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Canada

Labour

Archived - Highlights of Major Developments in Labour Legislation (1992-1993)

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July 1, 1992 to July 31, 1993

INTRODUCTION

Between July 1, 1992 and July 31, 1993, 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 amendments to the **Canada Labour Code, Part III**, with respect to, among other things, parental leave, the reassignment of a pregnant or nursing employee, the protection of injured workers, and the recovery of unpaid wages; amendments to the British Columbia **Employment Standards Act**, principally with respect to termination of employment provisions; the repeal of the youth minimum wage differential in Prince Edward Island; the liberalization of Sunday shopping in Manitoba, New Brunswick, Prince Edward Island, and Quebec; and the adoption of the **Pay Equity Act** in Ontario, and the subsequent modification to the deadlines for achieving pay equity. In addition, the general minimum wage rates of British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan were increased during the period under review.

In the field of industrial relations, there was a reform of the general collective bargaining law in Ontario and British Columbia as well as a modification to the **Canada Labour Code (Part I)**. Changes to collective bargaining laws applying to public servants were approved at the federal level and proposed in Ontario; Quebec modified its collective bargaining provisions dealing with police officers and fire fighters, and British Columbia passed legislation relating to the bargaining structure in the public sector. With respect to public sector restraint measures, laws were adopted or modified at the federal level and in Manitoba, Newfoundland, Ontario and Quebec. Also, during the period covered by this report, an had hoc emergency law was passed in British Columbia, and legislative changes affecting specifically the construction industry were adopted in Saskatchewan, Quebec and Ontario. Lastly, Ontario introduced a special collective bargaining law applying to employees and employers in the agriculture and horticulture industries in the province.

Among important changes to occupational safety and health legislation are the adoption of: a new *Occupational Health and Safety Act* in Saskatchewan; regulations covering the farm industry in British Columbia and covering health care and residential facilities in Ontario; radiation protection provisions in Saskatchewan; and amendments to the work in confined spaces regulation under federal jurisdiction.

I. EMPLOYMENT STANDARDS

A. Proclamations

Newfoundland proclaimed in force the provisions of the **Act to Amend the Labour Standards Act**, described in last year's issue of the *Highlights of Major Developments in Labour Legislation*, that replaced the Labour Standards Tribunal with a system of single arbitrators, effective April 15, 1993. The other provisions of that Act had come into force on June 11, 1992.

Prince Edward Island proclaimed in force Bill 64, the **Employment Standards Act** (S.P.E.I. 1992, ch. 18), effective November 1, 1992. Salient aspects of this Act, which was also described in last year's report, include new sexual harassment provisions, and improved notice of termination and recovery of unpaid wages provisions.

As reported in last year's *Highlights of Major Developments in Labour Legislation*, the **Yukon** had given royal assent, on June 2, 1992, to Bill 13, **An Act to Amend the Employment Standards Act**. However, the Bill was not proclaimed in force prior to a change of government in October 1992. The new government announced it will not be proclaiming Bill 13, but will be reviewing its contents and considering possible future amendments to the Employment Standards Act. In the meantime, the provisions of Bill 13 respecting its coming into force are amended by Bill 83 to ensure that no provision of the Bill will come into force on its own and would be proclaimed by the Commissioner in Executive Council.

B. Legislation of General Application

The **federal** government proclaimed in force on June 23, 1993, Bill C-101, **An Act to amend the Canada Labour Code and the Public Service Staff Relations Act** (S.C. 1993, ch. 42). The following is a description of the provisions of general application respecting labour standards contained in this Act.

Modifications to certain labour standards where the parties agree

- The procedure for modifying hours of work or substituting general holidays by ministerial permit has been streamlined. Where employees are covered by a collective agreement, the procedure simply requires a written agreement between the employer and the trade union. With respect to employees who are not subject to a collective agreement, modification of the hours of work or substitution of a general holiday requires approval by at least 70 percent of the affected employees and the posting of a notice for 30 days before the change takes effect. Any employee affected by the change may request that a secret vote monitored by an inspector be conducted to verify whether the 70 percent approval was obtained.

Application of collective agreements to prevail

- Where a collective agreement meets or exceeds the requirements of the Canada Labour Code with respect to annual vacations, general holidays, bereavement leave and minimum wages, the parties are exempted from the corresponding provisions of the Code. Only employees who have access to the grievance process are limited to obtaining redress through that process and would not have access to the complaint mechanism under the Code.

Parental leave

- The Act allows the parental leave period of 24 weeks to be taken at any time within 52 weeks following the birth or adoption of the child, or its coming into the parent's care and custody for the first time. This makes the parental leave provisions of the Code more consistent with the provisions of the Unemployment Insurance Act.

Reassignment of a pregnant or nursing employee

- Part III of the Code previously allowed an employer to unilaterally require a pregnant employee to take a leave of absence if she became unable to perform part of her job. In some cases, this forced pregnant or nursing employees to quit their job if certain parts of it posed a temporary danger to herself or to her unborn or breast-feeding child, unless the employee qualified for and had accumulated sufficient sick or vacation leave, or could begin her maternity leave. The Code was amended to provide a better balance between employers' and employees' rights and allow a pregnant or nursing employee to request, if her request is accompanied by a medical certificate, modifications to her job or a reassignment to other duties to avoid risks to her health, or that of her child. The employer is required to make every reasonable attempt to accede to the request. If reassignment is not reasonably practicable, or if the employee is unable to work at all, she has the right to an unpaid leave of absence, for the duration of the risk's existence from the beginning of the pregnancy until the end of the 24th week following the birth.

Injured worker protection

- The Code provides wage protection and return-to-work guarantees for workers who are absent due to work-related illness or injury. Employers are required to:

  a. provide replacement wages equal to the rate of workers' compensation in the province or territory where the employee resides;
  b. continue benefits and seniority during the period of the absence; and
  c. return the employee to work where reasonably practicable for a period of time to be defined by regulation.

Miscellaneous amendments

- Several amendments make the French and English texts of the Canada Labour Code consistent, and ensure clarity and uniformity.

This Act also contains provisions requiring a directed vote of an employer's last offer, described in Part II of this document, as well as recovery of unpaid wages provisions, which are described in Section E below.

British Columbia recently adopted the **Employment Standards Amendment Act, 1993**. This Act amends the Employment Standards Act to, among other things, remove the provisions permitting that certain rights contained in a collective agreement not meet the minimum criteria set out by the Act, provided that other rights in the agreement meet or exceed, when considered together, those of the Act. The amendments provide that an employee who accepts severance pay (i.e. pay in lieu of notice) is deemed to lose his or her recall rights, and that an employee terminated as part of a group must receive both the individual and group notice of termination or the severance pay. In addition, where an employee is still employed after the expiry of the notice period, the termination has no effect. The amendments respecting termination of employment are deemed to have come into force retroactively to June 28, 1993. All other provisions, except those making reference to the new Labour Relations Code and coming into force by proclamation, will take effect on January 1, 1994.

C. Minimum Wages

British Columbia increased its minimum wage rates, effective April 1, 1993. The minimum wage rate payable to a person aged 18 and over has been increased from $5.50 to $6.00 an hour. The rate payable to persons under age 18 has been increased from $5.00 to $5.50 an hour. Live-in homemakers, as well as domestics, farm workers or horticultural workers paid on a basis other than on an hourly or piece work must be paid at least $48 for each day or part of a day worked. Resident caretakers of an apartment building of nine to 60 units must be paid at least $360 per month plus $14.40 for each unit. Residential caretakers of apartment buildings of more than 60 units must be paid at least $1,224 per month. This regulation also establishes new rates for farm workers who are employed on a piece work basis to hand harvest certain fruit, vegetable, or berry crops which are based on gross volume or weight picked.

Nova Scotia increased the minimum wage rates for various categories of workers, effective January 1, 1993. The general minimum wage rate increased from $5.00 to $5.15 an hour. The rate for inexperienced employees (i.e. those who have not worked in that kind of employment for three months or more) increased from $4.55 to $4.70 an hour. The minimum wage rate for persons under 18 years of age was repealed.

The maximum deductions for board and lodging were established at $47.25 per week; for board only, $38.20 per week; for lodging only, $10.65 per week; and $2.45 for single meals. The overtime wage remained at least one and one-half times the applicable minimum wage rate, usually payable after 48 hours in a week. Other parts of the previous general minimum wage order have largely remained unchanged.

The minimum wage rate payable to persons engaged in road building and heavy construction work was also set at $5.15 an hour. Overtime became payable after 96 hours in a two-week period, and is also at least one and one-half times the minimum rate.

The minimum wage rate payable to workers employed in a logging or forest operation was raised to $5.15 an hour for time workers, and $1,005.00 per month for persons who have no fixed work week or whose hours of work are unverifiable (such as camp, gate and dam guardians, cooks and kitchen employees, stable hands, watch employees, fire rangers and wardens). The maximum deductions for board and lodging for these categories of workers was set at $7.55 per day. No employer can charge for board and lodging that the employee does not receive.

Ontario has raised its minimum wage rates in accordance with the announcement reported in last year's issue of the *Highlights of Major Developments in Labour Legislation*. A regulation amending the **General Regulation under the Employment Standards Act** became effective November 1, 1992. The general rate has been increased from $6.00 to $6.35 an hour. 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 was retained and the minimum wage for liquor servers was frozen at $5.50 an

hour. The student minimum wage was increased by 35 cents, to $5.90 an hour. The room and meal deductions were increased by the same percentage increase in the general minimum wage. Effective January 1, 1993, harvest workers became entitled to the minimum wage of $6.35 an hour, and hunting and fishing guides received the same percentage increase in their daily and half-day rates. Ontario's Minister of Labour, the Honourable Bob Mackenzie, announced on July 30, 1993, that the general minimum wage will be raised by 5.5 percent to $6.70 per hour, effective January 1, 1994. The rate payable to students under 18 employed for not more than 28 hours a week or during a school holiday will be raised to $6.25, whereas employees serving alcoholic beverages will be entitled to $5.80 per hour. It is expected that Ontario will increase the general minimum wage to a level representing 60 percent of the average wage in at least two stages between now and 1995, when the government will begin implementing its reform of the social assistance system.

Subsequent to the adoption of the **Employment Standards Act** last year, **Prince Edward Island** re-enacted the general minimum wage rate of $4.75 an hour and the rates that may be deducted for board and lodging, while repealing the youth wage, effective January 1, 1993. This change results from the fact that the new Act makes no provision for a different minimum wage rate for persons under 18 years of age.

