral of a dispute to arbitration, conciliation procedures and strike or lockout notice.

The Act stipulates that, if there is a dispute between a municipality, or a board of police commissioners it has established, and a local police association over the negotiation or revision of a collective bargaining agreement, and the parties have not agreed to refer to binding arbitration unsettled matters relating to hours and conditions of work, wages or employment, the minister responsible for the Human Resources, Labour and Employment Act may appoint a conciliator at the request of either party. When a conciliator is appointed, he/she must submit a written report to the parties within 30 days of the appointment, and no strike or lockout is permitted until the conciliator has done so.

Each party assumes an equal share of the cost of the chairperson of a board of arbitration or a conciliator and of any other general arbitration or conciliation costs. In addition, the Act requires that a party give the other at least 120 hours' written notice of a strike or lockout.

In **British Columbia**, effective July 31, 1992, the **Compensation Fairness Repeal Act** has repealed wage restraint legislation, applying to a broadly defined public sector, which had taken effect on January 30, 1991.

The Compensation Fairness Regulation adopted in the spring of 1991 under the **Compensation Fairness Act** has been repealed. This regulation could be made applicable to compensation plans in the public sector which were outside guidelines issued by the government.

In addition, on June 5, 1992, British Columbia passed the **University Amendment Act, 1992**.

Among other things, this Act removes from the University Act a section that prevents the Industrial Relations Act from applying to the employment relationship between a university and its faculty members. It will come into force on a date to be fixed by the government.

In **New Brunswick**, the **Expenditure Management Act, 1992** received royal assent on May 20, 1992. This Act applies to collective bargaining in the public sector (i.e. government departments, boards, commissions and agencies, public schools, hospitals, nursing homes and Crown corporations). The restraint measures it contains are in addition to the one-year wage freeze imposed by the Expenditure Management Act, 1991.

With respect to **expiring agreements**, the parties are free to return to normal collective bargaining, and the Act facilitates the giving of notice to bargain when the prescribed time limits have passed.

With respect to **continuing agreements**, the Act gives the bargaining agent three options:

1. to give notice in writing to the employer that it wishes to extend the collective agreement for an additional two years and further delay unpaid negotiated improvements for that period and that it accepts wage increases of 1% to be provided in the first year following the wage freeze year imposed by the Expenditure Management Act, 1991 and 2% in the second year (all other terms of the agreement would remain unchanged);
2. to agree with the employer to some other period of extension and/or some other delay in unpaid negotiated improvements and to other amendments to the collective agreement (changes in the extension period may require the approval of the Lieutenant-Governor in Council in specified circumstances);
3. to give notice to bargain (all unpaid negotiated improvements would then cease to exist)(changes on which there is an agreement during the negotiations may be retroactive to any date after the end of the pay freeze imposed by the Expenditure Management Act, 1991).

If no notice is given by the bargaining agent with respect to one of the above options, the continuing agreement is extended on the terms set out in option 1.

During the two-year period following the wage freeze imposed by the Expenditure Management Act, 1991, wage increases for non-bargaining employees are subject to the approval of the Lieutenant Governor in Council as being generally consistent with the restraint measures applying to those who bargain collectively.

Additional payments resulting from promotion, reclassification or progression within an established pay range are permitted. The same applies to payments received under the Pay Equity Act.

Agencies which are funded by government departments to deliver services to the community on their behalf may, if they are obliged to provide excessive wage increases, request that an order in council be issued providing for a reduction of these increases. Such a request may be made no later than October 15, 1992.

The Act provides for similar restraint measures with respect to the New Brunswick Medical Society Agreement and the New Brunswick Pharmacists Association Agreement.

The Act came into force on May 28, 1992. It ceases to have effect on the expiry of the agreements and arrangements to which it applies.

In **Newfoundland**, the **Public Sector Restraint Act, 1992** was enacted on June 11, 1992. It replaces the Public Sector Restraint Act which was adopted on April 18, 1991 and provided for a one year restraint period.

The 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, as well as Provincial Court judges, Ministers and members or employees of the House of Assembly. However, it does not apply to municipalities or cities.

