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Canada

Labour

Archived - Highlights of Major Developments in Labour Legislation (1993-1994)

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August 1, 1993 to July 31, 1994

INTRODUCTION

Between August 1, 1993 and July 31, 1994, 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 Saskatchewan's *Labour Standards Act* (among others, with respect to part-time workers, parental leave, the job modification or reassignment of a pregnant employee, the protection of injured workers, protection against arbitrary dismissals, notices of lay-off and termination of employment, and administration and enforcement), a review of the administration and enforcement provisions of Alberta's *Employment Standards Code*, the introduction of a 40-hour week for all employees in Newfoundland, the protection of homeworkers in Ontario and Saskatchewan, the adoption of a *Skills Development and Fair Wages Act* in British Columbia, and the adoption of an *Employment Equity Act* in Ontario. In addition, the general minimum wage rates of Ontario and Quebec were increased during the period under review.

In the field of industrial relations, there was a reform of the general collective bargaining law in Saskatchewan, and amendments were made to the corresponding legislation in Newfoundland, New Brunswick, Quebec and Prince Edward Island. In addition, New Brunswick and Alberta passed legislation to merge labour boards, and Newfoundland made public in June 1994 a White Paper proposing, among other things, special labour relations provisions for eligible new business enterprises. In the public sector, Ontario adopted a new collective bargaining law applying to public servants, New Brunswick amended its *Public Service Labour Relations Act*, and a provincial two-tiered system of collective bargaining in the public education sector was introduced in British Columbia. With respect to expenditure control measures in the public sector, laws were proclaimed, adopted or modified at the federal level and in Quebec, Nova Scotia, Prince Edward Island and the Yukon Territory. Moreover, during the period covered by this report, ad hoc emergency laws were passed in Ontario and at the federal level, and, in British Columbia, regulations were adopted under existing legislation to assist in the settlement of some labour disputes. Legislative changes affecting specifically the construction industry were also adopted in Quebec, Ontario and Nova Scotia. Lastly, a collective bargaining law applying to the agriculture and horticulture industries was enacted in Ontario, and a law on collective bargaining in the fishing industry was passed in British Columbia.

Among important changes to occupational safety and health legislation are the adoption of legislation concerning smoking in the workplace in Manitoba and Newfoundland; regulations respecting violence in the workplace and first aid requirements in British Columbia; and a regulation providing the staged reduction of exemptions from the requirement to establish joint occupational health and safety committees in Ontario.

I. EMPLOYMENT STANDARDS

A. Proclamations and Repeals

Alberta has repealed its *Industrial Wages Security Act*, effective December 2, 1993. This Act provided for the payment by an employer to the Minister of Labour of securities to cover the wages of employees engaged in the performance of public works. Notwithstanding the repeal of the Act, the Minister must retain any security held at the time of the repeal until the expiry of the period during which a claim may be made against it or, where a claim has been made, a final decision disposing of the claim is rendered.

Saskatchewan proclaimed in force Bill 38, *An Act to amend the Saskatchewan Human Rights Code* (S.S. 1993, c. 61), effective July 15, 1993. This Act added sexual orientation and family status to the list of proscribed grounds for discrimination in matters related to employment.

B. Legislation of General Application

Alberta gave royal assent to Bill 4, the *Employment Standards Code Amendment Act, 1994* on May 2, 1994. The Act permits the Director of Employment Standards to engage persons to perform services for and otherwise assist the Director and officers in administering the Code. It also provides for the recovery of all or part of the costs related to the administration of the Code. The Director is authorized, by regulation, to charge fees for such things as conducting employer audits, the filing of complaints, applications and appeals, the investigation and mediation of complaints, the issuing of documents, and the filing, registering, and enforcing of orders. In addition, the Act provides that an officer with whom a complaint is lodged, may refuse to accept or investigate it if the officer considers that the complaint is frivolous or vexatious, that there is insufficient evidence to substantiate the complaint, or that there are other means available to the employee to deal with the subject-matter of the complaint which must be pursued before the complaint is accepted or investigated. The officer may also refuse to deal with a complaint if the employee is proceeding with another action or has sought and obtained a recourse before a court, a tribunal, an arbitrator, or another form of adjudication. An appeal of an officer's decision may be lodged with the Director, whose decision is final and binding. The Act deems directors and officers of a corporation that has committed an offence guilty of the offence, if they have not actively opposed or tried to prevent it. Finally, the Act increases the maximum amounts of fines payable by a person guilty of an offence, from $10,000 to $100,000 in the case of a corporation, and from $5,000 to $50,000 in the case of an individual. This Act will come into force on a date fixed by proclamation.

British Columbia adopted the *Employment Standards Amendment Act, 1993*. This Act amends the *Employment Standards Act* to, among other things, make it clear that where certain provisions of a collective agreement concerning a particular matter, when considered together, do not meet or exceed the minimum requirements of the Act respecting the same matter, the provisions of the Act are considered to be incorporated in the collective agreement and the grievance procedure is deemed to apply for the resolution of any dispute concerning the application or interpretation of the provisions in question. This Act permits minor variances with specified provisions of the *Employment Standards Act* if, on the whole, the variances meet or exceed the requirements of the Act. However, any agreement to waive a requirement of the Act is void if it does not fall within this exception. The Director of Employment Standards must be notified of such variances at the time of the filing of the collective agreement. These provisions came into force on January 1, 1994, or on the date, not later than April 1, 1994, set out in an order of the Director or his/her representative, made upon a joint application of the parties to a collective agreement to delay their coming into force.

The Act amends the hours of work and overtime pay provisions to allow for regular patterns of work scheduling under collective agreements that provide for averaging of hours of work over not more than eight consecutive weeks, pattern which must repeat itself over a period of at least 26 weeks. These provisions came into force on January 1, 1994.

The Act provides that an employee who is covered by a collective agreement and who is laid off on an individual termination may choose to be paid any severance pay under the collective agreement or to maintain his or her recall rights under the collective agreement. Where an employee does not make the choice between the severance pay or the recall rights, the employer must pay the amount of the severance pay in trust to the Director at the expiry of the 13th week following the lay off. The sum is paid to the employee who renounces the right to be recalled or if the recall period expires, or is remitted to the employer if the employee accepts employment made available under the right of recall. An employee who accepts severance is deemed to lose his or her recall rights, and an employee who accepts employment made available under the right of recall is deemed to have abandoned the right to severance pay. These provisions are deemed to have come into force on June 28, 1993, and are retroactive to the extent necessary to give them effect on that date.

The Act also provides that an employee terminated as part of a group of 50 or more employees must receive either the severance pay (i.e. pay in lieu of notice) or the greater of:

a. the total of the individual notice of termination plus the group notice of termination; or

b. the notice required by an applicable collective agreement.

Where an employee continues to be employed after the expiry of the notice period, the notice has no effect. These provisions are deemed to have come into force on June 28, 1993, and are retroactive to the extent necessary to give them effect on that date.

Certain other provisions of this Act, which incorporate references to the Labour Relations Code and the Labour Relations Board to reflect their change of name, came into force on August 31, 1993, by a proclamation contained in B.C. Reg. 277/93 published in the *British Columbia Gazette*.

Newfoundland adopted the *Labour Standards Regulations, 1993* under the *Labour Standards Act*, which repealed and replaced the *Labour Standards Regulations, 1988*, effective for the most part October 15, 1993. This regulation re-enacts most of the provisions of the former regulation.

There are, however, some substantive changes, the most salient of which is the adoption of a standard workweek of 40 hours for all employees, replacing provisions establishing standard working hours of eight in a day and 40 hours per week for "assistants" (i.e. shop employees), and 44 hours per week for other employees. This amendment came into force on December 31, 1993.

Consequential amendments provide for the repeal of the definition of the term "assistant", and the replacement of that word wherever it appeared in the regulation by the term "employee" and the amendment of minimum call-in pay provisions to apply to all employees, instead of only to "assistants" as provided in the previous regulation.

Weekly rest day and rest periods provisions have been amended to specify that they do not apply to, in addition to the previously established exceptions, employees working alone and in circumstances where it is impracticable for such an employee to take a rest period.

The minimum wage rate and the minimum overtime rate remain unchanged. However, overtime provisions have been amended to clearly establish that, with respect to live-in housekeepers or babysitters, only those that work under an arrangement by which they are entitled to time off with pay in lieu of overtime are excluded from the overtime pay provisions.