Quebec increased its minimum wage rates, effective October 1, 1992. The general rate increased from $5.55 to $5.70 per hour. The rate payable to those who earn gratuities increased from $4.83 to $5.00 per hour. Live-in domestic workers became entitled to $221 per week, up from $215. The maximum amounts an employer may charge for room and board were raised as follows:

- $1.25 per meal, to a maximum of $16.78 per week;
- $16.78 per week for a room;
- $33.56 per week for both room and board.

Quebec has published a draft regulation announcing its intention to amend the minimum wage provisions of the **Regulation respecting labour standards**, effective October 1, 1993. The general minimum wage will increase to $5.85 per hour. The rate payable to employees who usually receive gratuities will increase from $5.00 to $5.13 per hour and that payable to domestic workers who reside in their employer's home will increase from $221 to $227 per week, effective on the same date.

Saskatchewan increased its general minimum wage rate from $5.00 to $5.35 per hour, effective December 1, 1992. The minimum call-in pay, payable to employees who report for duty at the call of their employer, whether or not they remain on duty for three hours on that occasion, increased from $15.00 to $16.05.

D. Sunday Shopping

Manitoba introduced a Bill which has further liberalized Sunday shopping in Manitoba, on a trial basis. Bill 4, the **Retail Businesses Sunday Shopping (Temporary Amendments) Act** allowed retail establishments which normally operate with more than four employees to open on Sundays between noon and 6:00 p.m., from November 29, 1992 to April 5, 1993. Employees of these establishments were given the right to refuse to work on Sundays if they exercised this right at the outset of the trial period or 14 days prior to being assigned work on a Sunday. Establishments which normally operate with no more than four employees continued to benefit from the exemption which removes closing restrictions under the Retail Businesses Holiday Closing Act. At the end of this trial period, the government assessed the situation and introduced another Bill to extend the trial period from April 13, 1993 until September 30, 1993, at the same conditions provided under Bill 4. Bill 23 would also, after September 30, 1993, enable municipalities to adopt by-laws regulating Sunday shopping in their communities.

Pursuant to amendments last year to the **Days of Rest Act**, **New Brunswick** adopted a amendments to **New Brunswick Regulation 85-149** under that Act to provide new exemptions from the requirement that establishments be closed on Sundays. Previously, the regulation permitted to carry on business on Sundays from the beginning of November to the Sunday preceding Christmas and the activities that were exempt for the purposes of the weekly rest day were somewhat more limited. The exemptions, which enable establishments to be open for business from the first Sunday after Labour Day to the Sunday immediately preceding Christmas Day, excluding Remembrance Day if it falls on a Sunday, now cover

most types of retail establishments (as specified in Schedule A of the Regulation) as well as the sale of liquor by persons appointed as agents under section 40.1(1) of the Liquor Control Act. This regulation also prescribes the criteria the Minister is to take into consideration when reviewing an application under subsection 7.2(1) of the Act with respect to the issuance of an exemption permit for a festival or other special event. Further amendments to the list of exemptions and the criteria for the granting of exemptions have also been adopted in the course of the last year.

Prince Edward Island adopted the **Retail Businesses Holidays Act**, which repealed and replaced the Day of Rest Act. The Act permits retail business establishments to be open on Sundays, from the last Sunday in November to the Sunday preceding Christmas. The Act sets out the principle that retail business is prohibited on a holiday (which include Sundays, except during the period mentioned above). However, certain activities are excluded from the prohibition. The Act also allows retail businesses to be open on Sundays if the person operating the establishment, on grounds of conscience or religion, observes another day without labour and closes the establishment on that other day each week. This Act came into force on November 14, 1992.

Quebec adopted **An Act to amend the Act respecting hours and days of admission to commercial establishments**. This Act, which came into force on December 18, 1992, effects a liberalization of the opening hours of commercial establishments. The Act provides that members of the public may generally be admitted to commercial establishments between 8:00 a.m. and 5:00 p.m. on Saturdays and Sundays, and 8:00 a.m. and 9:00 p.m. on the other days of the week. The only restrictions pertain to the obligation to close establishments on specified holidays, which remain largely unchanged. (The holiday celebrated on Easter Monday is repealed and replaced by Easter Sunday.) In addition, the public may be admitted to a commercial establishment only between the hours of 8:00 a.m. and 5:00 p.m. on December 24 and 31, and between 1:00 p.m. and 5:00 p.m. on December 26 where it falls on a Saturday or Sunday, or 1:00 p.m. and 9:00 p.m., where it falls on another day of the week. The Act has maintained most of the exceptions previously in force, but alters the application of some of them. Moreover, the Act provides that for a period of three years, a person operating a commercial establishment is prohibited from imposing sanctions on persons employed by him at the time of the coming into force of this Act because they have refused to work on Sundays or during the additional hours of admission established by this Act (i.e. from 7:00 p.m. to 9:00 p.m. on Mondays and Tuesdays).

E. Recovery of Unpaid Wages

Ontario amended the Employee Wage Protection Program in order to include amounts deemed to be wages under section 56.10 (4) of the Employment Standards Act. Amounts determined to be owed by successor employers, who have failed to make a reasonable job offer to a person to whom such an offer should have been made, have been included among additional payments for the purposes of compensation under the program.

Bill C-101, **An Act to amend the Canada Labour Code and the Public Service Staff Relations Act** provides a new **federal** wage recovery system for the administrative enforcement of the pecuniary obligations of an employer set out in the Code. Where an inspector finds that an employer has not paid an employee wages or other amounts to which the employee is entitled, the inspector is empowered to issue a written payment order to the employer, or in certain circumstances to a director of a corporation or a cooperative, ordering the payment of the amounts due. Any person affected by the order may appeal it within 15 days, by letter addressed to the Minister. The Minister is required to appoint a referee to hear and dispose of the appeal. The decision of the referee is final and binding. The decision of the inspector or, where there was an appeal, of the referee, can be filed in the Federal Court and become enforceable as a judgement of that court. A regional director is empowered to issue third party demands against a person or a financial institution who may owe money to the defaulting employer. The demand would order that person or institution to pay any amount, up to the amount stated in the payment order, directly to the Minister within 15 days. Directors of corporations and cooperatives become jointly and severally liable for wages and other amounts due to employees to a maximum equivalent to six months' wages if the entitlement arose during the time of the directors' incumbency and the recovery of the amount from the corporation or cooperative is impossible or unlikely. Any amounts recovered through the application of these provisions of the Code must be deposited to the credit of the Receiver General in the "Labour Standards Suspense Account" or in another special account created for this purpose, from which the Minister can authorize the payment of amounts due to any unpaid employee.

F. Pay Equity

Ontario adopted **An Act to amend the Pay Equity Act**. This Act was first introduced on December 18, 1991 as Bill 168 during the 1st Session of this Legislature. The Bill had been continued as Bill 102 of the 2nd Session. Excepting the change in the deadlines for achieving pay equity, Bill 102 has remained essentially unchanged from the previous version.

The Act establishes two additional methods of determining whether pay equity exists for a female job class, the proportional value method and the proxy method. The Act contains an extensive description of what proxy comparisons are, and how they should be utilized.

The proportional value method permits indirect comparisons of female and male job classes by looking at the relationship between the value of the work performed and the compensation received by male job classes and applying those principles and practices to compensate female job classes. This method permits relative comparisons to be made for all female job classes in an establishment to the male job classes in the same establishment, even when there are only a few male job classes on which to base the comparisons. This method would enable about 340,000 more women in the private and public sectors to benefit from the Act.

If a pay equity plan is prepared or revised using this method, the effective date of the first compensation adjustments would be as follows:

a. in the case of employers in the public sector and employers in the private sector with 100 or more employees, no later than January 1, 1993 (changed from the original deadline of January 1, 1992);
b. in the case of employers in the private sector with at least 50 but fewer than 100 employees, also no later than January 1, 1993;
c. in the case of employers in the private sector with at least 10 but fewer than 50 employees, no later than January 1, 1994.

Proxy comparisons apply to the public sector only, to employers who are declared by order of a review officer to be "seeking employers" for the purposes of this Act. Where comparisons cannot be made within a public sector organization through job-to-job or proportional value comparison methods, proxy comparisons provide for comparisons to another public sector organization. This method allows more than 80,000 women to benefit from the Act in public sector organizations such as in day care and in nursing, even where there are no male job classes in their workplaces. The organizations seeking pay equity and their "proxy counterparts" are determined in accordance with the regulations. Provision is made for the bargaining agents to be involved in the choice of a proxy organization as well as the preparation and application of the plan. Where there is no bargaining agent, the plan must be posted and employees dispose of 90 days to submit comments. The first compensation adjustments to be made under this method are required to be made effective January 1, 1994.

The Act specifies the circumstances in which the Crown is considered to be the employer of a person, for the purposes of the Act. This provision retroactively became effective on December 18, 1991. However, the Act establishes January 1, 1998 as the deadline for public sector employers to have achieved pay equity. The original version required public sector employers to achieve pay equity by January 1, 1995.

When an employer sells the business, the purchaser is required to assume the employer's obligations under the Act. In addition, a mechanism for amending a pay equity plan at an establishment when circumstances change is provided.

The Act enables review officers to issue compliance orders for failure to comply with the Act. Certain administrative and procedural changes are made with respect to the powers of the Pay Equity Hearings Tribunal.

The Act provides for the power to adopt regulations which can limit the requirement that an employer maintain pay equity.

The Act came into force, except for section 2 which is deemed to have come into force December 8, 1991, on July 1, 1993.

Ontario also adopted two regulations under the Pay Equity Act. The first amends the appendix to the Schedule of the Act which identifies which employers are deemed to be public sector employers for the purposes of the Act. The second identifies which public sector employers are

"seeking employers" and the potential proxy employers that may be used to effect a comparison through the proxy method of comparison.

Prince Edward Island introduced Bill 5, **An Act to Amend the Pay Equity Act**, on June 22, 1993. The Bill would modify the implementation date for pay equity adjustments for employees of hospitals and of the University of Prince Edward Island. In both these cases, Stage II of the implementation process as set out in section 17 of the Act has not yet been completed and the matter has been referred to arbitration but no award or order has yet been made. The Bill postpones any implementation of pay equity adjustments to these two sectors until the first day of the month following the order of the arbitration board. This Bill would be deemed to have come into force on January 1, 1992.