The Act is considered to have come into force on March 31, 1991. It provides for a three-year restraint period beginning on the date of expiry of collective agreements or other contractual arrangements, or on the date of the first scheduled pay increase after March 31, 1991 or on the date negotiations to revise pay scales were scheduled to start after that date. No increase in compensation is permitted during the first 24 months of the restraint period, and a maximum increase of 3% is permitted for the last 12 months. It is possible for the parties to negotiate an increase with respect to components of the pay scales or other items of a collective agreement or other contractual arrangement, provided the direct or indirect cost to the government does not exceed during the restraint period the total cost of the expired collective agreement or arrangement

(plus 3% during the last 12 months).

The restraint scheme does not affect payments required to be made under a pay equity agreement. However, notwithstanding any collective agreement, no pay equity agreement may contain a provision which implements that agreement retroactively, and any such provision is considered to be void.

The pay scales of some groups of public sector employees (e.g. psychiatric therapy aides and ambulance dispatchers) are exempt from the restraint measures effective April 1, 1992.

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

In **Quebec, An Act respecting the prolongation of collective agreements and the remuneration in the public sector** was assented to and came into force on June 23, 1992.

This Act authorizes the public bodies (e.g. government departments and agencies, school boards, colleges, health establishments and certain crown corporations) and associations of employees to agree on a deferral of the date of expiry of their collective agreements, and allows the duration of such agreements to exceed three years. In cases where the parties fail to reach an agreement, the date of expiry is deferred for one year.

In addition, the Act prescribes the maximum increase in salary rates and scales and in premiums that may be agreed upon by the parties for the period of deferral. The rates, scales or premiums in effect on the date of expiry of a collective agreement may be increased by a maximum of three per cent for the first nine months following that date and one per cent at least for the three following months.

The provisions on the deferral for one year of the date of expiry of collective agreements when the parties fail to reach an agreement and on maximum increases during the extension period do not apply to a collective agreement which contains a stipulation having the effect of providing a salary increase for employees concerned that does not exceed the above-mentioned limits and is applicable for a period of at least one year beginning in 1992, 1993 or 1994. In addition, the Act specifies that these provisions do not apply to collective agreements binding certain parties such as Hydro Quebec and the Quebec Liquor Board (Société des alcools du Québec) and the unions representing their employees as well as the Government of Quebec and the Quebec Association of Provincial Police Officers (Association des policiers provinciaux du Québec).

The Act applies the maximum percentages of increase to administrators of state, chief executive officers and members of public bodies, managerial staff and other employees of these bodies who do not belong to a bargaining unit, and to judges and Members of the National Assembly.

Agreements relating to insured services provided by health professionals under the health insurance scheme are also subject to the maximum increases applicable to collective agreements.

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

In the last 12 months, three ad hoc emergency laws were adopted in the **federal jurisdiction**.

The first of these laws, the **Public Sector Compensation Act**, was passed on October 2, 1991 to end a strike by various groups of federal government employees, and to provide for legislated wage restraint measures in the federal public sector.

The legislation applies to federal government departments, boards, commissions and agencies, designated Crown corporations, the Senate, House of Commons and Library of Parliament. It also applies to the staff of ministers and of members of the Senate and House of Commons as well as to the directors of designated Crown corporations, and members and officers of the Canadian Forces and of the Royal Canadian Mounted Police.

Compensation plans in effect on February 26, 1991 have been extended for 24 months. Compensation plans scheduled to expire before February 26, 1991 and not replaced by agreement of the parties before that date have been extended for 12 months with a retroactive increase in wage rates (4.2% or as authorized by the government) and, in addition, are subject to the 24-month extension mentioned above.

For the purposes of the Act, the term "compensation" does not include a lump sum payment of \$500 to employees earning \$27,000 or less a year, and an adjusted payment of less than \$500 to employees earning between \$27,000 and \$27,500.

The parties to a collective agreement or the persons bound by an arbitral award, that includes a compensation plan extended by the Act, may agree in writing to amend any of its terms and conditions, other than wage rates or other terms and conditions of the compensation plan.

Every compensation plan covered by the 24-month extension is deemed to include a provision to the effect that there is no wage increase in the first twelve months and a three per cent increase in the second twelve month period.

There is an exception to the extension of a compensation plan, which expired before or was in effect on February 26, 1991, when a new compensation plan replacing it was established during the period beginning on February 26, 1991 and ending on October 2, 1991 (or a later date if the process for resolution of the dispute is by arbitration and a request to that effect was made prior to October 3, 1991). In these circumstances, the Governor in Council, on the recommendation of the Treasury Board, may adjust wage rates under the new compensation plan in a manner considered consistent with the wage policy of the Government of Canada arising from the February 26, 1991 budget.