The provisions concerning the maximum deductions for room and board, as well as those concerning the furnishing and maintenance of uniforms or special apparel have been repealed.

Finally, the exemptions from the notice of group termination provisions of the Act have been amended to include the situation where an employer transfers, assigns or conveys an undertaking to another employer or firm, and the undertaking, along with the employment of employees, is continued and uninterrupted.

Ontario has adopted a *Regulation to amend the General Regulation* under the *Employment Standards Act*, in order to provide minimum employment standards for homeworkers. Previously, homeworkers were excluded from hours of work, minimum wages, overtime pay and paid public holidays provisions of the *Employment Standards Act*. This regulation revokes those exclusions, and fixes a minimum wage rate for homeworkers of 110 per cent the general minimum wage rate, or $7.37 per hour at present. This rate applies to all homeworkers, including to a student under 18 years of age who works not more than 28 hours in a week or during a school holiday. In addition, the regulation provides that the employer must advise the homeworker in writing of the type of work he or she is being employed to perform and of the basis on which the homeworker is to be remunerated. If the employer requires a specific number of articles or things to be manufactured by the homeworker within a certain period of time, the employer must advise the homeworker in writing of the number and the date or time.

Saskatchewan recently adopted Bill 32, the *Labour Standards Amendment Act, 1994*, which contains the following changes:

Protection and benefits for part-time workers

An employer who provides a non-statutory benefit to employees who work 30 hours or more per week is required to provide that benefit to employees who work less hours, on a pro-rated basis. The definition of "eligible employee" and "benefits" and issues concerning the pro-rating

of benefits, equivalent benefits and statutory exemptions, will be addressed by regulation following the receipt of the recommendations of the Joint Commission on Benefits and Hours of Work for Part-time Workers. (The government has proposed that this provision apply to organizations with more than 20 employees.)

Where required by regulation and where no other agreement exists respecting the distribution of work, an employer must "offer to part-time workers, in accordance with their length of service and qualifications, any additional hours of work that become available", except in an emergency. (The government has proposed to establish by regulation that this provision apply to organizations with more than 50 employees.) An employer cannot discipline an employee who refuses to work additional hours under these circumstances. The definition of "additional hours" as well as statutory exemptions and the use of employer discretion when allocating additional hours will be addressed in regulations following the receipt of the report of the Joint Commission.

Public holiday pay is extended to all employees and must be calculated on a pro-rated basis in the case of other than salaried employees. The minimum sum to be paid to employees who do not work on a holiday is a sum equal to their regular salary, where they are paid a salary, or one-twentieth ($1/20^{th}$) of the wages earned in the four weeks preceding the holiday, in any other case. The minimum sum to be paid to salaried employees who work on a holiday is a sum equal to one day's salary plus 1.5 times their regular salary for each hour worked. Other employees who work on a holiday are entitled to be paid one-twentieth ($1/20^{th}$) of the wages earned in the preceding four weeks, plus 1.5 times the hourly rate of wages for each hour worked. "Wages" includes annual holiday pay for any vacation time that may have been taken within the four weeks preceding the public holiday.

Similarly, pay in lieu of notice for lay-off or discharge must be calculated on the basis of the average weekly wage earned in the previous 13 weeks.

The Act makes clear that the provisions of the *Pensions Benefits Act, 1992* governing pension entitlement will prevail over those of the *Labour Standards Act*. (Amendments to the *Pensions Benefits Act*, which provided part-time workers with increased access to pension benefits, came into force on January 1, 1993.)

Maternity and other family-related leaves

The qualifying period for maternity leave is reduced from 52 to 20 weeks. A pregnant employee who is currently employed and has accumulated a total of 20 weeks of employment with the same employer during the 52 weeks preceding the commencement of the leave is entitled to 18 weeks of maternity leave.

This Act makes clear that an employee who suffers a miscarriage or still birth, as well as a pregnant employee who must cease work immediately for medical reasons, is entitled to immediate maternity leave. The employee must provide the employer a medical certificate attesting to the circumstances in which the leave was taken within 14 days of the commencement of the leave.

Where the pregnancy of an employee would unreasonably interfere with the performance of her duties, the employer may, if no opportunity exists to modify her duties or reassign her to another job with no loss of wages or benefits, require her to commence her maternity leave at any time within 13 weeks prior to the estimated date of birth. The onus is on the employer to prove that the pregnancy would unreasonably interfere with the employee's duties and that no opportunity exists to modify her duties or to reassign her to another job.

A parental leave of up to 12 weeks is available to any employee (both parents can qualify) who is currently employed and has accumulated 20 weeks of employment with the same employer during the 52 weeks preceding the commencement of the leave. An employee who wishes to take maternity and parental leave must take the two leaves consecutively. The Act repeals the six weeks of paternity leave.

An adoption leave of up to 18 weeks (up from six) is available to an employee who is to be the primary caregiver of the adopted child, is currently employed and has accumulated 20 weeks of employment with the same employer during the 52 weeks preceding the commencement of the leave.

In the case of all the leaves discussed above, the Act requires the employee to apply for the leave at least four weeks prior to the date on which it is to commence. Special provisions apply if the employee is unable to comply with this provision.

The Act provides for the accrual of seniority, the continuance of recall rights and the right to continue to contribute to, and to participate in, a benefit plan throughout the period of maternity leave, parental leave or adoption leave. Consequently, benefit plans that do not presently allow for the continued participation of employees on leave must be modified within three years of the coming into force of this Act.

Temporary lay-off notice

No employer can lay-off or discharge an employee with 13 consecutive weeks of service or more because of a shortage of work without giving that employee one week's notice for each year, or fraction of a year, of employment, to a maximum of 10 weeks' notice. However, the period of notice may be altered by regulation. A lay-off is defined as a temporary termination for a period exceeding six days. A year of employment is a period of 52 consecutive weeks during which the employment is not broken by a period greater than 13 consecutive weeks (up from 14 days).

An employer cannot adjust an employee's wages downward after having given a notice of lay-off to that employee. In addition, the employer must make staged payments to the employee of the amount owed as pay in lieu of notice in accordance with the regular pay schedule during the first 30 days of lay-off. After 30 days, the employer must pay to employee any balance owing. Where a laid-off employee is called back to work within the period of notice, the pay in lieu of notice must be reduced by the amount of wages earned by the employee during the remaining period of notice.

Protection against arbitrary dismissals

An employee terminated without just cause is entitled to two weeks' notice, where employed less than one year, or to four weeks' notice, where employed one year, but less than two. An employee is entitled to one additional week of notice for every additional year or fraction of a year of employment thereafter, to a maximum of 14 weeks' notice. An employer cannot adjust an employee's wages downward after having given a notice of individual termination to that employee.

The Act prohibits the dismissal of an employee with 13 consecutive weeks of service or more for an absence from work due to serious illness or injury for a period not exceeding 12 weeks in any 52 week period. This period is extended to 26 weeks where the employee is receiving compensation pursuant to the *Workers' Compensation Act*. In the case of minor illnesses or injuries, the employer cannot dismiss an employee for absences not exceeding a total of 12 days in a calendar year, except where the employer can demonstrate that the employee has a record of chronic absenteeism and that there is no reasonable expectation of improved attendance.

Where an employee becomes disabled and the disability would unreasonably interfere with the performance of his or her duties, the employer must, where reasonably practicable, modify the duties or reassign the employee to another job. The onus is on the employer to prove that it is not reasonably practicable to modify the employee's duties or to reassign him or her to another job.

New whistleblowing protection

The illegal dismissal provisions of this Act protect employees from discharge, threat of discharge, or from any discrimination for reporting any illegal activity at work (for which, upon conviction, a fine or imprisonment is prescribed), or for testifying or participating in any proceeding. This protection extends to whistleblowing activities relative to this Act, any other Act of the province, and any Act of the Parliament of Canada. However, this protection does not apply where the actions of an employee are vexatious.

New notice of group termination

Where 10 or more employees are to be terminated within a four week period, the employer must give to the minister, each employee and any trade union representing employees affected, a notice of termination. The length of notice will be established by regulation. (The government has

proposed that the period of notice vary from four to 12 weeks according to the number of employees terminated.) The notice period runs concurrently with the required notice of individual termination or lay-off. The notice must contain information concerning the number of employees affected, the effective date or dates of their terminations and the reasons for the terminations.