In addition, **Quebec** re-established the application of section 41.1 of the Labour Standards Act for certain part time employees in respect of whom the application of that section had been suspended since January 1, 1992. Section 41.1 of the Act provides equal pay for equal work to part time workers performing the same tasks in the same establishment and who earn not more than twice the minimum wage. A recent regulation restores, effective August 3, 1993, coverage of section 41.1 for employees engaged in the wholesale trade of food products or the storage of such products and, effective December 31, 1994, for those engaged in the retail trade or storage of such products. Salary adjustments resulting from the application of this section may be deferred until the expiry date of an applicable collective agreement in force at the time of the above effective dates. The salary adjustments may also be deferred, in certain circumstances, where the collective agreement has expired but the parties have engaged in negotiations to renew it at the time of the effective dates.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In **Ontario**, the **Labour Relations and Employment Statute Law Amendment Act, 1992** (Bill 40) received royal assent on November 5, 1992, and came into force on January 1, 1993. Upon its coming into effect, provisions protecting the employment and collective agreements of workers employed in services in a building (e.g. cleaning, food and security services) became retroactive to June 4, 1992. Following is a summary of the most important changes to the Labour Relations Act.

Objectives of the Act

- The preamble to the Labour Relations Act has been repealed, and an added purpose clause states 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 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).

Certification of Trade Unions

- The exclusion from the Act of domestics, certain categories of professionals and classes of agricultural or horticultural workers prescribed by regulation has been removed. The requirement for security guards to only join trade unions which represent security guards exclusively has been eliminated. At the request of either party, the Ontario Labour Relations Board (OLRB) will place security guards in a different bargaining unit than other employees if their monitoring duties would give rise to a conflict of interest.
- Faster Board processes are provided to deal with complaints arising from the disciplining or discharging of employees, or the imposition of other penalties, during organizing campaigns.

- Organizing activity is allowed 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 has the power to restrict such activity if it causes undue disruption.
- The one dollar minimum membership fee to be paid by employees on signing a membership card in order to be considered members of a trade union has been eliminated.
- The OLRB is directed to consider evidence of membership in a trade union only if it is filed on or before the date of application for certification, and it is in writing and signed by each employee concerned.
- The OLRB power to certify a trade union in order to remedy an unfair labour practice has been modified by removing the "adequate membership support" requirement (i.e. certification can 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).
- It is provided that the level of membership in a union required to make a representation vote mandatory is from 40% to 55% (previously from 45% to 55%).
- The OLRB is required to include full-time and part-time employees in the same bargaining unit in defined circumstances. This does not apply to craft units, or units in the construction industry. The Board is required to separate full-time and part-time employees where there was insufficient support for certification in the combined unit. Also, it may separate bargaining units if a trade union is the bargaining agent for either the full-time or part-time employees.
- The OLRB has been given 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 takes notably into consideration the advantages of viable and stable collective bargaining and the potential for serious labour relations problems, and is directed not to combine units, in the case of manufacturing operations, if the employer has established that this would unduly interfere with its ability to maintain significant operational or production differences between two or more geographically separate facilities or to continue to operate those facilities as viable and independent businesses. An application for consolidation can be joined to an application for certification. This provision does not apply to the construction industry.

Collective Bargaining Process

- On application to the Minister by either the employer or trade union, a first collective agreement is settled 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 is then terminated. The provisions that existed previously and permitted an application to the Board for a direction to settle a first collective agreement by arbitration have been maintained.
- During a labour dispute, an employer is prohibited from using employees in the bargaining unit or replacement workers, whether paid or not, (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 or the work of managers and other persons replacing these employees. Employers continue to have the right to contract work out. This legislation applies to lockouts and legal strikes authorized by at least 60% of those in the bargaining unit who participated in a secret ballot. If there is a complaint relating to replacement workers during a strike or lockout, the burden of proof is on the employer that it acted legally. A number of exceptions are provided 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.
- Employers are required 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.
- Employees are provided 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 in the case of 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).

- The limitations existing previously on the right to return to work during a strike have been repealed. 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, if there is insufficient work for all these employees, they must 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.
- Individuals are permitted 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 can be restricted by the OLRB if it causes undue disruption.
- The OLRB has been given 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.
- Every collective agreement must contain a consultation provision if a party so requests during the negotiation period. Such provision must provide that the parties consult regularly during the term of the agreement about pertinent workplace issues.

Protection for Bargaining Rights

- The purchaser of a business has been made 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.
- The protection of bargaining rights and collective agreements has been extended to situations in which the sale of a business causes a transfer from federal to provincial jurisdiction.
- Protection has been given to bargaining rights and collective agreements with respect to 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 change was retroactive to June 4, 1992; it does not apply to construction, production or manufacturing activities. Amendments to the Employment Standards Act 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.

Administration and Enforcement of the Labour Relations Act

- The OLRB has the power to issue orders on an interim basis on application in a pending or intended proceeding.
- Certain changes to the grievance arbitration process have been introduced with the purpose of making it more effective and expeditious, notably by giving arbitrators additional procedural powers and ensuring that they can decide all issues before them.
- 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.

Adjustment and Change in the Workplace

- The Minister of Labour has the power 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.
- There is 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 does not have the power to determine an adjustment plan for the purpose of remedying a contravention of this provision. A negotiated adjustment plan is enforceable as if it were part of the collective agreement or, if no agreement is in effect, any difference relating to its interpretation or application can be referred to

a single arbitrator at the request of either party. It is also specified that the purposes of committees established under the Employment Standards Act in cases of termination of employment are to consider alternatives to the terminations and to facilitate the adjustment process.

In **British Columbia**, effective for the most part January 18, 1993, the **Labour Relations Code** has replaced the Industrial Relations Act. Major changes are described below.

Unfair Labour Practices

- The new Code provides that, if an employee is discharged, suspended, transferred, laid off or otherwise disciplined during an organizing campaign or at any other time when no collective agreement is in force, a complaint of unfair labour practice must be resolved without delay. An adjudication hearing must be held by the Labour Relations Board within three days and a decision given two days after completion of the hearing.
- The test for automatic certification where an unfair labour practice has been committed has been changed. The test is whether the union would likely have obtained the requisite support for certification in the absence of the unfair labour practice. The focus in the former legislation was on whether the representation vote measured the true wishes of the employees.
- During an organizing campaign, employers continue to be free to communicate to employees a statement of fact or opinion reasonably held with respect to their business.

Certification and Decertification

- The requirement to hold a mandatory vote when there is an application for certification (except in the construction industry) has been removed. Trade union certification occurs where support for a bargaining unit is demonstrated by 55% or more of the employees in the unit who sign membership cards with a union. If support is between 45% and 55%, a vote is held within ten days of the date of application or such longer period ordered by the Labour Relations Board if it is conducted by mail. The Board has the power to order that another representation vote be taken if less than 55% of eligible employees cast ballots.
- The former legislation permitted the certification of dependent contractors only where they could be included in an existing bargaining unit. The Code permits dependent contractors to form their own bargaining unit. Where a certification already exists for a group of employees of the same employer, the Board is required to determine whether the dependent contractors are more appropriately included in the existing unit or a separate unit.
- In the case of an application for certification concerning supervisory employees and other employees, the Board may certify the applicant trade union for the unit, for a unit of supervisory employees only, or for a unit composed of some or all of the other employees.
- Provisions which allowed an employer to apply for decertification if there had been no employees in the bargaining unit for two years have been eliminated.

Successor Rights and Obligations

- Changes relating to the sale, transfer, lease or disposition of a business give more discretion to the Labour Relations Board to determine whether or not an employer is a successor (e.g. enumerated factors to be taken into account by the Board in determining successorship have been eliminated).
- The provisions on successor rights and obligations are now applicable to all situations where a business or part of it is sold, leased, transferred or otherwise disposed of by a trustee in bankruptcy.
- With respect to the legislative provision that may be invoked by the Labour Relations Board to treat several businesses as one employer for the purposes of collective bargaining, a change has returned the language of the provision to "common control or direction" (the terms "same control and direction" were used in the previous legislation).

- The Labour Relations Code provides for the extension of protection for bargaining rights and collective agreements to situations in which the sale, lease or transfer of a business causes a shift from federal to provincial jurisdiction.

First Collective Agreements

- In negotiating a first collective agreement, either party can initiate a mediation process if there is a failure to reach agreement and a majority of employees, who have participated in a strike vote, are in favour of a strike. The process suspends the right of the parties to engage in a strike or lockout, unless this is subsequently authorized in a recommendation of the mediator, and provides for time limits.
- The legislation permits the use of arbitration or mediation/arbitration to settle issues that are not resolved by the mediation process. If the mediation process does not achieve a settlement, the Board must direct the use of arbitration, mediation/arbitration, or allow the parties to settle matters through a strike or lockout.

Resolution of Collective Bargaining Disputes

- Intervention in collective bargaining disputes is reduced under the new Labour Relations Code, and the power to intervene is placed with the Minister of Labour and Consumer Services. Formerly, the Commissioner of the Industrial Relations Council had various discretionary powers with respect to the resolution of disputes.
- The mediation and fact-finding procedures of the former Act have been retained to help the parties resolve their differences and clarify the issues in dispute. Industrial inquiry commissions may also be appointed by the Minister to inquire into a dispute and make recommendations for a settlement.
- The Code gives the Minister the power to appoint a special mediator at any time during a collective bargaining dispute. The appointment of a special mediator does not restrict or prohibit a strike or lockout unless the parties so agree.
- Another provision allows the Minister to establish industry advisory councils to examine labour-management relations in those industries and recommend measures that may contribute to the improvement of those relations.
- The possibility of establishing public interest inquiry boards and the requirements relating to public sector interest arbitration, as provided under the Industrial Relations Act, have been eliminated.
- A last offer vote, directed by the Minister (previously the Commissioner of the Industrial Relations Council) during a strike or lockout, has been retained in the new Code. An employer's ability to request such a vote before a work stoppage has also been retained.

Strikes and Lockouts

- Votes continue to be mandatory before a strike or lockout. However, the requirement that these votes be government-supervised has been eliminated. Strike votes as well as ratification votes are by secret ballot, and all members of a bargaining unit have the right to participate.
- A new section of the Code requires that an employer continue health and welfare benefits (other than pension benefits or contributions) to striking or locked out employees provided that the trade union pays the total costs or premiums. The parties may agree in writing to be excluded from the operation of this provision.