As of the coming into force of the Act and for the duration of a compensation plan covered by it, it is prohibited for the employees to participate in a strike. In addition, certain actions or omissions of a bargaining agent and its officers and representatives leading to the declaration or continuation of a strike are prohibited.

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

A term of imprisonment may not be imposed in default of payment of a fine by a person. Any fine imposed on a bargaining agent or one of its representatives or officers may be recovered by deducting it, in whole or in part, from the amount of membership dues that the employer deducts from the pay of the employees and remits to the appropriate bargaining agent.

A restraint scheme for 1992 and 1993, which is similar to the one applicable to compensation plans extended by the Act, applies to the salaries and allowances of the members of the Senate and the House of Commons.

The Act took effect on October 3, 1991.

The second law, the **Thunder Bay Grain Handling Operations Act**, which came into force on October 12, 1991, had the effect of ending a strike involving approximately 900 grain handlers employed at the Port of Thunder Bay, Ontario.

The legislation provided for the resumption of grain handling operations, and the appointment of a mediator-arbitrator to deal with all matters remaining in dispute between the parties. The term of the collective agreement was extended to include the period from February 1, 1991 to a date fixed by the mediator-arbitrator, which could not be earlier than January 31, 1993 or later than January 31, 1994.

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

Fines were 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) or by the employer or bargaining agent (maximum: \$100,000). These fines were applicable to each day or part of a day during which the offence continued.

The third law was the **Postal Services Continuation Act, 1991** which received royal assent on October 29, 1991.

This Act provided a mechanism for the settlement of a labour dispute between the Canada Post Corporation and the Canadian Union of Postal Workers (CUPW) representing approximately 45,000 employees, including mail sorters and handlers as well as letter carriers.

As of 6:00 a.m. on October 30, 1991, the legislation required the continuation or resumption of postal operations, and extended six collective agreements that had expired on July 31, 1989, and one that had expired on September 30, 1989, until July 31, 1993, except for a period during which CUPW declared rotating strikes.

The Act provided for the appointment of an arbitrator having the task of amalgamating the seven collective agreements into a single agreement. Other responsibilities included resolving the issues in dispute as well as determining the matters on which the parties had reached substantial agreement during the collective bargaining process, and incorporating such matters into the collective agreement.

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

Fines were 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) or by the employer or union (maximum: \$100,000). These fines were applicable to each day or part of a day during which the offence continued.

Any fine imposed on the union or one of its representatives or officers could be recovered by deducting it, in whole or in part, from the amount of membership dues that the employer may be required to deduct from the pay of the employees and to remit to the union.

D. Construction Industry

Changes to the **Newfoundland Labour Relations Act** affecting more specifically the construction industry are outlined in Section A "Legislation of General Application".

In **Ontario**, effective December 19, 1991, the **Labour Relations Amendment Act, 1991** has amended the Labour Relations Act to make changes with respect to the industrial, commercial and institutional sector of the construction industry as described below.

- The terms of province-wide agreements are increased from two to three years.
- When a vote is conducted to ratify a proposed province-wide agreement, the counting of the ballots is not allowed until the voting is completed throughout the province.
- A new section added to the Act gives the government the power to establish, by regulation, a corporation to facilitate collective bargaining in the industrial, commercial and institutional sector of the construction industry and to provide other assistance. The corporation does this

notably by collecting, analyzing and disseminating information concerning collective bargaining and economic conditions in the sector, and by holding conferences involving representatives of the appropriate bargaining agencies. The membership of the corporation consists of an equal number of representatives of labour, management and the provincial government. The corporation is funded by labour and management.

In addition, on June 25, 1992, the Ontario Minister of Labour tabled Bill 80, **An Act to amend the Labour Relations Act**. The proposed amendments concern the relationship between local trade unions in the construction industry and their parent trade unions.

If a parent trade union holds bargaining rights within the jurisdiction of a local trade union (in a sector other than the industrial, commercial and institutional sector), the local trade union would be deemed to share the bargaining rights, and if the parent trade union is a party to a collective agreement, the local trade union would be considered a party to the agreement with respect to its jurisdiction. The Minister would have the power to require a parent trade union and its local trade unions to form a council of trade unions.