Hours of work and time off

Employers are required to provide notice to employees of when work begins and ends over a period of at least one week or, where work is done in shifts, when each shift begins and ends, as well as when each meal break begins and ends. Except in certain cases, the notice must be in writing and may be given by posting notices in a conspicuous place. In addition, the employer must give at least one week's notice of changes to the employee's work schedule.

The Labour Standards Director may, upon written application from the employer and the employees or their representative or trade union, give authorization to vary the above notice requirements. An automatic exemption is granted when sudden or unusual occurrence or condition arises that could not have reasonably been foreseen by the employer.

Employers must schedule hours of work in a way that provides each employee with a rest period of at least eight consecutive hours in any 24-hour period, except in an emergency. An employee is entitled to refuse to work, free of disciplinary action, where the work schedule does not permit this.

Each employee is entitled to a meal break of at least one-half hour after each consecutive period of six hours of work. Where a majority of employees agree, the Director may authorize alternate arrangements to be made. Similarly, an exemption may be awarded where the employer obtains the written consent of the union.

An amendment to the averaging of hours of work provisions requires that where the Director grants an averaging permit, he or she must determine when the employer is required to pay the overtime rate to the employees.

The Minimum Wage Board may make regulations requiring employers to provide free transportation home to any employee or class of employees who finish work between 12:30 a.m. and 7:30 a.m. Previously, this provision applied to female employees only.

Annual vacations with pay

The Act makes clear that the calculation of annual holiday pay is based on total wages (i.e. gross wages, overtime pay, unpaid wages, the cash value of board and lodging received as part payment of wages, etc.) earned in the year preceding the time the vacation became due.

Where the employer cancels or postpones an employee's annual holiday scheduled at a time previously agreed to, the employer must reimburse the employee for any monetary loss suffered by the employee as a result of the cancellation or postponement.

Full coverage of the Act to homeworkers

The Act clarifies that employees who work out of their homes are covered by the *Labour Standards Act*, and that the location of the workplace is not relevant in determining whether an employer-employee relationship exists. Employers must maintain records setting out the name of homeworkers, their address, and the portion of the labour or services performed at home.

Extended bereavement leave

The Act extends the definition of "immediate family" to include a grandparent, and redefines "spouse" as a the wife or husband of an employee, or a person with whom an employee has cohabited as spouses:

a. continuously for a period of not less than two years; or

b. in a relationship of some permanence, if they are the parents of a child.

Leave of absence to seek nomination and election

Every employer must grant, upon application, a reasonable leave of absence to an employee to seek nomination as a candidate and to be a candidate in a municipal, provincial or federal election, or for election at a school board or district health board. Previously, such leave was

not available for school board or district health board elections. Upon the expiration of the leave, the employer must allow the employee to continue his or her employment without the loss of any privilege connected with seniority accrued at the date the leave began.

Administration and enforcement of the Act

The procedure for serving third party demands is clarified and a mechanism for their collection is provided. Certain criteria, to be met before a third party demand may be served, are established. The Act specifies that the serving of a third party demand binds any debt due by the third party to the employer when the demand is served or accruing due while the demand is in force, to the extent set out in the demand. These sums must be diverted to the Director by the third party. The Director may reissue a third party demand, or the 90 day period during which the demand is in force may be extended if the Director is satisfied that the debt will be paid within a reasonable time.

Wage assessments under the *Labour Standards Act* may include overtime, annual holiday pay, public holiday pay and pay in lieu of notice as well as other monies owing resulting from certain monetary losses or expenses incurred that are compensable under the Act. The Labour Standards Director is empowered to issue a wage assessment against an employer, where the Director knows or has reason to believe that the employer has failed or is likely to fail to pay wages. The Director may also issue a wage assessment against a corporate director, where the corporate director is liable for wages. Wage assessments may be amended or be revoked, if necessary, by the Labour Standards Director. Employers or corporate directors have the right to appeal a wage assessment within 21 days after the date of being served the assessment.

The employer or corporate director against whom a wage assessment is made is liable to pay the expenses incurred in the administration of the wage assessment, if the assessment is not appealed or if it is upheld on appeal. Regulations will prescribe a fee reflective of the number of times wages are assessed against an employer. (Proposed fees are 20 per cent of the administrative costs of collecting a first wage assessment, 100 per cent of the costs of collecting a second wage assessment and 200 per cent of the costs of a third or subsequent assessment.)

This Act specifies that the Labour Standards Director has the right to represent employees in any proceeding pursuant to this Act or pursuant to any other Act of the province or an Act of the Parliament of Canada and requires that the Director act in a reasonable manner in exercising those powers. The Director is also empowered to negotiate settlements on behalf of an employee, where there is a considerable advantage to do so and the employee requests it, or where the employer produces evidence that satisfies the Director that full settlement of unpaid wages will lead to the cessation of the employer's operation. However, in the latter case, a settlement cannot be made for less than the amount for which corporate directors would be liable pursuant to the *Labour Standards Act* (up to six months' wages).

The time limit to file a claim for unpaid wages pursuant to the Act is one year from the date the wages became payable. A prosecution under the Act may not be commenced after the expiration of two years from the date of the commission of the alleged offence.

The Act clarifies that the standards imposed by the *Labour Standards Act* are minimum requirements, and that more generous terms provided by contract, agreement or regulation prevail over those of the Act and, inversely, that the terms of the Act are deemed to be incorporated in current collective agreements where they contain less generous terms.

Wherever authorization is sought from the Director to vary a standard in accordance with the Act, the Director may require a vote by secret ballot to determine if the majority of employees are in agreement with the proposed variation.

This Act increases the maximum penalty for a first offence to an amount not exceeding $2,000 (up from $200). The fine for a second offence

within six years of the first is increased to $5,000 (up from $500), and the fine for a third offence within six years of the second is established at $10,000. Imprisonment is no longer a consequence of the failure to pay a fine.

A new adjudication and appeals system

Where an appeal of a wage assessment is lodged, an adjudicator must be appointed from a list established following consultations with business and labour. The adjudicator has the same powers as a commissioner appointed pursuant to the *Public Inquiries Act*, in addition to those set by the *Labour Standards Act* and regulations. A decision of an adjudicator may be appealed to the Court of the Queen's Bench and the Court of Appeal only on a question of law or jurisdiction.

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

C. Minimum Wages

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 January 1, 1994. The general rate has been increased from $6.35 to $6.70 an hour. This represents a 5.5 per cent increase. The rate payable to students under 18 employed for not more than 28 hours a week or during a school holiday has been raised to $6.25, whereas employees serving alcoholic beverages are entitled to $5.80 per hour.

Quebec has raised its minimum wages on October 1, 1993, by amendment to the *Regulation respecting labour standards* under the *Act respecting labour standards*. The general minimum wage was increased from $5.70 to $5.85 per hour. The minimum wage rate payable to employees who usually receive gratuities was raised from $5.00 to $5.13 per hour, and that payable to domestics who live in their employer's home from $221 to $227 per week.

Quebec has also published a draft regulation announcing its intention to amend the minimum wage provisions of the *Regulation respecting labour standards*, effective October 1, 1994. The general minimum wage will increase to $6.00 per hour, from $5.85. The rate payable to employees who usually receive gratuities will increase from $5.13 to $5.28 per hour and that payable to domestic workers who reside in their employer's home will increase from $227 to $233 per week, effective on the same date.

D. Fair Wages

British Columbia adopted the *Skills Development and Fair Wage Act*, which applies to all publicly funded construction projects in the province. However, some exceptions respecting types of construction work and the worth of a contract can be made by regulation. Its purposes are to ensure skill development training in the construction industry, ensure high quality work standards by requiring that employees hold the appropriate qualifications and ensure employees receive fair wages for work performed on publicly funded construction projects.

The Act requires every project to which it applies to meet a certain number of requirements, including requiring most trade workers to hold the appropriate certificate of apprenticeship, a certificate of qualification or a Red Seal Program certificate. It requires every contractor or subcontractor to comply with this Act and, among other things, pay fair wages to their workers in accordance with the regulations and keep records on their workers' qualifications, rates of pay and hours of work.