Essential Services

- Either of the parties to a collective bargaining dispute may request the Chair of the Labour Relations Board, or the Chair may decide on his/her own initiative, to investigate whether the dispute poses a threat to the health, safety or welfare of the public. After receiving a report of the Chair of the Board, or on his/her own initiative, the Minister of Labour and Consumer Services may direct the Board to designate essential services.
- Essential services are limited to threats to "health, safety or welfare", and previous references to educational services and threat to the economy of the province have been deleted.

- The Board may appoint one or more mediators to assist the parties to reach an agreement on essential services designations. It must then submit a decision regarding essential services within 30 days after receiving a mediation report.
- If the process of designation is initiated before the beginning of a strike or lockout, no work stoppage may occur until the process has been completed.
- Specific timeframes for completion of the designation process are provided so as not to unduly interfere with the right to strike or lockout. The provision imposing a "cooling-off" period on the parties has been removed.
- The requirement for notice to strike or lockout is changed with respect to establishments affected by essential services designations. If the required 72-hour (or possibly longer) strike or lockout notice period expires without the work stoppage occurring, the party is required to give a new notice of at least 72 hours before commencing a strike or lockout.

Picketing

- The Code retains the previous provisions on picketing, which are based on the principle that, as much as possible, the impact of picketing must be restricted to those parties directly involved in a labour dispute. There is, however, one modification. The former legislation required that third parties not be affected by the impact of picketing in a common site situation. Under the new provisions, at the discretion of the Labour Relations Board, workers may exercise the right to picket their own worksite even though third parties may in some instances be affected (e.g. a site where two or more employers are located and which has only one entrance).

Replacement workers

- During a legal work stoppage, an employer is prohibited from using the services of persons transferred, hired or engaged after notice to bargain was given or, if no such notice was given, after the beginning of negotiations. Also, an employer cannot use the services of management personnel and employees ordinarily working at another of the employer's places of operations, and cannot contract out work not carried out because of the strike or lockout.
- Those who can perform replacement work during a work stoppage include: consenting members of the bargaining unit affected as well as managers and employees not in the bargaining unit, who work at the place of operations and agree to perform such work.

Secondary boycotts

- Under the previous law, secondary boycott agreements were considered to be illegal. These are negotiated provisions of collective agreements which permit employees not to use or handle products of a struck employer, or require that the employer deal with unionized companies. The new Code makes it possible for the parties to negotiate terms of collective agreements allowing secondary boycotts.
- Secondary boycott provisions are governed by the Labour Relations Code and are not permitted if their impacts are considered by the Labour Relations Board to be an illegal work stoppage or to constitute illegal picketing, or if they are considered an unfair labour practice against another party.

Expedited Arbitration Process for Grievances (Provisions not yet in force)

- A new system of expedited arbitration administered by the Collective Agreement Arbitration Bureau of the Ministry of Labour and Consumer Services will be established. Once the grievance procedure under a collective agreement has been exhausted, either party may, under certain conditions, request that this process be used to resolve a grievance. The Bureau will then appoint an arbitrator to hear and resolve the grievance within strict time limits. The arbitration hearing will begin within 28 days of the application to use expedited arbitration, and the arbitrator's decision will be made within 21 days of the conclusion of the hearing.
- A settlement officer may be appointed to provide assistance to the parties before the arbitration hearing if a party so requests and the other agrees.

- Despite any grievance or arbitration provision of a collective agreement, the parties may, at any time, agree to refer one or more grievances to a single mediator-arbitrator for resolution in an expeditious and informal manner.
- The Arbitration Bureau will be assisted by an appointed advisory committee composed of management, labour and arbitrators who will provide advice on the list of arbitrators, and on possible training programs for arbitrators and settlement officers.

Joint Consultation (Provisions in force on May 1, 1993)

- The Code provides that all collective agreements must contain a provision requiring a consultation committee to be established if a party makes a written request for one during the bargaining period. The provision must provide that the parties consult regularly during the term of the agreement for the purpose of promoting the resolution of workplace issues, responding and adapting to changes in the economy, fostering the development of work related skills and promoting workplace productivity. Upon a joint request of the parties, the Mediation Division of the Labour Relations Board must appoint a facilitator to help the parties develop a more cooperative relationship.
- A new technological change section provides that the parties must meet to develop an adjustment plan in response to the introduction, or planned introduction, of a change which affects the working conditions or employment security of a significant number of employees covered by a collective agreement. Adjustment plans will no longer be referred to arbitration as in the former legislation. Possible elements of an adjustment plan include consideration of alternatives to the proposed change, amendments to the collective agreement, human resource planning and employee counselling and retraining, notice of termination and severance pay, entitlement to pensions and other benefits as well as a bipartite process for overseeing the implementation of the adjustment plan. The notice period for a planned change is reduced from 90 days to 60 days.

Administration of the Code

- The ongoing administration of the Code is by the Labour Relations Board. It has replaced the Industrial Relations Council.
- The Board continues to adjudicate matters brought before it and to provide mediation services to assist the parties during a collective bargaining dispute.
- All reports to the Board from persons appointed to undertake investigations on the Board's behalf are disclosed to the parties. An exception to the requirement for disclosure to the parties is information relating to union membership which is only disclosed with the consent of the Board.
- The provision requiring the Board to publish its decisions has been amended to include the requirement that decisions be made within a reasonable period of time.
- Leave from the Board is required for a party to apply for reconsideration of a Board decision. This restriction on the right to appeal decisions will reduce delays in the final resolution of matters coming before the Board.

On June 23, 1993, the **federal government** approved Bill C-101, **An Act to amend the Canada Labour Code and the Public Service Staff Relations Act**, which came into effect on the same date.

An amendment to Part I of the Canada Labour Code (Industrial Relations) provides that where the Minister considers that a collective bargaining dispute affects the public interest, he/she may direct the Canada Labour Relations Board, or another person or body, to conduct a vote among the employees in the bargaining unit concerned as to the acceptance or rejection of the employer's last offer made to the trade union in respect of all matters remaining in dispute.

B. Public and Parapublic Sectors

In the **federal jurisdiction**, Bill C-26, the **Public Service Reform Act** received royal assent on December 17, 1992. Some provisions amending

the **Public Service Staff Relations Act** took effect on April 1, 1993, while others came into force on June 1, 1993. The most important of these amendments are described below.

- A fair representation clause has been added to the Act. It stipulates 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) must 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 provides 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 is irrevocable until the single collective agreement is entered into.
- Before a bargaining agent requests an alternate dispute resolution process (as outlined below) and before it or the employer asks for conciliation or arbitration, either of them may request the assistance of a fact finder if negotiations have taken place in good faith without an agreement being reached. The PSSRB must 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, and neither party may request conciliation or arbitration before the fact finder has submitted his/her report. The fact finder must 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 is 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 is not made public. If an agreement is not reached, the PSSRB must 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 may seek an alternate dispute resolution process. Under this process, the bargaining agent is 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 is 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 may 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 must 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 must, 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 chairperson selected by them or appointed by the PSSRB). The functions of the designation review panel are 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 must, within the prescribed limitation period, refer the positions in dispute to the PSSRB. The Board reviews the positions in dispute and, after giving the parties an opportunity to make representations, determines if they have safety or security duties.

A procedure permits 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.

Another amendment to the Public Service Staff Relations Act, contained in **An Act to amend the Canada Labour Code and the Public Service Staff Relations Act**, came into force on June 23, 1993. It gives a Minister designated by the Governor in Council, other than a member of the Treasury Board, the power to order a vote on the employer's last offer in respect of all matters remaining in dispute, when he/she considers that a collective bargaining dispute affects the public interest. The vote is conducted by the Public Service Staff Relations Board or another person or body.

In **Quebec**, **An Act to amend the Labour Code and the Act respecting the Ministère du Travail** came into force on March 25, 1993. The Act has modified the Labour Code mainly to make changes to the process for resolving disputes involving police officers or fire fighters and municipal corporations or intermunicipal boards.

Upon application by one party, the Minister of Labour must appoint a mediator to help a municipal corporation or an intermunicipal board and an association of employees certified to represent its police officers or fire fighters to settle their dispute. The mediator has 60 days to bring the parties to an agreement. Upon his/her request, this period may be extended by not more than 30 days.

If there is no agreement at the expiry of the period of mediation, the mediator must give his/her report to the parties and send a copy to the Minister. A party may, after receiving the report, apply to the Minister for the referral of the dispute to arbitration. The arbitrator is appointed from a list which the Minister draws up for the specific purposes of the arbitration of disputes involving municipal police officers or fire fighters. The Minister may enter on the list the names of persons proposed jointly by all associations recognized by order of the government as being the most representative associations of municipal corporations, intermunicipal boards, police officers and fire fighters. If there is not a sufficient number of joint proposals approved by the Minister, the latter must select arbitrators whose names appear on a list he/she draws up each year in consultation with the Conseil consultatif du travail et de la main-d'oeuvre (Advisory Council on Labour and Manpower). The list is valid for a period of five years, during which it may be amended by the Minister after he/she has consulted the representative associations mentioned above.

In rendering his/her award, the arbitrator may take into account, among other things, the conditions of employment of the other employees of the municipal corporation concerned or of the municipal corporations which are party to the agreement creating the intermunicipal board concerned, as well as the conditions of employment prevailing in similar municipal corporations or intermunicipal boards or in similar circumstances. The arbitrator must render an award based on the evidence collected at the inquiry. The award binds the parties for a period of not less than one year nor more than three years. The parties may, however, agree to amend its content.

The Minister must present to the government, at the latest on March 1, 1997, a report on the implementation of these provisions.

In **British Columbia**, the **Public Sector Employers Act** was assented to on July 29, 1993.

The purposes of this Act are to ensure the coordination of human resource and labour relations policies and practices among public sector employers, and to improve communication and coordination between public sector employers and representatives of public sector employees.

The Act provides for the establishment of the Public Sector Employers' Council. The council consists of the minister chairing Treasury Board, a

maximum of seven persons who are ministers or deputy ministers, a person nominated by each public sector employers' associations established under the Act, and the commissioner of the Public Service Employee Relations Commission.

The functions of the council are:

- to set and coordinate strategic directions in human resource management and labour relations;
- to advise the government on human resource issues with respect to the public sector; and
- to provide a forum to enable public sector employers to plan solutions to human resource issues.