A parent trade union could not alter the jurisdiction of a local trade union without its consent. There would be provisions for the resolution of disputes about jurisdiction. Two or more local trade unions of the same parent trade union could agree to having the parent trade union resolve a difference concerning their jurisdiction, or an interested local trade union or employer could apply to the Ontario Labour Relations Board to resolve such a difference.

The above provisions would apply within the existing province-wide bargaining structures.

A parent trade union or council of trade unions would be prohibited from interfering with a local trade union without just cause. They would also be prohibited from penalizing local trade union officials without just cause.

It would be possible for local trade unions to become a successor to a parent trade union with its approval.

Local trade unions would be entitled to appoint at least a majority of trustees of employment benefit plans (exclusive of trustees appointed to represent employers).

In **Quebec, An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry** was assented to and came into force on June 23, 1992.

The Act contains measures which, among other things, have the following objectives:

- to clarify the notion of independent contractor and the provisions concerning the representative of a corporation or partnership who works on construction sites, and to specify certain powers of the Construction Commission (Commission de la construction);
- to increase certain fines, create new offences, and provide that in the event of a subsequent offence, certain offences entail, in addition to a fine, the suspension of the competency certificate or the suspension of the right to obtain or renew a competency certificate, and that any person who hires the services of an employee whose competency certificate or whose right to obtain one has been suspended becomes liable to heavy fines;
- to extend joint liability to every building contractor and subcontractor as regards the payment of their employees' wages, and to provide that every prime contractor who makes agreement with a contractor who does not hold the licence required to perform construction work is jointly liable for the payment of the wages fixed by the Construction Decree.

In **Prince Edward Island**, the Minister of Labour tabled amendments to the **Labour Act** on March 24, 1992. Among other things, these proposed amendments provide that, when the government considers that the provisions of a collective agreement between an accredited employers' organization and a trade union in the construction industry have acquired a preponderant significance and importance for the establishment of labour conditions in a trade, it would have the power to extend by regulation the provisions of the collective agreement to

designated construction projects in the sector and area covered by the accreditation order.

E. Artists and Producers

In the **federal jurisdiction**, the **Status of the Artist Act** was assented to on June 23, 1992.

While excluding persons holding employee status under Part I of the Canada Labour Code or the Public Service Staff Relations Act, Part II of the Status of the Artist Act establishes a framework for collective bargaining between professional artists, who are independent contractors working in the federal jurisdiction, and producers.

Part II of the Act creates a new administrative tribunal called the "Canadian Artists and Producers Professional Relations Tribunal" (CAPPRT). The CAPPRT is composed of a Chairperson, a Vice-chairperson and from two to four full-time or part-time members. Nominations to the CAPPRT are made on the recommendation of the Minister of Labour in consultation with the Minister of Communications.

The contents of Part II of the Status of the Artist Act include:

- giving artists' associations the possibility to apply to the CAPPRT for certification;
- providing for the determination by the CAPPRT of the sector(s) suitable for bargaining and of the representativity of artists' associations;
- giving the CAPPRT the power to certify artists' associations (a certified artists' association has exclusive authority to bargain on behalf of artists in a particular sector);
- authorizing the CAPPRT to revoke the certification of artists' associations in specified circumstances;
- providing that a certified artists' association or a producer may give notice to bargain and that they have the duty to bargain in good faith in order to enter into a scale agreement respecting minimum terms and conditions of engagement for artists;
- ensuring the final settlement, without pressure tactics, by arbitration or otherwise, of all differences between the parties or among artists bound by the scale agreement concerning its interpretation, application or an alleged contravention;
- specifying that, at the request of an artists' association, a scale agreement contain a compulsory check off provision applying to each artist subject to the agreement;
- enabling the Minister of Labour to appoint a mediator to help resolve collective bargaining disputes;
- permitting pressure tactics six months after the date of certification of an artists' association or 30 days after the expiry of a scale agreement, but not when such an agreement is in force; and
- prohibiting unfair practices by producers and certified artists' associations as well as giving the CAPPRT the power to hear complaints and issue remedial orders.