Fair wages under this Act are deemed to be wages for the purposes of the *Employment Standards Act*, and the collection, review and appeal procedures of that Act apply as if they were incorporated in this Act. In addition, the Labour Standards Director may make orders requiring compliance with a particular section, or to remedy or cease doing an act. A person who commits an offence under this Act is liable to a fine not exceeding $10,000.

Regulations may be made, among other things, establishing fair wages and the method of calculating those rates, governing the procedures to be followed in the execution of contracts with tendering agencies, prescribing standard provisions to be included in those contracts and governing exemptions from any or all provisions of this Act.

Several acts are amended by this Act, including the *Drainage, Ditch and Dykes Act*, the *Ministry of Transportation and Highways Act*, and the *Municipal Act*. In addition, the *Wage (Public Construction) Act* is repealed. This Act will come into force by proclamation.

E. Sunday Shopping

Nova Scotia adopted on November 25, 1993 *An Act to Amend Chapter 402 of the Revised Statutes, 1989, the Retail Business Uniform Closing Day Act*. This Act permitted retail businesses to be open on Sundays between noon and 8:00 p.m. from October 1, 1993 to December 31, 1993, except on Boxing Day. Notwithstanding any lease or agreement, no owner or operator could be forced to open on those days. Similarly, notwithstanding any contract of employment or agreement, no person could be forced to work on those days. The Act prohibited retaliation against any person who refused to operate a retail business or to work on any of the Sundays in question. In addition, a municipality or municipal council could not prohibit or restrict the operation of retail businesses on those days. This Act came into force retroactively to October 1, 1993.

Ontario gave royal assent to *An Act to amend the Retail Business Holidays Act in respect of Sunday Shopping* on July 29, 1993. This Act, which had received first reading on June 3, 1992, removes "Sunday" from the list of holidays under the *Retail Business Holidays*

Act, and adds "Easter Sunday" to that list. It repeals section 4.4 of the Act, which provided for the opening of retail establishments on Sundays in December. This Act also provides that a provision in a lease or other agreement that has the effect of requiring a retail business establishment to remain open on a holiday or on a Sunday, whether or not the Sunday is a holiday, is of no effect even if the lease or agreement was made before this Act was given royal assent. This Act is deemed to have come into force on June 3, 1992.

Prince Edward Island recently adopted the *Exemption Regulations* under the *Retail Business Holidays Act*. This regulation exempts tourism related businesses from the obligation to close a retail business on holidays and Sundays, if the operator has paid all requisite charges under the *Tourism Industry Act*. These businesses remain, however, subject to regulations made under the *Liquor Control Act*. This regulation is deemed to have come into force May 19, 1994.

F. Pay Equity

Ontario adopted a new regulation under the *Pay Equity Act*. The *Regulation respecting Limitations on Maintaining Pay Equity* provides that where the compensation for a male job class that is being used as the basis for job-to-job comparisons is increased as a result of a decision of an arbitrator, board of arbitration or other tribunal other than a decision that results from the failure of the parties to reach an agreement in the course of negotiations, the requirement to maintain pay equity for any female job class is limited as follows. The employer may declare that the male job class for which the compensation has been increased shall no longer be used for comparison with the female job class in the pay equity plan. To do so, the employer must, within 30 days of the decision, give written notice of the declaration to the bargaining agent for the female job class. The increase in compensation consequently does not apply to the female job class, nor do any retroactive increases in pay resulting from the decision.

Within 90 days of the declaration, the employer and the bargaining agent must negotiate a new comparison for the female job class using the job-to-job or the proportional value methods of comparison. If the parties cannot agree on a new comparison within the 90-day period using one of these methods, they must use either a male job class that had previously been identified in preparing the pay equity plan as being of equal or comparable value, with a rate of pay that was the same as the former male job class, or the male job class previously identified with the nearest higher rate of pay to the one of the former male job class.

If the parties are not able to make a comparison by using one of the above alternatives, they must negotiate a comparison using the proportional value method of comparison, and Part III.1 of the Act applies with necessary modifications.

This regulation does not apply in such a way as to reduce the compensation paid to the female job class. This regulation came into force on September 1, 1993.

Prince Edward Island adopted *An Act to Amend the Pay Equity Act*. This Act was introduced on August 6, 1993, to replace Bill 5, by the same title, which had been introduced on June 22, 1993 and was left to die on the order paper. It modifies the implementation date in respect of pay equity adjustments for hospital employees and employees of the University

of Prince Edward Island. For these two sectors, implementation of Stage IV of the pay equity process is deemed to have commenced on January 1, 1993. The Act has enabled the negotiation of a resolution, announced September 24, 1993, to an outstanding pay equity dispute involving hospital employees that had been brought to arbitration.

G. Employment Equity

Ontario proclaimed in force the *Employment Equity Act, 1993*, effective September 1, 1994.

Object

This Act provides various measures to achieve employment equity by giving employers in Ontario a framework to:

- remove barriers to employment and advancement in the workplace;
- promote equal opportunities and treatment; and
- help to make the most out of human resources by using the skills and capabilities of all people of Ontario.

In particular, the object of this Act is to correct systemic and overt discrimination experienced by aboriginal people, people with disabilities, members of racial minorities, and women. The application of objective standards governing hiring practices and employment opportunities, such as those set out in this Act, are required as positive measures to establish a better equilibrium in the levels of representation of these groups in all areas of employment, especially in senior and management positions where they are under represented.

Principles

The five principles that govern employment equity are contained in Part I of the Act, and are as follows:

- members of the designated groups have the right to be considered for employment, hired, retained, treated and promoted for jobs in a way that is free of discrimination and barriers;
- every employer's workforce, at each level and in each job category, must reflect the composition of the community;
- every employer must make sure that workers are treated in a way that is free of systemic (indirect) and deliberate barriers;
- every employer must put in place positive measures to help recruit, employ, retain and promote members of the designated groups;
- every employer must put in place supportive measures that will help recruit, employ, retain and promote members of the designated groups, and benefit the workforce as a whole.

Application

Part II of the Act defines the terms "employer", "employee", and other terms used in the legislation, and identifies the designated groups. It also describes the classes of employers covered by the Act. **Not** covered by the Act are the following:

- employers in the broader public sector (such as municipalities, school boards, universities and the health care system) with fewer than 10 employees;
- employers in the private sector with fewer than 50 employees;
- Police forces covered by the *Police Services Act* (which has its own regulation requiring employment equity plans).

Obligations of the Employer

Part III contains the core provisions of the Act. It requires employers to implement employment equity in accordance with an employment equity plan, and to ensure supervisors and staff responsible for recruiting, hiring, supervising, evaluating or promoting employees comply with the Act. The employer must conduct an employment equity workforce survey to determine the extent to which members of the designated groups are employed in his or her workforce. Employees have the right to decide whether to answer the questions asked in the survey. The employer must review his or her employment policies and practices (called an employment systems review) in order to identify barriers to the hiring, retention, treatment and promotion members of the designated groups in a particular workplace. Those barriers can include terms and conditions of employment that have a negative effect on designated groups. Seniority rights contained in a collective agreement or provided by established practice, however, do not constitute a barrier under the *Employment Equity Act*. Other seniority rights may be determined to be a barrier by a Board of Inquiry established under the Ontario *Human Rights Code*.

The key elements of an employment equity plan, details of which requirements are to be found in the regulations, must provide for:

- how barriers found during an employment systems review will be removed;
- what positive measures will be put into action to help overcome the effects of barriers faced by members of the designated groups. Positive measures could include, for example, training programs, job sharing, and mentoring;
- what supportive measures will be put in place to help designated groups to be recruited, hired, retained, treated and promoted and which may benefit the workforce as a whole (for example, introducing flexible working hours);
- what accommodation measures will be used. Accommodation measures could include, for example, providing appropriate equipment to palliate against specific disabilities;
- goals and timetables for barrier elimination and positive, supportive and accommodation measures. Employment equity plans, developed by the workplace parties, must set targets for each measure and stipulate when each will be introduced and completed;
- goals and timetables for the composition of the workforce. Setting numerical goals for designated group representation in different job classifications is required in order to make the workplace better reflect the community.

An employer may prepare more than one employment equity plan. The plans must cover all of an employer's employees in all workplaces, and must enable the employer to meet the obligations set out in the Act. This provision recognizes the reality that different types of organizations, corporate cultures, workplaces or workforces may exist within a single legal entity, and allows for their continued existence.