The exercise of these functions must be consistent with cost efficient and effective delivery of services in the public sector.

Another function of the council is to enable representatives of public sector employees to consult with public sector employers on policy issues that directly affect the employees.

In addition, the Act provides that an employers' association must be established for each sector other than the public service sector. This includes school boards, post-secondary educational institutions, hospitals as well as Crown corporations and public sector boards, commissions, councils and authorities designated by regulation. Each of these public sector employers must become and remain a member of the employers' association for the applicable sector.

The government must be represented on the board of directors of every employers' association.

The purposes of an employers' association are:

- to coordinate compensation for employees who are not subject to collective agreements as well as benefit administration, human resource practices and collective bargaining objectives;
- to foster consultation between the association and representatives of employees in the sector; and
- to assist the Public Sector Employers' Council in carrying out any objectives and strategic directions for the employers' association.

An employers' association or two or more of its members may apply to the Labour Relations Board for accreditation under the Labour Relations Code. An accredited employers' association acts as bargaining agent for the members of the association named in the accreditation.

Also, at the request of two or more members of an employers' association or on his/her own initiative, the Minister of Labour and Consumer Services may, after any investigation considered advisable, direct the Labour Relations Board to consider whether in a particular case an employers' association or any group of employers in an association would be an appropriate bargaining agent for the employers in a sector or part of a sector. The Minister may make such an order only if an employers' association or any of its members have at any time made an application to the Labour Relations Board for multi-employer accreditation, and he/she considers that such action is necessary to secure and maintain industrial peace and promote conditions favourable to the settlement of disputes.

Upon receiving a recommendation from the Labour Relations Board, the Minister may direct that the employers' association or any group of employers in the association has exclusive authority to bargain collectively for the employers he/she has named and to bind those employers by collective agreement.

The provisions outlined above will come into force on a date to be determined by the government.

The Act also provides for changes to the School Act which took effect on the date of assent. These changes contain a new definition of "teachers' union", which from now on is described as an association of teachers that is certified as the bargaining agent for the teachers in one or more school districts under the Labour Relations Code and includes a council of trade unions that is certified to act as the bargaining agent for teachers

under the Code.

In **Ontario**, Bill 49, the **Crown Employees Collective Bargaining Act, 1993**, was introduced on June 14, 1993. This Bill relates to the collective bargaining of Crown employees. It proposes to repeal the Crown Employees Collective Bargaining Act and to provide for the application of the Labour Relations Act to employees of the Crown, who would be given the right to strike.

A new broader definition of "Crown employee" would be provided. Among others, it would no longer exclude those persons employed in a managerial capacity, except when they regularly provide advice to Cabinet, a minister or a deputy minister on matters that materially affect the terms or conditions of employment of Crown employees.

The Bill would modify the application of the Labour Relations Act to Crown employees. The modifications would relate to various provisions of the Act, including those dealing with voluntary arbitration of disputes, first contract arbitration, grievance arbitration, successor rights, use of bargaining unit employees during a strike or lockout, and limitation on the right to strike or to lock out. Certain provisions of the Labour Relations Act would not apply, such as those relating to the permitted use of "specified replacement workers" during a strike or lockout and those dealing specifically with the construction industry.

With respect to the limitation of the right to strike or to lock out, the new legislation would provide that the employer and the trade union must have an essential services agreement before an employee may strike or an employer may declare a lockout. The parties who have or are negotiating a collective agreement would be required to make an essential services agreement.

"Essential services" would be those services that are necessary to enable the employer to prevent danger to life, health or safety, the destruction or serious deterioration of machinery, equipment or premises, serious environmental damage, or disruption of the administration of the courts. "Essential services agreement" would mean an agreement between the employer and the trade union that applies during a strike or lockout and that has an essential services part providing for the use of bargaining unit employees as well as an emergency services part that provides for the use of a larger number of such employees in emergencies.

The essential services part of an essential services agreement would include provisions identifying the essential services, the number of bargaining unit employees in particular positions that are necessary and the employees who according to an agreement between the employer and the trade union will be required to work during a strike or lockout.

At any time after the employer and trade union are required to begin negotiations, the Minister of Labour would, at the request of either party, appoint a conciliation officer to confer with the parties and endeavour to effect an essential services agreement. On application by either party, the Ontario Labour Relations Board would determine any unresolved matters. The Board would then have to consider the impact of its decision on the trade union's bargaining strength, and would not be permitted to exceed the number of employees proposed by the employer.

An essential services agreement would continue until terminated by one of the parties but only when a collective agreement is in place and there are at least 190 days left before its expiry.

On application by a party to an essential services agreement, the Board could enforce the agreement, amend it and make such other orders as it considers appropriate.

A party to an essential services agreement could apply to the Ontario Labour Relations Board for a determination as to whether, because of that agreement, meaningful collective bargaining is prevented. The Board would make its determination in accordance with regulations issued under the Act. If the Board determines that meaningful collective bargaining is prevented, the parties would be deemed to have irrevocably agreed to refer all matters in dispute to final and binding arbitration. The decision of the board of arbitration would not include any term relating to pensions, staffing levels or work assignments.

In addition, the Bill provides that the Grievance Settlement Board would be continued and would deal with grievance arbitrations. Provisions are

made for its composition, administration and procedure.

Lastly, the Bill deals with certain transfers of undertakings that would cause those employed in the undertakings to be subject to a different collective bargaining scheme. The provisions in question would be analogous to the Successor Rights (Crown Transfers) Act which would be repealed.

In a number of jurisdictions, laws dealing with restraint in the public sector have been amended or adopted.

In **Newfoundland**, effective December 23, 1992, **An Act to amend the Public Sector Restraint Act, 1992** has reduced the restraint period provided by the Public Sector Restraint Act, 1992 from 36 to 24 months. It has also clarified when the restraint period began as it applies to provincial court judges.

In addition, an amendment provides that where, on the expiry of the restraint period, a collective agreement covered by the Act continues in force, its provisions on pay scales are of no effect. The pay scales that applied during the restraint period to the public sector employees concerned continue to apply until new ones are agreed to by the pertinent public sector employer and the bargaining agent.

In the **federal jurisdiction**, **An Act to provide for government expenditure restraint** received royal assent on April 2, 1993. Provisions contained in Part 1 of this Act, which are all in force, have amended the Public Sector Compensation Act adopted in 1991, and several other Acts to provide that wages in the federal public sector remain at current levels for two years.

The legislation applies to federal government departments, boards, commissions and agencies, designated Crown corporations (including their directors), the Senate, House of Commons and Library of Parliament. It also covers the staff of ministers and of members of the Senate and House of Commons, order-in-council appointees, judges and members and officers of the Canadian Forces and of the Royal Canadian Mounted Police.

Effective January 1, 1993, the sessional allowance payable to members of the Senate and House of Commons has been frozen for three years.

In **Quebec**, Bill 102, **An Act respecting the conditions of employment in the public sector and the municipal sector**, was assented to on June 17, 1993.

The general objective of this Act is to extend by two years collective agreements affecting public bodies and maintain, during that period, the salary rate and scales and the premiums that are effective on the original date of expiration. Public bodies are defined as including the government, its departments and agencies, school boards, colleges, universities, health care establishments, the provincial police force and various Crown corporations.

In addition, the Act provides that every public body, for the purpose of reducing by 1% the annual amount of its expenses relating to the remuneration and social benefits of the employees governed by a collective agreement, must, before March 31, 1994 and every twelve-month period thereafter, give each employee such number of days of unpaid leave as is determined by the government, not exceeding three days. However, every public body is required to take one of the following alternative measures, as the government prescribes, for such groups of employees as it determines:

1. an equivalent reduction of the number of days of sick leave credited, insofar as they are refundable each year, or a reduction of the indemnity standing in lieu of sick leave;
2. an equivalent number of unpaid holidays or days of vacation;
3. an equivalent reduction of the indemnity pertaining to the annual leave.

In the case of public bodies which provide instruction, the dates on which the employees take unpaid leave must be determined without reduction in the number of days of instruction.

It is possible for the parties to exclude themselves from the provisions dealing with the reduction of expenses arising out of the application of collective agreements if they negotiate and ratify amendments to the conditions of employment entailing a reduction of at least 1% of the annual amount of expenses relating to remuneration and social benefits.

Measures equivalent to those mentioned above apply to administrators of state, chief executive officers, officers, and management personnel and other personnel of public bodies who are not covered by a collective agreement. Such measures also apply to Members of the National Assembly and health professionals.

Finally, the Act provides that similar measures relating to the extension, without increases, of collective agreements and the reduction of expenses arising out of their application are applicable to municipal bodies. However, the latter can, by a resolution adopted before September 15, 1993, waive the application of the legislation. The other provisions of the Act will come into force on a date or dates to be fixed by the government.

In **Ontario**, the **Social Contract Act, 1993** was adopted on July 8, 1993.

Effective June 14, 1993, the date on which it was introduced in the Ontario Legislative Assembly, the Social Contract Act, 1993, provides for the measures described below.

The Minister responsible for the administration of the Act must establish expenditure reduction targets for the various sectors and employers in the public sector, which include the Ontario Public Service Sector, the Health Sector, the Community Services Sector, the Schools Sector, the Colleges Sector, the Universities Sector, the Agencies, Boards and Commissions Sector and the Municipalities Sector. If there is a sectoral framework (i.e. a plan of expenditure reduction and adjustment measures for employees, that comply with the Act) in respect of a sector, the Minister must establish lower expenditure reduction targets for every employer in the sector who by August 1, 1993, has entered into a local agreement, or has put into effect a plan covering non-bargaining unit employees, that implements the sectoral framework. However, a local agreement may be entered into not later than August 10, 1993, if there is a sectoral framework that relates to the sector of an employer and the Minister so directs.

An employee, bargaining agent or employer covered by a valid local agreement or a plan for non-bargaining unit employees may apply for payments out of a Public Sector Job Security Fund. The objective of the Fund is to provide payments to employees who are released from employment and to employers for the purpose of extending the employment of employees who will be released. In certain circumstances, payments may be made to a bargaining unit employee who is released from employment when, in the opinion of the administrator of the Fund, the bargaining agent representing that employee made all reasonable efforts to enter into a local agreement with the employer to implement a sectoral agreement.

A structure for the negotiation of settlements in order to achieve the expenditure reduction targets is established at both the sectoral and local levels for bargaining unit employees. A structure is also provided for plans in respect of non-bargaining unit employees.