The Act will come into force on a date or dates to be fixed by the government.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Proclamation

In **New Brunswick**, **An Act to amend the Occupational Health and Safety Commission Act**, adopted in May 1991, was proclaimed into force on August 29, 1991. This Act changes the composition of the Occupational Health and Safety Commission. Its membership is increased

from seven to nine. Four persons must be representative of employers, four of workers, and one person not representative of either group is appointed as chairperson. The maximum term of office of the chairperson is reduced from ten to six years and the maximum terms of office for the members are repealed. The quorum at Commission meetings is a majority of its members, provided that at least one member representative of employers and workers as well as the chairperson or vice-chairperson are present. The chairman of the Workers' Compensation Board continues to be an ex officio member of the Commission, but in addition has the function of vice-chairperson of the Commission.

B. Legislation of General Application

The **federal** government amended the fee schedule of the **Hazardous Materials Information Review Regulations under the Hazardous Materials Information Review Act**, which are part of the Workplace Hazardous Materials Information System (WHMIS). Changes are made by this regulation to the fees and the manner of calculating fees that are payable with respect to a claim for exemption from disclosure of confidential business information or for an appeal of a decision or an order of a screening officer employed by the Hazardous Materials Information Review Commission.

The new fee structure under this regulation ensures the achievement of full cost-recovery in the operations of the Hazardous Materials Information Review Commission. The fee structure consists of a base fee of \$2,000 per claim and a supplementary fee of \$400 for each hazardous ingredient requiring a separate material safety data sheet. The amount of the base fee per claim varies with the number of claims being grouped for fee purposes. Where a subsequent claim for exemption is filed, the base fee payable for the existing claim or claims is not charged; however, the fee for each additional ingredient is imposed. The regulation also provides an additional fee structure at a lower level for the filing of a subsequent claim for exemption.

A 50 per cent reduction of fees is provided to small businesses, defined as businesses with a gross annual revenue of not more than three million dollars that do not employ more than 100 employees.

The fee generally required to accompany a statement of appeal is \$2,000. However, it is of \$1,000 where the appeal is filed by an individual employee, in certain circumstances, or by a small business.

Alberta adopted a new **Codes and Procedures Regulation under the Elevator and Fixed Conveyances Act**, which came into force on July 1, 1992. It applies to such devices as freight elevators, belt lift type manlifts, freight platform lifts, power type manlifts, and personnel hoists.

New Brunswick adopted a new **General Regulation under the Occupational Health and Safety Act**. This regulation, which became effective March 1, 1992, completes the review of N.B. Reg. 77-1 undertaken earlier with the publication of N.B. Reg. 89-66. Accordingly, this regulation repeals and replaces N.B. Reg. 77-1 and 89-66, as well as that part of the Mining Regulation under the Mining Act dealing with pits and quarries. Regulation 89-66, however, is reproduced almost integrally in the new regulation.

The purpose of this regulation is to change the wording of the occupational health and safety regulation to make clear where the onus lies in each case where rights or obligations are created. This should also simplify the enforcement of the provisions.

To achieve the goal of making occupational health and safety a priority in every workplace or work site, the employer is required to develop a Code of Practice before performing any dangerous work. This should provide for better planning of the work and the methods used, a more effective assignment of tasks, and the preparation of those involved to react to the worst-case scenario.

Other salient aspects of the regulation include the following: increased use of references to ACGIH, ANSI, ASHRAE, CSA and similar standards; comprehensive provisions respecting work in confined spaces which require, among other things, training of employees and posting of rescuers at the entrance of the confined space; a prohibition from using electrical means of initiation when blasting within 1,000 meters of a power-line, and a shift to safer blasting techniques; new requirements respecting the use of seat-belts and the installation of roll over protective structures on powered mobile equipment and falling object protective structures on industrial lift-trucks; clearer requirements respecting lock-out of

machinery and machine guarding; and new provisions concerning arboricultural operations (for example, the trimming of trees) around power-lines in urban areas.

The **Northwest Territories** adopted an **Amendment to the General Safety Regulations under the Safety Act** respecting first aid. The new first aid requirements, which came into force on April 24, 1992, are contained in Schedule C of the regulations.

On February 28, 1992, the Northwest Territories adopted the **Hours of Service Regulations under the Motor Vehicles Act**. The regulations establish limitations of driving time and duty time for motor vehicle operators, requirements for off duty time and the keeping of daily logs, as well as conditions for extension of hours, permits and the power of an officer to declare a driver to be off duty and impose an off duty period. Where these provisions conflict with a provision of the Labour Standards Act or its regulations, that provision prevails over the provisions of this regulation.