The employer must file with the Employment Equity Commission a certificate attesting that a plan has been prepared. The details of what the certificate must contain will be provided by regulation. The Act requires that the Ontario Public Service file its employment equity plan with the Commission. The Commission may exercise discretion whether other employers must file their plan.

The plans must provide reasonable progress toward achieving the principles of employment equity. In addition, every employer must make all reasonable efforts to implement their employment equity plans and to meet the goals and timetables set out in the plans. Employers are required to review and revise their plans every three years, and submit a new certificate to the Commission. Large employers must also provide

information on the results achieved during the previous three years.

Joint Responsibilities

The Act requires bargaining agents, where present in a workplace, to assist in the development of an employment equity plan. They must participate in:

- conducting the workforce survey;
- reviewing the employment policies and practices;
- preparing an employment equity plan;
- revising an employment equity plan.

Employers and bargaining agents must carry out their joint responsibilities in good faith and separately from their regular collective bargaining process. Where there are several bargaining agents representing the employees of the same employer, a committee must be established composed of representatives of the different bargaining agents in equal proportion to the representatives of the employer. The committee must coordinate the joint responsibility activities between the bargaining agents and the employer. Employers are required to provide the appropriate information to the bargaining agents concerning any aspect of the development of the employment equity plan. The requirement to provide information excludes, however, providing confidential business information that could harm the employer's competitive position.

Employees not represented by a bargaining agent must be consulted by their employer about the workforce survey, the review of employment policies and practices, and the development and review of the employment equity plan that affects them.

Employment equity plans must be made accessible to all employees affected by them. The employer must post in each workplace a copy of the certificate that has been filed with the Commission, as well as any other information required to be posted by regulation.

Each employer must keep employment equity records for its workforce. The Commission may require from employers any information specified in the regulation. In addition, information obtained by the Commission under this Act remains accessible to anyone under the provisions of the *Freedom of Information and Protection of Privacy Act*.

Exclusions

Some exclusions from the processes established by this Act may be made by regulation. The Act contains regulation-making authority to apply employment equity differently in Aboriginal workplaces. Also, smaller workplaces in the broader public sector and the private sector can be exempted from specific parts of the Act and regulations. However, exemptions granted to those smaller employers will cease to apply if they grow to employ, in the broader public service, 50 employees, or 100 employees in the private sector.

Implementation:

Different timetables are established for various categories of employers for the completion of their workforce survey, review of their employment policies and practices and preparation of their employment equity plan as follows:

- Provincial government ministries and some governmental agencies will have 12 months following the coming into force of the Act;
- Broader public service employers with 10 or more employees and private sector employers with 500 employees or more will have 18 months;
- Private sector employers with 100 or more but fewer than 500 employees will have 24 months; and
- Private sector employers with 50 or more but fewer than 100 employees will have 36 months from the effective date.

New employers must comply within 12 months from the date they begin to exist, or within 18 months time of the coming into force of the Act, if that period is longer. In the case of employers from the broader public service with fewer than 10 employees and employers from the private sector with fewer than 50 employees that grow to exceed those numbers, the adjusted timetables are 12 months from the date that they first come to employ the specified number of employees, or within 18 months of the coming into force of the Act, if that period is longer. Similarly, if regulatory exemptions granted to smaller employers (as outlined above in *Exclusions*) cease to apply, they must comply within 12 months of the date of the cessation, or within 24 months of the coming into force of the Act, if that period is longer.

The Employment Equity Commission

In general, the Commission has the mandate to: advance the principles of employment equity; monitor and assist employers and employees in complying with the Act and in implementing the goals and principles of employment equity; conduct research and develop policies on employment equity; and play an important role as public educator and facilitator in putting into effect employment equity.

The Commission may hold public consultations or hearings and may appoint advisory councils for the province as a whole or on a regional basis in order to further its aims. Each council would include representatives from business, labour and the designated groups.

The Commission may also issue policy directives to guide employers and employees in implementing employment equity. The directives will come into force as they are published in the *Ontario Gazette*.

The Commission must submit a yearly report of its activities to the Minister of Citizenship, who must table it in the Ontario Legislative Assembly, containing statistics and information on the progress made toward achieving employment equity.

The Commission may conduct an audit of an employer to verify if the employer is complying with the Act. The powers of officers of the Commission include entering a workplace and inspecting relevant documents and information as required.

In addition, the Commission and an employer may try to work out a settlement if the Commission feels that improvements are required to comply with the Act. Nonetheless, the Commission has the power to order an employer to take certain steps to achieve compliance if it considers that any of the following circumstances exist:

- the employer has not conducted a workforce survey;
- the employer has not carried out an employment systems review;
- the quality of the employer's employment equity plan is inadequate or the plan is incomplete;
- the employer has failed to file a certificate (or a plan, if required) with the Commission;
- the employer has not consulted with its employees;
- the employer has not posted or provided access to information as required;
- the employer has not established or maintained proper employment equity records;
- the employer has not submitted reports or other information to the Commission, as required.

The Employment Equity Tribunal

Members of the Tribunal are appointed by the Lieutenant Governor in Council. One member must be designated as chair, and one or more members may be designated as vice-chairs. The chair may appoint a panel of one or more members of the Tribunal to conduct hearings as required. The Tribunal can set its own rules of procedure.

The Tribunal must act as a mediator and adjudicator. It reviews and enforces the orders of the Commission. It also adjudicates disputes about joint responsibility and responds to complaints concerning non-compliance.

The employer may appeal any order of the Commission to the Tribunal within 35 days after its mailing. The Tribunal may rescind, vary or confirm the order of the Commission. If the employer does not appeal within the prescribed time limits, the order of the Commission is deemed to be an order of the Tribunal.

The Tribunal has the power to determine, among other things:

- upon an application by the Commission, whether an employer has complied with the Act. However, an employer is deemed not to have complied with Part III of the Act if the employer has not taken the steps required by its employment equity plan or has failed to achieve the goals set out in the plan. To repel this presumption of proof, the employer must prove to the contrary that the plan does indeed comply, and the employer has made all reasonable efforts to implement the plan and achieve the goals under the plan;
- upon the application of any person, whether an employer has failed to implement an employment equity plan or has failed to achieve the goals under that plan. As is the case above, the presumption of proof lies against the employer, and the means to repel it are available to the employer;
- upon the application of a bargaining agent or an employer, whether the other party's joint responsibilities under the Act have been properly carried out;
- whether two or more employers, where they carry on business activities under common control or direction and have employment policies and practices under common control, should be considered a single employer for the purposes of the *Employment Equity Act*;
- whether intimidation, coercion, penalty or discrimination occurred against any person seeking the enforcement of rights under the Employment Equity Act. The Tribunal can consider various remedies, including the reinstatement of an applicant who was dismissed, or rescinding any penalty imposed on the applicant;
- whether a matter brought before it is within its jurisdiction or whether a complaint is trivial, frivolous, vexatious or made in bad faith;
- whether a complaint is justified, and order that: an employment equity plan be established or amended; an employment equity fund be established by an employer; an administrator be appointed, at the employer's expense, to help develop and implement an employment equity plan; a collective agreement be amended, if the Tribunal believes that no other order will be sufficient to ensure compliance with the Act;
- all questions of law or fact that arise out of any proceeding.

Every application that is made to the Tribunal must first be referred to an officer of the Tribunal who may attempt to bring the parties together to effect a settlement. Applications to the Tribunal may be put in abeyance if an audit of the employer is being undertaken by the Commission.

The Tribunal has exclusive jurisdiction over all questions that relate to the *Employment Equity Act* and its decisions are final and binding. However, the Tribunal may, if it considers it advisable, reconsider any decision or order and vary or revoke it.

Offences and Penalties

Offences under the Act include:

- knowingly provide false information on a certificate filed with the Commission;
- hinder or obstruct an employee of the Commission who is carrying out an audit or executing a legal warrant;
- intimidate, coerce, penalize, or discriminate against another person who is exercising or attempting to exercise a right under this Act, is participating or may participate in any proceeding under this Act, has made a disclosure or may make a disclosure required in a proceeding under this Act, or has complied with or may act in compliance with a requirement of this Act.