If there is no agreement or plan, employers will implement their expenditure reduction targets through a freeze in compensation (from June 14, 1993 to March 31, 1996) and, if the freeze does not produce the necessary savings, through unpaid leaves of absence (a maximum of 12 days or the equivalent for the period from June 14, 1993 to March 31, 1994, and for each of the following two fiscal years). Special provision is made for employees who perform critical functions.

If a sectoral framework or local agreement is not negotiated in 1993 as provided in the Act, the parties will have an opportunity to exclude themselves from the measures mentioned in the previous paragraph if they negotiate a two-year sectoral framework and local agreement by March 1, 1994. The Minister may order a ten-day extension (to March 10, 1994) with respect to the negotiation of a local agreement.

The expenditure reduction measures do not adversely affect employees earning less than $30,000 annually, excluding overtime pay. However, this may not apply if, in the opinion of the Minister, special circumstances exist with respect to a sectoral framework. In addition, the Act does not

reduce any right or entitlement under the Human Rights Code or the Pay Equity Act.

The province is authorized to reduce its payments to public sector employers and, in cases prescribed by regulation, to require payments from them. Also, provision is made for the application of the Act to independent health professionals as well as to the members of the Legislative Assembly and other office holders, whether elected or appointed.

In **Manitoba**, the **Public Sector Reduced Work Week and Compensation Management Act** was assented to on July 27, 1993.

The Act contains measures permitting the implementation of a reduced work week by public sector employers, including the government, Crown corporations, hospitals, personal care homes, child and family services agencies, municipalities, school boards, colleges and universities, Crown agencies, and any person or organization designated as a public sector employer by regulation.

Public sector employers are permitted to require their employees to take leave without pay during one or two 12-month periods, the first one starting in the last nine months of 1993, provided the combined total of days and portions of days to be taken does not exceed 15 days in a 12-month period for any one employee.

The Act provides for the giving of notice to any concerned trade union of the intention of an employer to implement a reduced work week and for consultations between the parties.

However, if no agreement is reached by the employer and the union on a reduced work week within 30 days after notice is served, the employer may determine the number of days of leave without pay that each employee must take, when the leave must be taken within the 12-month period, and other matters relevant to the issue. Once filed with the Minister of Labour, an agreement between the parties or the determination made by an employer on the implementation of a reduced work week is binding on the employer, the union and the employees it represents.

If a school board implements a reduced work week, the leave without pay to be taken by any one teacher must not exceed 10 days in a 12-month period, and must consist of days that are set aside for teacher in-service, parent-teacher conferences, administration and pupil evaluation days.

During fiscal year 1993-94, there is a reduction of 3.8% in the remuneration of the Members of the Legislative Assembly, Provincial Court judges and government appointed members of Crown agencies, boards, commissions or committees. However, except in the case of the Members of the Legislative Assembly, this reduction may be achieved, where practicable, by the person's taking specific approved days or portions of days as leave without pay. For fiscal year 1994-95, the reduction will generally be equivalent to the amount by which the wages of provincial government employees covered by a collective agreement are reduced in the same period as a result of a requirement to take leave without pay.

The Act also provides for restraint measures applying to the compensation of medical practitioners during 1993-94 and 1994-95.

The new legislation applies retroactively to April 1, 1993.

C. Emergency Legislation

In **British Columbia**, the **Educational Programs Continuation Act** was passed on May 30, 1993.

This Act provided for the settlement of a dispute between the Board of School Trustees of School District No. 39 (Vancouver) and the Vancouver Teachers' Federation. It made it illegal to engage in a strike or lockout and ordered a resumption of ordinary duties by the employees.

The last collective agreement between the parties was extended and is considered to be in effect until a new one comes into force. An arbitrator was appointed under the Act to resolve the dispute within 30 days or a longer period determined by the Minister of Labour and Consumer Services. The decision of the arbitrator is binding on the parties, except insofar as they agree to modify it.

In addition, the legislation provides that the Minister may exercise certain powers upon the designation by regulation of any board of school trustees and the trade union representing its employees. School District No. 36 (Surrey) and the Surrey Teachers Association as well as School District No. 72 (Campbell River) and C.U.P.E. Local 723 have been designated under these provisions.

By virtue of the special powers, when a special mediator has been appointed under the Labour Relations Code, the Minister may order that (1) his/her recommendations constitute the collective agreement between the parties, or (2) the parties have 36 hours to reach a settlement or the special mediator will issue a report deemed to be the collective agreement. In either case, the constituted agreement may be modified if both the employer and the trade union agree on one or more changes.

The Act will be repealed on March 31, 1994 or on an earlier date set by regulation.

D. Construction Industry

In **Saskatchewan**, the **Construction Industry Labour Relations Act, 1992** came into force on September 22, 1992. It provides for special labour relations legislation to govern collective bargaining in the construction industry.

The Act creates a framework for province-wide collective bargaining on a trade-by-trade basis in the construction industry by:

- providing the Minister of Labour with powers to determine trade divisions and designate representative employers' organizations;
- defining "trade division" as all unionized employers in a sector or sectors of the construction industry that are in a trade or in an identifiable class or group of unionized employers in a trade;
- giving the Labour Relations Board the power to determine a representative employers' organization for a trade division in specified circumstances;
- requiring unionized employers to bargain collectively through an employers' organization designated or determined to be the representative employers' organization for a trade division;
- requiring locals of a trade union to set up a council of locals for the purpose of bargaining collectively with the representative employers' organization for a trade division;
- permitting the negotiation and operation of a project collective agreement and the operation and renegotiation of a national collective agreement (i.e. an agreement applying in two or more jurisdictions) existing immediately prior to the coming into force of the Act;
- prohibiting "spot" certifications by establishing that the Labour Relations Board must determine the unit of employees that is appropriate for collective bargaining by reference to the geographical jurisdiction of the trade union applying; and
- permitting representative employers' organizations and trade unions to fix contract administration and industry development fees to be paid respectively by unionized employers and employees.

The Act regulates strikes and lockouts in the construction industry by:

- establishing a mandatory conciliation process for labour disputes before a strike or lockout can occur;
- requiring a strike or lockout vote by secret ballot and, if a majority is obtained, a notice of at least 48 hours before a strike or lockout can commence;
- establishing that when a trade union wishes to cause a strike, the strike must be held with respect to all unionized employers in the trade division and all the work being performed by those employers;
- requiring a trade union to ensure that all unionized employees of struck employers participate in a strike; and

- establishing that, when a representative employers' organization wishes to cause a lockout, all unionized employers in the trade division must participate in the lockout and must lock out all unionized employees.

The Act prevents unionized contractors from operating on a non-union basis through an associated corporate entity to avoid certification orders of the Labour Relations Board or to avoid adhering to the terms of the collective bargaining agreement between a representative employers' organization and a trade union by:

- empowering the Labour Relations Board to declare two related companies to be the same unionized employer for the purposes of the Act;
- giving the Labour Relations Board the power to grant additional relief (e.g. back wages), from the date of application to the Board, if, in its opinion, a spin-off company has been created with the intention of avoiding unionization or collective bargaining obligations under the Act; and
- making these provisions applicable to spin-off companies which commence carrying on business, undertakings or other activities in the construction industry after the coming into force of the Act.

The Act accommodates the practice of "reverse spin-offs" by:

- specifying that, in exercising its discretion to declare two related companies to be the same unionized employer for the purposes of the Act, the Labour Relations Board may recognize the practice of non-unionized employers performing work through unionized subsidiaries.

The Act creates a mechanism for the settlement of jurisdictional disputes between trade unions by:

- establishing a process to create, by regulation, a jurisdictional assignment plan for the resolution of jurisdictional disputes.

Enforcement mechanisms, paralleling those in The Trade Union Act, are established by:

- empowering the Labour Relations Board to determine if there has been a violation of the Act; and
- giving the Labour Relations Board the power to issue a compliance order that is enforceable as an order of the court.

In addition, the Act establishes transitional rules applying until province-wide agreements are negotiated under the new legislative framework.

In **Quebec**, there have been amendments to the **Construction Decree under the Act respecting labour relations, vocational training and manpower management in the construction industry**.

The Construction Decree has been modified to provide for the creation of a fund, supported by employers in the construction industry, to finance the costs related to studying, implementing and operating a Developmental training and retraining plan to promote the stabilization of income and employment for workers in the industry, including the payment of training allowances. The terms and conditions for the implementation of the Plan are described in a schedule that has been added to the Decree.

Also, the Construction Decree, which was to expire on April 30, 1993, was extended until June 14, 1993, and again until December 14, 1993.

In **Ontario**, a **new regulation under the Labour Relations Act** provides for the establishment of the Ontario Construction Secretariat. The membership of the Secretariat consists of an equal number of representatives of labour, management and the provincial government. They are appointed by the Minister of Labour.

The Act provides that the objects of the Secretariat are to facilitate collective bargaining in the industrial, commercial and institutional sector of the construction industry and to provide other assistance. This is done notably by collecting, analyzing and disseminating information concerning collective bargaining and economic conditions in the sector, and by holding conferences involving representatives of the employer bargaining agencies and the employee bargaining agencies. An additional object of the Secretariat, which is prescribed by the regulation, is the

advancement of the unionized construction industry in Ontario.

The regulation also governs the payments that the employer bargaining agencies and the employee bargaining agencies are required to make to the Secretariat.

The regulation came into force on June 1, 1993.

E. Agriculture and Horticulture Industries

In **Ontario**, Bill 91, **An Act respecting Labour Relations in the Agriculture Industry**, was introduced on July 29, 1993.

The Act would apply to employees, employers, trade unions, councils of trade unions and employers' organizations in the agriculture and horticulture industries, subject to certain exceptions (i.e. municipalities, silviculture operations, and when the primary business is not agriculture or horticulture).

The Labour Relations Act would apply to the agriculture and horticulture industries. However, certain provisions, such as those relating to the right to strike and to lock out, would not apply, while others would be modified, including the provisions relating to the determination of bargaining units in the case of seasonal employees and access to employer property.

Labour relations statutes, collective agreements and trade union constitutions, by-laws or rules would not be interpreted so as to prohibit (or allow the prohibition of) a family member of an employer from performing any work for the employer.

Votes to ratify a proposed collective agreement would be by secret ballot, and all employees in a bargaining unit would be entitled to participate.