Nova Scotia adopted the **Temporary Workplace Traffic Control Regulations under the Occupational Health and Safety Act**. These regulations provide that no work may be undertaken at a temporary workplace on or near a public highway unless a Code of practice to ensure the safety of operations has been adopted and implemented by the employer or constructor.

Nova Scotia also adopted **An Act to Implement Arrangements Made Between the Province and the Government of Canada to Provide Uniformity in the Laws Relating to Petroleum Resources in the Offshore**. This Act, which amends Chapters 3, 8 and 10 of the Statutes of Nova Scotia of 1987, adds to those Acts, among other things, clear references to the promotion of safety, particularly by encouraging persons exploring for and exploiting petroleum to maintain a prudent regime for achieving safety. The Act was assented to June 30, 1992.

Manitoba adopted a new **Power Engineers Regulation under the Power Engineers Act**, which became effective March 2, 1992.

Saskatchewan's Minister of Labour, the Honourable Bob Mitchell, recently introduced Bill 89, **An Act to amend the Occupational Health and Safety Act**. This Act would provide for the nomination of an occupational health and safety representative in establishments of less than 10 employees, and allow the Lieutenant-Governor in Council to require, by regulation, the establishment of a joint occupational health and safety committee in these establishments. Actions arising out of this Act could no longer be brought before the ordinary courts, and would be referred to a tribunal created pursuant to the adoption of a regulation. The Act would generally make more effective the exercise of certain substantive rights of workers under the Act, such as the right to refuse and the right to participate. For example, where the right to refuse has been exercised, the employer would be required to inform any other employee assigned to perform the task of the reasons for which a co-worker has refused to perform it. The Act would confer to health and safety officers (and to the director of health and safety) certain new powers, including forwarding notices of contravention to the Workers' Compensation Board, issuing stop-work orders in certain circumstances, and requiring an employer to cease any discriminatory action against a worker. For example, where a worker has been dismissed for a proscribed motive, the officer would be empowered to order the employer to reinstate the worker and pay any wages he or she would have earned. An officer would also be empowered to order the removal of any reprimand or other reference to the matter from employment records. In addition, the amount of fines which may be imposed for offences to the Act would be increased.

C. Chemical and Biological Agents

Newfoundland adopted the **Asbestos Abatement Code of Practice under the Occupational Health and Safety Act**, on October 4, 1991. The Code of Practice has been developed to provide safe handling procedures to minimize exposure to airborne asbestos fibres released from material containing asbestos.

The Code applies to every workplace covered by the occupational health and safety legislation where asbestos or material containing asbestos is likely to be handled, dealt with, disturbed or removed, including every project, project owner, contractor, employer and employee involved, and operations involving a risk of exposure to airborne asbestos fibres. It also applies to every building in which material that contains asbestos has been used and to the owner.

The provisions of the Code deal with the following topics: prohibitions with respect to the use of asbestos, threshold limit values, registration of contractors, worker training, information to provide to the Occupational Health and Safety Division of the Department of Employment and Labour Relations before starting work, identification of asbestos containing material, assessment of the workplace, asbestos management plan, preparation of the work area, removal procedure, encapsulation and enclosure, air monitoring of the workplace, respiratory equipment, personal protective equipment, personal hygiene, decontamination, cleanup, transport and disposal of asbestos, precautions to be taken by every owner/contractor, medical monitoring, and an owner/contractor's obligation to keep employee records.

Similarly, the **Northwest Territories** adopted the **Asbestos Safety Regulations under the Safety Act**. These regulations put a ban on the use crocidolite minerals in any asbestos process, and on the application of asbestos by spraying.

Several safety measures must be taken by employers conducting an asbestos process. These include: providing exposed workers with approved respiratory equipment, dustproof coveralls, gauntlets, eye protection, and headgear; operating, at all times during the process, ventilation and air filtering equipment and removing asbestos dust from the air; enclosing the work area, or if this is not practicable, in the opinion of a safety officer, ensuring that any asbestos surface is kept wet as it is being disturbed; ensuring that, before the asbestos surface is disturbed, the asbestos is soaked with water through its entire thickness; posting warning signs; cleaning the work area thoroughly each day by vacuuming or by a wet cleaning method approved by a safety officer; and ensuring that all asbestos materials, debris and dust are placed in sealed, airtight containers and clearly labelled "ASBESTOS".

An employer must provide exposed workers with training with respect to the proper use of protective equipment, handling, removal and proper disposal of asbestos waste, as well as health education including information on asbestos-related illnesses, and any other information a safety officer considers necessary.