Any person who fails to comply with an order of the Tribunal, or who contravenes the Act, is guilty of an offence and on conviction is liable to a

fine of not more than $50,000. No prosecution for any offence can proceed without the written consent of the Tribunal.

Government Contracts

It is a condition of every contract with the Province of Ontario or a governmental agency that every contractor will comply with the *Employment Equity Act*, to the extent that the contractor has obligations under the Act. Subcontractors must also comply, as must people or organizations that receive grants, contributions, loans or loan guarantees from the Government or its agencies. If the Tribunal rules that these parties have not complied, any contract, loan or loan guarantee can be cancelled, and the Province or an agency may refuse to enter into any further contract, or make any further grant, contribution, loan or loan guarantee to that same person.

Regulations

The Lieutenant Governor in Council may make regulations concerning, among other things:

- definitions of the designated groups;
- how to conduct a workforce survey;
- details on what elements must be included in an Employment Systems Review;
- processes for including bargaining agents and non-unionized employees in the employment equity;
- the elements of an employment equity plan;
- requirements for certificates, reports and other information required under the Act.

Consequential Amendments

The Ontario *Human Rights Code* is amended to provide that no rights under the Code is infringed because positive measures or numerical goals, that are contained in an employment equity plan prepared under this Act, are restricted to members of the designated groups. Therefore, individuals who believe they have been discriminated against by an employer maintain their rights to have the case considered under the *Human Rights Code* by a Board of Inquiry, and for that Board to order a remedy. The Board, though it cannot amend an employment equity plan, may order action to be taken in addition to the plan. In determining the appropriate remedy, the Board may take into account the cost of implementing an employment equity plan in order not to create undue hardship for the employer.

Review of the Act

The Act calls for a standing or select committee of the Legislative Assembly to undertake a comprehensive review of the Act and its regulations within five years of its proclamation and to make recommendations for amendments.

In addition, Ontario recently adopted five regulations under the *Employment Equity Act, 1993*, which also came into force on September 1, 1994.

The *Regulation respecting Aboriginal Workplaces* establishes variances with respect to the timetable for implementing employment equity in aboriginal workplaces.

The *Regulation respecting the Construction Industry* establishes variances with respect to the timetable for implementing employment equity in the construction industry.

The *Regulation respecting the Agricultural Industry* deems seasonal employees in the agricultural industry not to be employees for the purposes of various parts of the Act. Seasonal employees include those employed under the Commonwealth Caribbean Seasonal Agricultural Workers Program or the Mexican Seasonal Agricultural Workers Program administered by Human Resources Development Canada.

The *Regulation respecting Definitions* defines the words "designated groups", "barrier", "aboriginal workplace" and "construction industry" for the purposes of the *Employment Equity Act, 1993* and its regulations.

The *General Regulation* specifies the details of, among other things, how to conduct a workforce survey and what determinations must be made on the basis of that survey, what is considered in the review of policies and practices with respect to recruitment, hiring, retention, treatment and promotion of employees, how to prepare an employment equity plan and what the plan must contain, what the joint responsibilities of employers and bargaining agents are, how to proceed with consultations of unrepresented employees, which records must be established and maintained and which reports must be submitted and their content and frequency.

H. Proposed Legislation

The **Yukon** has introduced in first reading Bill 30, *An Act to Amend the Employment Standards Act, 1994*, on May 24, 1994. Many of the provisions of this Bill are the same amendments that were included in the *Act to Amend the Employment Standards Act, 1992*, which was not proclaimed. However, it does not contain provisions respecting the application of the Act to the government and its employees, the right to refuse extra hours of work, increased paid vacation time, parental leave and family responsibility leave. In addition, the Bill contains important amendments to the maternity leave provisions and priority of unpaid wages provisions not found in the 1992 Act. Provisions to repeal the 1992 Act are also contained in the Bill.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In **Newfoundland**, *An Act to amend the Labour Relations Act* (Bill 49) came into force on February 28, 1994. The Act has modified the provisions of the *Labour Relations Act* dealing with votes upon applications for certification and applications to revoke certification. In both cases, it:

- requires a vote upon an application supported by at least 40% of the employees in a bargaining unit (in the case of an application for certification, this requirement does not apply if the trade union and employer concerned jointly request that the Labour Relations Board not take a vote);
- provides that any such vote be taken no more than 5 days after receipt by the Board of the application for certification or revocation of certification (the Board may extend the time for the taking of a vote in exceptional circumstances);
- specifies that the Board is bound by the outcome of a vote, except if it determines that the conduct of the vote has been influenced by intimidation, or any kind of threat or coercion.

With respect to applications for certification, the Act provides that the date of application is the operative date for determining support on the basis of membership records.

In addition, the Act provides for a mandatory vote by secret ballot of the employees in a bargaining unit before they can go on strike. The vote must be conducted in such a way that the employees entitled to vote have ample opportunity to do so.

In **New Brunswick**, *An Act to Amend the Industrial Relations Act* (Bill 47) took effect on April 20, 1994. This amendment provides that, at any time after the statutory delays relating to conciliation or mediation before strikes or lockouts have been met, the employer or employers' organization may make a written request to the Industrial Relations Board for a secret ballot vote among the employees in the bargaining unit affected on the acceptance or rejection of its most recent offer made during collective bargaining in respect of all matters in dispute between the

parties. A similar request may be made by a bargaining agent where an employers' organization is a party to a dispute. The cost of taking the vote must be paid by the party making the request.

A request for such a vote may only be made once during each dispute and not in relation to disputes submitted to binding arbitration or where the parties have agreed to be bound by, or have voted in favour of, the report of a conciliation board.

Also in New Brunswick, the *Labour and Employment Board Act* (Bill 59), which will come into force by proclamation, will provide for the creation of a Labour and Employment Board consisting of a Chairperson, one or more Vice-Chairpersons and an equal number of members representing employers and employees. The Chairperson will be appointed for a term not exceeding five years and the Vice-Chairpersons and the other members of the Board will be appointed for a maximum term of three years. The Chairperson, the Vice-Chairpersons and the other members may be reappointed.

The Board will exercise powers now conferred on the Employment Standards Tribunal under the *Employment Standards Act*, the Industrial Relations Board under the *Industrial Relations Act*, the Pensions Tribunal under the *Pension Benefits Act*, and the Public Service Labour Relations Board under the *Public Service Labour Relations Act*.

In **Alberta**, the *Labour Boards Amalgamation Act* (Bill 1) was assented to on May 25, 1994, and will come into force by proclamation.

This Act will amend the *Labour Relations Code* and the *Public Service Employee Relations Act*. The most significant modifications include:

- changes to the functioning of the Labour Relations Board which will replace the Public Service Employee Relations Board;
- giving the Labour Relations Board the power to make rules for the charging of fees for services or materials provided by the Board or at the direction of the Board in a proceeding before it or in an application for judicial review of a ruling or proceeding;
- replacing provisions of the *Public Service Employee Relations Act* dealing with such topics as the powers of the Board, certification, revocation of bargaining rights, and grievance arbitration with corresponding provisions of the *Labour Relations Code*; and
- providing that the expenses and remuneration of a mediator or the chairman of a compulsory arbitration board, appointed under the *Public Service Employee Relations Act*, must be paid jointly by the parties.

In **Quebec**, *An Act to amend the Labour Code* (Bill 116) came into effect on May 19, 1994. This Act has modified the *Labour Code*, among others, to introduce the following changes:

- to allow collective agreements to be concluded for a period of more than three years in enterprises operating in the private sector; and to specify that the term must not be more than three years in the case of a first collective agreement;
- to introduce, for agreements with longer terms, new time periods during which employees may exercise the right to change their union allegiance;
- to repeal the obligation to send certain notices relating to collective bargaining to the Minister (i.e., the notice of meeting in order to reach a collective agreement, and the notice a trade union must give when a vote has authorized it to declare a strike);
- to allow the joining of matters brought before the labour commissioner general when the questions in dispute are substantially the same or could properly be combined;
- to authorize a labour commissioner to order the suspension of negotiations where an issue resulting from the sale or concession of an undertaking must be resolved;
- to permit the Labour Court to summarily dismiss an appeal it considers improper or dilatory;
- to set a time limit for the rendering of judgments by the Labour Court on any matter, and to authorize the chief judge to remove a matter from a judge who fails to render judgment within the prescribed time;

- to extend the definition of public service spelled out in the *Labour Code* to include undertakings that engage in various operations involving putrescible waste; and
- to grant an employer, in a public service, a length of time within which to adapt its operations in view of the cancellation of a strike notice, or a return to work notice following a strike.