Strikes and lockouts would be prohibited. The parties could avail themselves of conciliation and mediation procedures. If a conciliation officer has reported to the Minister that he/she has been unable to effect a collective agreement, a selector appointed by the parties (or by the Minister if they fail to make the appointment within the prescribed time) would be required to select all of the final offer made by one party or the other on all matters remaining in dispute. The parties could, however, continue to negotiate, and the selector would not consider their final offers respecting any matters on which agreement has been reached.

If the parties prefer not to use the final offer selection process, they may, following notice to bargain, irrevocably agree to refer all matters in dispute to an arbitrator or a board of arbitration for final and binding settlement.

The Lieutenant Governor in Council would have the power to repeal by regulation the final offer selection provisions after the Act has been in force for three years. In the event such a regulation is made, provisions would be substituted, which would allow for conciliation and require an arbitration process (other than final offer selection) with respect to matters in dispute.

The legislation would also provide that the Minister may establish an advisory committee on labour relations in the agriculture and horticulture industries.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Legislation of General Application

Quebec amended its **Act respecting occupational health and safety** to provide for the appointment of a chairman of the board of directors and chief executive officer as well as a chairman and chief of operations of the Occupational Health and Safety Commission. Previously, the Act

provided for the appointment of a chairman who also held the office of director general. The Act also provides for the creation of a financial division within the review office (i.e., for the review of decisions on claims made under the Act respecting industrial accidents and occupational diseases) and for the appointment of conciliators mandated to meet with the parties to an application for review and to attempt to reach a settlement. Certain provisions of this Act, including those respecting the creation of a financial division, came into force on October 7, 1992 and November 11, 1992.

Saskatchewan has adopted new legislation respecting occupational health and safety. **The Occupational Health and Safety Act, 1993** will make the following changes with respect to the existing Act, with a view to:

- Place duties on contractors, owners and suppliers respecting matters under their control which affect worker health and safety.
- Enhance access to workplace health and safety information. Employers are required to inform their workers of any information in their possession which is relevant to the workers' health and safety.
- Require that certain employers, starting with the larger, high risk industries, develop and implement an occupational health and safety program. The programs, which must be developed in consultation with the occupational health committee or representative, would identify potential hazards at the workplace and how they can be controlled, provide for worker participation in certain areas such as accident investigations and safety audits, and identify training needs and how to fill them. The Act thus seeks to make everyone recognize that the key to an effective internal responsibility system is an occupational health and safety program in which employers and workers participate.
- Address the problem of workplace violence, by placing the duty upon employers at prescribed places of employment where violent situations have occurred or may reasonably be expected to occur to develop and implement, after consultation with the occupational health committee or representative, or with the workers themselves, where there is no committee or representative, a policy statement to deal with potentially violent situations. The policy statement must include any provisions prescribed in the regulations.
- Require employers to ensure that the workers are not exposed to harassment at the place of employment. Workers are required to refrain from harassing others. Regulations will also prescribe measures that employers must take to deal with harassment complaints.
- Provide that occupational health committees be established at every workplace where 10 or more workers are employed, and worker representatives be designated at prescribed workplaces of less than 10 employees engaged in activities of higher than average risk. The duties of representatives are similar to those of committees. Multiple occupational health committees could be required at certain workplaces where work divisions so dictate, such as at a mine, underground and above ground. A multiple employer committee could be required at construction sites.
- Confirm a worker's right to refer a health and safety concern directly to an occupational health officer.
- Clarify the right to refuse unusually dangerous work, by establishing a procedure for a worker whose refusal to work has not been supported by an occupational health officer. In addition, the employer is required to inform, in writing, other workers who are asked to do the refused work that the worker has refused to do, of every previous refusal by a worker to perform the work and the reasons for the refusal, the reasons why the employer believes the subsequent worker can perform the work safely, and the right of the subsequent worker to refuse to perform the work if that worker believes it is unusually dangerous.
- Extend worker protection from discriminatory action for participation in health and safety activities. These provisions enhance the existing protection of workers against employer reprisals by including workers who are complying with the legislation, seeking enforcement of the legislation, giving information to an occupational health officer, an occupational health committee or member, or an occupational health and safety representative, or testifying in court or other proceedings.
- Clarify the occupational health officer's power to stop work where a violation of the Act involves a serious risk to the health and safety of a worker.
- Broaden the appeal process. Any person directly affected by a decision of an occupational health officer has the right to appeal that decision to the director of the Occupational Health and Safety Division. The director's decision is subject to appeal to an adjudicator appointed under the Act. The adjudicator's decision is subject to appeal on questions of law and jurisdiction or on questions relating to

stop work orders, to the Court of the Queen's Bench. Appeals do not suspend the decision being appealed unless the person hearing the appeal so directs.

- Establish higher penalties to better reflect the serious nature and consequences of non-compliance with the Act. Four categories of offenses with corresponding maximum fines are established:

    1. obstructing an officer, falsifying or destroying records, or failing to comply with a decision or order (first offence), $2,000;
    2. contravention to the Act or regulations not likely to cause injury (first offence), $10,000;
    3. contravention to the Act or regulations which may cause injury (first offence), $50,000; and
    4. contravention causing serious injury or death, $300,000.

- Create a Farm Health and Safety Council to give advice to the Minister concerning the unique health and safety concerns of farmers and farm workers.
- Enable the director to forward information about an employer's diligence, level of co-operation, number of contraventions, etc. to the Workers' Compensation Board for the purpose of improving occupational health and safety.
- Limit the circumstances under which a medical examination can be conducted pursuant to the Act, and specify these must be carried out with the consent of each worker.
- Provide that, in a prosecution under the Act, a company would be deemed responsible for the act of its manager, agents, representatives, officers, directors and supervisors.
- Extend the time limit for commencing a prosecution from six months to two years.
- Ensure the inspection, investigation and search provisions of the Act comply with the requirements of the Charter of Rights and Freedoms.

This Act, which will repeal and replace the Occupational Health and Safety Act, or any of its provisions will come into force on a date or dates fixed by proclamation.

B. Safety in High Risk Industries

The **federal government** adopted the **Newfoundland Offshore Petroleum Drilling Regulations under the Canada-Newfoundland Atlantic Accord Implementation Act**. This regulation sets out the requirements that operators must follow if they wish to undertake drilling activities in the Newfoundland offshore. It ensures that all measures affecting the safety of human life, the prevention of pollution of the natural environment and the conservation of hydrocarbon resources meet stringent standards before approval to drill is granted. Stringent standards are set concerning design, construction and operation of drilling units, as well as the drilling procedures and well evaluation. The provisions include requirements such as the setting of steel casings, the mounting of blowout preventers, the alert and evacuation procedures for natural hazards such as ice and the contingency plans for hazardous occurrences such as fires and blowouts as well as other matters affecting the security and effectiveness of the drilling operation. This regulation is modelled on the Canada Oil and Gas Drilling Regulations, which ceased to apply to the Newfoundland offshore area when the Canada-Newfoundland Atlantic Accord Implementation Act was adopted in 1987.

The federal government also adopted the **Revocation of the Stevedores Safety Order under the Canada Labour Code**. This order, which was first adopted in 1978 and provided that Part IV of the Canada Labour Code of the time applied "to and in respect of employment in the loading and unloading of ships...", has become redundant in light of an amendment of 1987 to the Code. As a result of the adoption of section 123 (previously section 80) of Part II of the Code, the occupational safety and health provisions of the Code became applicable to stevedores without requiring an order emanating from the Governor in Council.

In **British Columbia**, the **Resolution of the Governors - September 8, 1992 - under the Workers' Compensation Act** became effective

March 31, 1993. This resolution of the Governors of the Workers' Compensation Board extends to the farming industry the application of the Workplace Hazardous Materials Information System Regulation (B.C. Reg. 299/88) and of the Industrial First Aid Regulation (B.C. Reg. 343/79, as amended by 470/83), with the exception of the requirements of Tables 1 and 2. The requirements of Tables 1 and 2 for the presence of first aid attendants having survival first aid certificates on farms falling into the first two categories in each table will apply effective December 31, 1993. The farming industry is defined in B.C. Reg. 434/82 (operations relating to the growing or raising of crops, dairying, poultry raising, egg production, raising of livestock for human consumption, breeding of beef cattle for herd improvement, horticulture, beekeeping, fur farming, and breeding of horses), but does not include "aquaculture".

A **Regulation for Agricultural Operations under the Workers' Compensation Act** was also adopted in British Columbia. This regulation establishes occupational health and safety provisions for the farming industry. The regulation applies to the farming industry as defined in B.C. Reg. 434/82, with the exception of aquaculture. It contains various requirements pertaining to the safety and salubrity of workplaces, hazardous substances, pesticides, confined spaces, personal protective clothing and equipment, tools, machinery and equipment, as well as animal handling.

In addition, an **Occupational Safety and Health Regulation under the Railway Act** was adopted in British Columbia. This regulation establishes occupational safety and health requirements for workplaces where an employee is engaged in work for a railway. Certain provisions, however, apply only to trains while in operation. The regulation deals with matters such as the occupational safety and health programs and committees, reports and investigations, the right to refuse dangerous work, training and instruction of employees, the Workplace Hazardous Materials Information System, levels of lighting, levels of sound, electrical safety, sanitation, hazardous substances, personal protective equipment, hand tools and material handling, design and construction of rolling stock, first aid, and the safe occupancy of the workplace.

Nova Scotia adopted, on July 24, 1992, the **Nova Scotia Offshore Area Petroleum Drilling Regulations under the Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act**. This regulation establishes, among other things, provisions respecting the safe operation of offshore oil or gas drilling installations. It provides the conditions under which drilling program authorizations will be issued, including many health and safety requirements, such as the control of hazards, equipment standards, alarm and communication systems and rescue measures.

Ontario recently adopted the **Health Care and Residential Facilities Regulation under the Occupational Health and Safety Act**. This regulation provides for occupational health and safety in health care and residential facilities. It deals with matters such as notices of accidents, the duty to establish safety measures and procedure, personal protective equipment, ventilation, heating, lighting, restricted and confined spaces, various kinds of equipment including electrical equipment, compressed gas cylinders, ladders and scaffolds, explosive hazards, anaesthetic gases, antineoplastic drugs, flammable liquids, material handling, as well as housekeeping and disposal of waste. This regulation came into force on June 1, 1993.