The ventilation and air filtering equipment must be inspected and cleaned each week. Repairs must be made within 30 days of the receipt of a report to the employer by a person in the workplace designated by a safety officer to inspect and report to the employer on the condition of the equipment and the need for repair.

No person under the age of 19 can be employed where an asbestos process is conducted unless the process is being conducted under constant supervision and has been inspected and approved by a safety officer.

Finally, these regulations provide that the employer must make arrangements for, and pay the full cost of, medical examinations of workers involved in an asbestos process within 30 days following the request of such workers. The examinations must include a complete physical examination with special attention to the respiratory system, lung function tests including vital capacity and forced expiratory volume at one second, and any medical procedures considered necessary by the examining physician for the diagnosis of asbestos-related illnesses. These regulations came into force on March 27, 1992.

The Northwest Territories also adopted the **Silica Sandblasting Safety Regulations under the Safety Act**. These regulations provide that an employer conducting a silica process must ensure that certain safety measures are taken to protect the health of the workers who may be exposed to silica dust.

Where an employer cannot control the emission of silica dust in the air through engineering means, such as enclosing the work area, maintaining ventilation and air filtering equipment, or maintaining a jet or stream of water or other liquid on the work surface, the employer must provide each worker with appropriate respiratory equipment and dustproof coveralls, gauntlets, eye protection and headgear. The regulations establish provisions for the training of workers in safety measures, and require the regular cleaning and maintenance of work areas and of engineering control mechanisms. The regulations prohibit the use of uncombined silica in a silica process, and encourages the substitution of silica flour with a less hazardous substance, with the approval of a safety officer. The regulations require the registration of persons conducting sandblasting operations with the Chief Safety Officer.

In addition, the regulations prohibit the employment of persons under 19 years of age in an area where a silica process is being conducted

unless the process is conducted under constant supervision and the process used has been inspected and approved by a safety officer.

Finally, these regulations provide that the employer must make arrangements for, and pay the full cost of, medical examinations of workers involved in a silica process within 30 days following the request of such workers. The examinations must include a complete physical examination with special attention to the respiratory system, lung function tests including vital capacity and forced expiratory volume at one second, and any medical procedures considered necessary by the examining physician for the diagnosis of silica-related illness. These regulations came into force on March 27, 1992

On October 26, 1991, the **Ontario** Minister of Labour announced a review of specific Occupational Exposure Limits listed in the **Regulation respecting Control of Exposure to Biological or Chemical Agents**, O. Reg. 654/86, and specified in certain designated substances regulations under the Occupational Health and Safety Act. The review would concern chemicals for which Ontario values are higher than some other jurisdictions, for example, asbestos, benzene, lead, PCBs, and vinyl chloride. On August 4, 1992, proposed changes to the Occupational Exposure Limits of 101 substances were published in the *Ontario Gazette*. A total of 235 substances will eventually be covered in the review conducted by the Task Force of the Joint Steering Committee established following the October 26, 1991 announcement.

D. Mining Safety

On November 2, 1991, **Ontario** amended its **Mines and Mining Plants Regulation under the Occupational Health and Safety Act**. The amendments are very diverse in nature and range from reducing the concentration of toxic substances in diesel exhaust emissions, to the control of radon gas and its derivatives, to rescue methods and first aid equipment in mines and mining plants. In addition, many of the provisions have been amended to make reference to more recent CSA standards.

The same regulation was amended again on April 11, 1992, to establish new requirements respecting drilling and sampling within proximity of blasting holes or explosives in mines.

Quebec pre-published a draft **Regulation respecting occupational health and safety in mines** in the Gazette officielle du Québec of November 13, 1991. This regulation, which contains more than 500 sections, would amend, repeal and/or replace the Regulation respecting the salubrity and safety of workmen in mines and quarries, the Regulation respecting mine rescue stations, the Regulation respecting the quality of the work environment, as well as any provision of any regulation under the Act respecting occupational health and safety which applies to mines and which may be incompatible with the provisions of this regulation. This regulation deals with various issues, such as those concerning the obligations of an employer, personal protective equipment, the minimum age of workers, first aid, the physical organization and the quality of the work environment, safety measures to prevent events that could result in mining disasters, motorized vehicles, the handling and use of explosives, and hazards associated with electricity. It is possible that this regulation may come into force in the fall of 1992.