In **Prince Edward Island**, *An Act to Amend the Labour Act* (Bill 64) was assented to on May 19, 1994, and will come into force by proclamation. The Act brings a number of changes to the *Labour Act*; the main ones are outlined below.

- The members of the Labour Relations Board will be appointed for a term of up to three years and will be eligible for reappointment for a second term.
- When there is a failure to comply with an order of the Labour Relations Board or one of its panels, the Board will, after being notified of that fact by an affected party, file it in the Supreme Court and the order will become enforceable as if it were a judgment of that court.
- If the negotiation of a first agreement is unsuccessful, once the right to strike or to lock out has been acquired, the Minister will have the power, at the request of either party, to refer the matter to the Board for the settlement of the terms and conditions of the first collective agreement. A first contract determined by the Board will be in effect for at least one year.
- A union, employer or employers' organization will be able to request the Labour Relations Board to resolve a jurisdictional dispute with respect to assignment of work. (The current law enables the Board to do so when a work stoppage is perceived to be imminent.)
- Arbitration fees and expenses will be shared by all parties in the case of an arbitration board appointed by the Minister to resolve collective bargaining issues affecting municipal police officers, fire fighters, employees of hospitals, nursing homes or community care facilities, and non-instructional school personnel.
- New provisions will protect the confidentiality of information obtained or reported in the discharge of their duties by members of the Board or its staff, a conciliation officer, a mediator or a member of a conciliation board.

In **Saskatchewan**, the *Trade Union Amendment Act, 1994* (Bill 54), received royal assent on June 2, 1994. It will come into force by proclamation. Following is a summary of the most important changes contained in this Act.

Collective bargaining and dispute resolution

- A party will be able to make application to the Labour Relations Board for assistance in concluding a first collective agreement and the Board may provide such assistance if the parties have bargained in good faith and failed to reach an agreement, and either a majority of employees participating in a strike vote have voted in favour of a strike, the employer has commenced a lockout, or after making a determination concerning the failure or refusal to bargain collectively, the Board decides to assist the conclusion of a first agreement.
- Following an application, the parties will be required to submit a list of outstanding issues as well as their position and their last offer on those issues. The Board may order them to submit the matter to conciliation if they have not already done so and, upon failure of conciliation, may refer certain terms to arbitration and/or settle terms of the first agreement itself.
- An imposed first agreement will expire two years after its effective date, unless the parties agree otherwise. Within 30 to 60 days before its expiry, either party may serve a notice to revise or terminate such an agreement, and the parties must begin bargaining.
- The Minister of Labour may appoint, at the request of either party or on his/her own initiative, a special mediator to assist in the resolution of labour-management disputes.

Administration of collective agreements

- A new provision will require that all differences regarding the interpretation, application or alleged violation of a collective agreement be settled by arbitration after any grievance procedure established by the agreement has been exhausted.

- The powers of grievance arbitrators will be enhanced to relieve against breaches of time limits set out in an agreement with respect to grievance or arbitration procedures, to dismiss or refuse to hear an application or grievance if there has been unreasonable and prejudicial delay, and, with the consent of the parties, to act as a mediator and encourage the settlement of disputes during the course of an arbitration.
- After certification, but before the conclusion of a first agreement, an employee who is suspended or discharged for a cause other than shortage of work will have access to the arbitration process. However, this will not apply if the suspension or termination is the subject of an unfair labour practice application.
- After the conclusion of a hearing, arbitrators and arbitration boards will be required to give decisions within 30 and 60 days respectively. The parties may extend these time limits by mutual consent. The time limits will not apply in the case of an oral decision (written reasons may be requested by either party). The parties will not be responsible for the payment of the remuneration and expenses of an arbitrator or arbitration board whose decision is not rendered within the prescribed time limits.
- The Act will provide a mechanism for voluntary expedited arbitration of grievances (i.e. this process will apply only if both parties agree).
- Procedures will be provided for voluntary grievance mediation through the Department of Labour.

Changes to terms and conditions of work after the expiry of a collective agreement

- Except for imposed first agreements, the parties will no longer be able to serve a notice to terminate a collective agreement from the 60th to the 30th day preceding its expiry date. Therefore, the terms of an agreement will continue in force until replaced by a new agreement. An agreement will be terminated if a bargaining unit is decertified. The parties will be required to bargain collectively with respect to changes to terms and conditions of collective agreements.

Rules governing strikes and lockouts

- Procedures will be provided for the reinstatement of striking or locked-out employees when, following the conclusion of a work stoppage, no agreement on this matter has been reached by the parties. Subject to the availability of work, employers will be required to reinstate employees in accordance with the terms of the applicable collective agreement respecting recall or, in the absence of such provisions, seniority. Any employee who is not reinstated due to insufficient work will be entitled to notice of lay-off or pay in lieu of notice (a back-to-work protocol will override the *Labour Standards Act* provisions on those subjects).
- The new legislation will ensure that, during a work stoppage, the concerned trade union is able to make payments to continue the employees' membership in benefit plans (e.g. life, disability, medical or dental insurance plan).
- The provision on the final offer vote will be retained, but amended. The parties will be able to request the appointment of a special mediator after a strike has continued for 30 days. In addition to other powers, the special mediator, rather than the Board, will have the power to order a final offer vote.
- The provisions specifying that, on application, the Board may supervise strike and ratification votes will be retained, but only the employees affected or the trade union will be allowed to make such an application.
- A new provision will facilitate the collection of certain fines by unions. A fine imposed on a member who has worked for a struck employer during a legal strike (maximum: net earnings during that strike) will be deemed to be a debt owing to the union that can be recovered in court as if it was a debt owed pursuant to a contract.

Technological change and successorship obligations

- The definition of "technological change" will be broadened to include removal or relocation of work outside the bargaining unit. An employer will continue to give at least 90 days notice of a proposed significant change, and the trade union may serve notice to commence collective bargaining for the purpose of developing a workplace adjustment plan. A workplace adjustment plan may, among others, include

provisions for employee counselling, retraining, early retirement or severance pay. If the parties fail to develop a workplace adjustment plan, the employer may proceed to implement the change.

- On application by an employer, the Board will have the power to exempt the employer from complying with the technological change provisions if it is satisfied that the technological change must be implemented promptly to prevent permanent damage to the employer's operations.
- The Act will preserve collective bargaining obligations when certain contracted-in services are retendered. This provision will apply to contracts for the provision of cafeteria and food, janitorial and cleaning, and security services supplied to provincial and municipal government buildings, hospitals, universities or other public institutions.
- When collective bargaining relating to a business under the jurisdiction of the federal government becomes subject to Saskatchewan laws, it will continue to be subject to any existing certification orders and/or collective agreements. The Labour Relations Board will have the power to order alternate arrangements in particular circumstances.
- The Labour Relations Board will have the power to deem associated or related businesses to be one employer for the purposes of the *Trade Union Act*. This will only apply to businesses that become associated or related after this provision comes into force.

Administration and enforcement of the *Trade Union Act*

- There will no longer be alternate members of the Labour Relations Board. Members will be appointed for fixed terms. Both the Chairperson and the Vice-Chairperson will be named by the Lieutenant Governor in Council and an indeterminate number of members will represent business and organized labour in equal numbers.
- The powers of the Labour Relations Board will be clarified regarding interim orders, rectification orders, compensation for monetary losses (suffered by employees, employers and trade unions as a result of violations of the Act, regulations or a decision of the Board) and amendments and corrections of orders.
- Where, following an application for certification, the Board finds that the employer or its representative has committed an unfair labour practice or has otherwise violated the Act, and that there is no evidence of majority support for the application, but that majority support would otherwise have been obtained, it will order a representation vote. A similar provision will apply where, following an application for decertification, there has been an unfair labour practice or a violation of the Act by the trade union or an employee.
- The definition of the term "employee" will be changed:

    1. to remove the ability of the Board to order an exclusion from a bargaining unit on the basis that an employee is "an integral part of his (or her) employer's management"; and
    2. to include a person engaged by another person to perform services (i.e. a contract employee) if, in the opinion of the Board, the relationship between those persons is such that the terms of the contract between them can be the subject of collective bargaining.