In October, 1992, Ontario adopted the **Mines and Mining Plants Regulation under the Occupational Health and Safety Act**. This regulation amends the Mines and Mining Plant Regulation with respect to, among other provisions, mine designs, ground support systems, power supply for equipment and machinery, blasting, self-propelled underground vehicles, cranes, hoists and other machinery, and eating areas.

Similarly, **Quebec** adopted the **Regulation respecting occupational health and safety in mines under the Occupational Health and Safety Act**. This regulation sets out occupational health and safety requirements that apply to mines, to certain mining operations such as treatment and processing mills and to buildings, warehouses, garages and plants located at the surface in which work is performed in relation to exploration and extraction of a mineral substance. The regulation deals with various matters such as personal protective equipment, check-in controls, monitoring of work stations, mine rescue teams and equipment, first aid, protection from dangerous or toxic substances, minimum age of workers and registers to be kept and notices to be given in given circumstances. The regulation also contains provisions concerning the fitting-out and the quality of the work environment, safety measures to be taken (such as installing an alarm system, preparing an evacuation plan and staging evacuation drills), the safety of motorized vehicles, hoisting plants and various other equipment and installations, the handling and use of explosives, and establishes special provisions for certain types of work. This regulation came into force on March 17, 1993.

C. Safety in High Risk Processes or Operations

In October, 1992, the **federal government** amended Part XI of the **Canada Occupational Safety and Health Regulations, Amendment, under the Canada Labour Code**, which prescribes worker safety in confined spaces. New provisions have been added to require consultations with the safety and health committee or representatives in the development of safe entry procedures, to expand the requirement for an initial hazard assessment prior to developing entry procedures, to regulate "hot work" in confined spaces, and to provide for the distribution and retention of records of hazard assessments and entry procedures. A definition of "class of confined space" has been added and the regulation provides that, where a confined space falls into such a class, it usually suffices to undertake a hazard assessment and apply the safety measures adopted for the class in general. In addition, the sequence of the provisions has been rearranged and new headings have been inserted to reflect each distinct requirement in order to make the regulation easier to read and understand.

The regulation makes clear the requirement that an employer must appoint a qualified person to carry out a hazard assessment prior to establishing the required entry and emergency procedures, to determine the physical and chemical hazards which might be present, to identify the tests which must be carried out prior to entry, and to provide a signed written report of the assessment, a copy of which is to be made available to the safety and health committee or representative. However, the hazard assessment need only be carried out for confined spaces which have never been the object of such an assessment. Where such an assessment has been carried out, the qualified person must review the report at least once every three years to verify that conditions existing at the time of the initial hazard assessment have remained unchanged. Further, where a confined space has not been entered, and no entry is scheduled, the review of the assessment report need not be done until entry is planned.

An employer is required to establish, in consultation with the safety and health committee or representative, an entry permit system where reasonably practicable. The object of this provision is to prevent untrained persons from gaining access to a confined space without proper precautions being taken. It is likely that issuance of permits will not be required in most cases because persons that are regularly required to enter a confined space are considered "qualified" persons.

A new provision requires that no person close off a confined space until a qualified person has verified that no person is inside it.

The regulation also provides that, unless a qualified person has determined that the work can be done safely, no hot work can be performed in a confined space that contains an explosive or flammable substance in a concentration in excess of 10 per cent of its lower explosive limit or oxygen in a concentration in excess of 23 per cent. Where hot work is to be performed in a confined space that contains hazardous concentrations of flammable or explosive materials, a qualified person must patrol the area surrounding the confined space and maintain a fire-protection watch. Specified fire extinguishers must be provided and kept in the immediate vicinity. Where an airborne hazardous substance may be produced by hot work in a confined space, no person can enter or occupy the confined space unless the confined space is purged and ventilated in accordance with the regulation, or the person uses a respiratory device that meets the requirements of these regulations.

The period of retention of specified reports and other records has been increased from two to ten years, to permit detection of adverse effects from exposure to chemicals, dusts or other substances over a longer period of time. To avoid excessive paper storage, machine readable copies may be kept. In the case of entry reports, only those where an alarm sounded during entry or while a person was within a confined space need to be kept for ten years. In all other cases, reports must be kept for a period of two years.

Finally, other existing provisions of the confined space regulation have essentially remained unchanged.

Manitoba amended Man. Reg. 108/88 R in order to provide a blaster safety program, the issuance of blasters' certificates for the specified classes of work, as well as the fees payable to attend the safety program and to obtain an examination or re-examination for a blaster's certificate.

New Brunswick also amended its regulation with respect to blasting operations. New Brunswick Regulation 91-191 was amended to replace the

word "powderman" wherever used by the word "blaster". This regulation also requires that where more than one blaster is involved in a blasting operation, an employer must designate one of the blasters to supervise the blasting operation. A special temporary exemption, valid until June 1, 1993, is awarded to blasters who have conducted or supervised blasting operations for a period of six months or more before the coming into force of this regulation in the open mining industry from the new requirement for blasters to obtain a certificate of qualification as a blaster issued under the Apprenticeship and Occupational Certification Act.

In addition, New Brunswick adopted a **Code of Practice for Workers Working Alone under the Occupational Health and Safety Act**. This regulation requires an employer to establish a code of practice to ensure, so far as is reasonably practicable, the health and safety of an employee who works alone from the risks associated with the work assigned. Among the information that the code of practice must contain are the requirements for an employer to provide any equipment for the protection of the employee and to provide training with respect to the code of practice. Where there is an inconsistency between a code of practice and any regulation, the regulation prevails to the extent of the inconsistency.

Prince Edward Island amended its **Occupational Health and Safety Regulation** to provide that the Minister may establish classifications for operators of hoisting apparatus, establish a Board of Examiners to examine candidates for the various classifications, issue certificates of qualification, and determine fees payable for examinations and certifications. This regulation came into force on July 17, 1993.

Quebec adopted a **Regulation respecting concrete pumps and distribution masts under the Act respecting occupational health and safety**, which establishes the standards for the manufacture, installation and use of equipment used to pump concrete. It also regulates the supply, sale or leasing of such equipment, as well as its testing, inspection, repair and maintenance.

Saskatchewan adopted a **Radiation Health and Safety Regulations under the Radiation Health and Safety Act**. This regulation establishes, among other things, the permissible dose limits to radiation from ionizing and non-ionizing sources for both workers and others persons. The regulation clearly puts the onus on the owner of the radiation emitting equipment to control its use and to report on excessive exposure of workers to the Radiation Safety Unit of the Saskatchewan Department of Human Resources, Labour and Employment and/or to the National Dose Registry of Health and Welfare Canada. Part 11 of the regulation deals with ionizing radiation, such as radiation from external sources (i.e. ionizing radiation installations and any radioactive substance associated with operations licensed under the Atomic Energy Control Act (Canada)), from all radioisotopes ingested or inhaled in the course of employment, as well as from inhaled radon daughters and thoron daughters. Part III of the regulation deals with non-ionizing radiation, such as ultraviolet radiation, including from suntanning equipment used in commercial tanning salons, lasers, laser scanners and laser light shows, ultrasound equipment, and microwave radiation. With respect to ionizing radiation, the owner of equipment emitting such radiations must ensure that occupational workers are exposed to as low an effective dose as reasonably achievable with economic and social factors taken into consideration. The effective dose must not exceed an average of 20 mSv per year on the whole body during a period of five consecutive years, and must not exceed 50 mSv in any one year. Other dose limits are specified in relation to specific body parts, and to the level of exposure at which monitoring and reporting is required. Where an occupational worker reports to the owner of the equipment that she is pregnant, the owner must make arrangements to ensure that the effective dose equivalent received by the pregnant worker at the surface of the abdomen does not exceed two mSv during the remainder of the pregnancy.

With respect to non-ionizing radiation, occupational exposure limits are established for ultraviolet radiation, ultrasound and microwave radiation. Emission limits are set for laser scanners. In addition, the owner of specified classes of laser devices must ensure that no part of the body of any person is exposed to the direct beam of the laser except under strictly controlled circumstances. The regulation makes note of the fact that suntanning equipment, laser scanners and microwave ovens sold in Canada must meet the requirements of the Radiation Emitting Devices Act (Canada), and that this regulation imposes essentially the same requirements on the use and operation of such devices.

In the case of both ionizing and non-ionizing radiation, the regulation specifies other owner responsibilities, such as ensuring the equipment is properly shielded, inspected and maintained, providing proper labelling of equipment, installing warning signs in conspicuous places and ensuring that occupational workers are trained in the proper use of the equipment. In some cases, the operators of the equipment must be members of specified professional associations, or must work under the close supervision of a doctor or dentist. Finally, the regulation requires lasers and laser scanners to be classified in accordance with International Electrotechnical Commission IEC Standard, Publication 825, first

edition, 1984, entitled "Radiation safety of laser products, products, equipment classification, requirements and user's guide".

This regulation, which was published in Part II of the Saskatchewan Gazette as R.R.S., Ch. R-1.1, Reg. 1, came into force on February 9, 1993.

D. Miscellaneous

Alberta proclaimed parts of the *Safety Codes Act*, described in the 1991-92 edition of the *Highlights of Major Developments in Labour Legislation*. Section 1, which deals with the interpretation of the Act, and sections 16, 17, 18, except for clause b), 19 and 20, which deal with the establishment of the Safety Codes Council, came into force January 27, 1993, in anticipation of the proclamation of the remainder of the Act. The Safety Codes Act may be found under the reference: Chapter S-0.5, Statutes of Alberta, 1991.

Alberta recently amended this Act by way of the **Safety Codes Amendment Act, 1993**. This Act specifies that, in addition to others listed in the Safety Codes Act, no actions lie against "accredited agencies" for exercising functions under the Act, amends the criteria for the selection of the members of the Safety Codes Council, determines the expenses that may be paid to the members of the Council while travelling, establishes certain powers of the Council with respect to spending and the charging of fees. Section 3 of this Act, respecting the selection of Council members, came into force on September 1, 1993. The remainder of the Act is to come into force upon proclamation.

Ontario amended its **Workplace Hazardous Materials Information System Regulation under the Occupational Health and Safety Act** (Regulation 860 of R.R.O. 1990) in order to include at section 19 a reference to an appeal board established under the subsection 43 (1) of the Hazardous Materials Information Review Act (Canada), and to add, at section 20, a second subsection which specifies that a label or material safety data sheet relating to a product for which a claim for an exemption from disclosure has been made must nonetheless meet the requirements of the WHMIS Regulation, excluding the information for which the exemption is sought.

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