E. Noise Protection

The **federal** government amended Part VII, "Levels of Sound", of the **Canada Occupational Safety and Health Regulations under the Canada Labour Code**. The new regulation prescribes lower maximum permissible levels of sound to which an employee can be exposed in the workplace, as well as shorter duration of this exposure. Whereas the maximum permissible level of exposure had been previously set at 90 decibels for 8 hours in any 24 hour period, this has been reduced to 87 dBA. A schedule to the regulation outlines the maximum A-weighted sound pressure levels permissible per duration of exposure in any given period. In addition, hazard investigations must be conducted wherever exposure levels are of 84 dBA or greater for a duration that is likely to endanger an employee's hearing. If the report states that an employee is likely to be exposed to high levels of sound as specified, the employer must post a copy in a conspicuous place in the work place and provide any employee affected with information respecting the hazards associated with this exposure. The regulation provides that, as far as is practicable to do so, engineering controls other than hearing protectors must be applied by the employer to reduce exposure of every employee in the workplace that is or is likely to be exposed to levels of sound in excess of the prescribed limits. Where there is no reasonable alternative but to provide employees with hearing protectors, the employer must file a report setting out the reasons why it is so with the regional safety

officer and give a copy of this report to the safety and health committee or the representative, if any. Hearing protectors must also be used by persons, other than employees, having access to the workplace where they are likely to be exposed to a sound level exceeding the prescribed limits. The hearing protectors must meet the requirements of CSA Standard Z94.2-M1984 "Hearing Protectors", as amended from time to time. Moreover, the employer, in consultation with any safety and health committee or representative, must formulate a program to train employees who have been provided with hearing protectors in the fit, care and use of such devices. Signs must be posted in conspicuous locations warning of a potentially hazardous level of sound in the workplace, where exposure may exceed 87 dBA. Operators of "large trucks" have been excluded from this regulation pending the results of a study to determine the levels and the duration of exposure to sound of these operators.

In the interim, the maximum permissible levels of exposure for these operators will remain the same as in the previous Part VII of the Canada OSH Regulations, which are referenced in Schedule II of this regulation.

F. Radiation Protection

New Brunswick adopted a new **X-Ray Equipment Regulation under the Radiological Health Protection Act**. This regulation establishes, among other things, the dose limits to radiation from X-ray equipment for both X-ray workers and other employees and persons. In this respect, the regulation clearly puts the onus on the owner of the equipment to control the use of the X-ray equipment so that no radiation worker is exposed to annual dose limits in excess of 20 mSv on the whole body, and no person, other than radiation workers, is exposed to annual dose limits in excess of 1 mSv (reduced from 5 mSv). Other dose limits are specified as they relate to specific body parts, and to the level of exposure at which a medical examination is required. The regulation also provides special provisions for a radiation worker who becomes pregnant, for the duration of the pregnancy.

The regulation specifies other owner responsibilities, such as ensuring that the equipment is properly shielded, so that the maximum annual dosage requirements are respected, and to clearly designate which employees are radiation workers and which are not. The owner must ensure that radiation workers are trained in the proper use of the equipment, and are members of one of recognized professional associations, such as the Canadian Association of Radiation Technologists. Except in specified circumstances, no person under the age of 18 can be employed as an X-ray radiation worker.

The regulation makes references to a number of Safety Codes respecting the operation of radiation equipment that are published under the authority of the Minister of National Health and Welfare (Canada). It is also the first Canadian regulation to incorporate references to standards established by the International Commission on Radiation Protection. This regulation came into force on March 1, 1992.

G. Fire Protection

Ontario adopted the **Fire Marshals Amendment Act, 1991**. This Act amends the Fire Marshals Act in ways relevant to occupational health and safety. Among other things, the Act provides authorization to establish fire protection teams in territories without municipal organization. The Act also provides increased powers for the Fire Marshal, such as authorizing the Fire Marshal or an officer to enter land, without warrant, for the purpose of removing or reducing an immediate threat to life. In addition, the Act makes clear that the fire code, which does not apply to buildings under construction, is inapplicable only to the unoccupied parts of such a building. This Act came into force on November 25, 1991.

Alberta adopted the **Alberta Fire Code Regulation, 1992 under the Fire Prevention Act**. This regulation provides for the coming into force, on August 31, 1992, of the Code.

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