In **British Columbia**, certain sections of Part 8 of the *Labour Relations Code*, which provides methods and procedures for determining grievances and resolving disputes under the provisions of collective agreements, were brought into force on July 15, 1994. The sections deal with the establishment of the Collective Agreement Arbitration Bureau, the appointment by the director of the arbitration bureau of an arbitration board, at the request of either party, when there is a failure to appoint one, the appointment of a settlement officer, expedited arbitration, and consensual mediation-arbitration. However, a particular section, which provides for the payment by the provincial government of one third of the cost incurred by the parties for the reasonable remuneration, travelling and out of pocket expenses of a person named to investigate a difference between them and to submit recommendations with respect to a grievance, does not apply to expedited arbitration or consensual mediation-arbitration.

In June 1994, the government of **Newfoundland** tabled a White Paper on proposed new legislation to promote economic diversification and growth enterprises in the province. It proposes that new business enterprises wishing to establish in Newfoundland and existing businesses

expanding operations be eligible for special business development incentives with respect to taxation, productivity and labour relations, provided that they meet certain criteria (e.g. if they make a capital investment of at least $500,000, and have the potential to generate incremental annual sales of at least $1,000,000 and to create and maintain at least 10 full-time permanent jobs in the province).

The proposed new legislation, entitled "*An Act to Promote Economic Diversification and Growth Enterprises in the Province*", includes special provisions modifying the application of the *Labour Relations Act* with respect to corporations designated as eligible by the Lieutenant-Governor in Council. These provisions would not apply to an existing corporation if a bargaining agent has been certified for the employees of that corporation prior to the designation.

The *Labour Relations Act* would apply to the employees of designated corporations. However, a number of different labour relations provisions would be made available to those corporations. The main features of the special provisions would be as follows:

- A collective agreement would remain in force for at least five years or until the expiry of the contract (when it is for less than five years) that would be concluded by the province and the designated corporation with respect to the benefits provided to the latter and the implementation of the business proposal. Both parties could agree to a renegotiation during that period.
- If the parties are unable to conclude a collective agreement, one would be established by a special panel consisting of a representative appointed by each of the parties and a chairperson named by the Minister of Employment and Labour Relations. No strike or lockout would be allowed.
- A collective agreement reached by the parties or established by a panel would not be permitted to provide for wage increases exceeding the percentage rise in the consumer price index as reported by Statistics Canada for the area concerned.
- If they both agree, the parties could waive the application of all or some of the special labour relations provisions.

The *Labour Standards Act* would apply to the employees of designated corporations if they are not represented by a trade union.

The government of Newfoundland has indicated that its intends to introduce the legislation entitled, *An Act to Promote Economic Diversification and Growth Enterprises in the Province*, in the fall of 1994, and that it expects it to be enacted by the end of the year.

B. Public and Parapublic Sectors

In **British Columbia**, most provisions of the *Public Sector Employers Act* came into force on September 16, 1993. The rest of the provisions had taken effect on July 29, 1993. The *Public Sector Employers Act* was described in last year's issue of the *Highlights of Major Developments in Labour Legislation*.

In **Ontario**, the *Public Service and Labour Relations Statute Law Amendment Act, 1993* (Bill 117) came into force on February 14, 1994, except for some sections which had taken effect on December 14, 1993. These sections (i.e. ss. 23 and 24) deal with the power of the Lieutenant Governor in Council to establish seven bargaining units of Crown employees and to designate the Ontario Public Service Employees Union as the bargaining agent for six of those units.

The Act creates a new *Crown Employees Collective Bargaining Act, 1993*, providing, among other things, for the application of the *Labour Relations Act* to employees of the Crown, who are given the right to strike.

A new broader definition of "Crown employee" is provided. Among others, it no longer excludes those persons employed in a managerial capacity, except when they regularly provide advice to Cabinet, a minister or a deputy minister on employment-related legislation that directly affects the terms and conditions of employment of employees in the public sector as defined in the *Pay Equity Act*.

The Act modifies the application of the *Labour Relations Act* to Crown employees. The modifications relate to various provisions of the Act,

including those dealing with voluntary interest arbitration, first contract arbitration, grievance arbitration, successor rights, use of bargaining unit employees during a strike or lockout, and limitation of the right to strike or to lock out. Certain provisions of the *Labour Relations Act* do 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 limitations concerning the right to strike or to lock out, the new legislation provides 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 are required to make an essential services agreement.

"Essential services" are 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 or of legislative drafting. "Essential services agreement" means 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 must 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 must, 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 must determine any unresolved matters.

An essential services agreement continues until terminated by one of the parties. Termination may take place 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 may enforce the agreement, amend it and make such other orders as it considers appropriate.

A party to an essential services agreement may apply to the Ontario Labour Relations Board for a determination as to whether, because of that agreement, meaningful collective bargaining has been prevented. No application may be made until employees in the bargaining unit have been on strike or locked out for at least ten days. The Board must consider whether sufficient time has elapsed in the dispute to permit it to determine whether meaningful collective bargaining has been prevented. The Board may take the following actions:

- direct the parties to continue negotiations and/or to confer with a mediator;
- order that all matters remaining in dispute be resolved by a mediator-arbitrator, or be referred to binding arbitration (final offer selection may be required);
- amend the essential services agreement to reduce the number of designated positions or employees in the bargaining unit; or
- give other directions it considers appropriate.

If the Board determines that meaningful collective bargaining has been prevented because of an essential services agreement, it may not, upon application by either party, amend the agreement to increase the number of designated positions or employees in the bargaining unit.

A decision on an arbitration authorized under the provisions mentioned above may not include any term relating to pensions, staffing levels or work assignments.

The Act also provides that the Grievance Settlement Board is continued. Provisions are made for its structure and functioning.

In addition, amendments to the *Public Service Act* enhance the political activity rights of Crown employees and provide protection for whistleblowers.

With respect to the new provisions on whistleblowers, wich will come into force by proclamation, Ontario government employees will be protected from retaliation when, acting in good faith, they allege serious wrongdoing by a government institution. Serious government wrongdoing is defined as an act or omission of an institution or of an employee acting in the course of his/her employment that contravenes legislation, represents gross mismanagement, causes a gross waste of money, represents an abuse of authority, or poses a grave health, safety or environmental hazard. The definition may be expanded by regulation.

Employees and officials (except lawyers with respect to privileged information received in confidence from employees) will be authorized to disclose confidential government information to a newly-appointed Counsel for the purpose of determining what constitutes serious government wrongdoing that ought in the public interest to be disclosed, whether particular information may reveal serious government wrongdoing and establishing what steps can be taken to bring the information to the attention of the public or disclose it to the agencies concerned. They may also seek advice concerning their rights and obligations under the legislation.

Employees and officials will be afforded protection with respect to:

- copying documents and/or disclosing information to the Counsel in accordance with the legislation;
- the disclosure by the Counsel or his/her staff of information received from the employees or officials, or their identity; or
- exercising a right under the Act.

In **New Brunswick**, two laws, effective April 20, 1994, brought the following changes to the *Public Service Labour Relations Act*:

- The parties to a collective agreement are authorized to extend the term of the agreement by mutual consent.
- Employers may, at any time after any of the employees in a bargaining unit have taken strike action, lock out any or all employees in the bargaining unit or otherwise refuse to permit them to work, and refuse to pay them. This does not apply to employees occupying designated positions.
- Upon an application by an employer to declare a strike illegal, the Public Service Labour Relations Board must make a decision within 24 hours or within such longer period as the parties may agree.
- The automatic decertification of a bargaining agent in respect of which a strike has been declared unlawful is removed; instead, the Board may decertify such a union upon an application by the employer.
- Fines have been set for an illegal strike at $100 for an employee and at $300 for an officer or representative of an employee organization for each day that the contravention continues.
- Every employee organization is liable on conviction to a fine of ten dollars for each employee in the relevant bargaining unit with respect to each day of an illegal strike that is declared, authorized, condoned or acquiesced in by it. The minimum fine is $10,000.
- At any time after a deadlock in negotiations has been declared by the Public Service Labour Relations Board, the employer may request that a vote by secret ballot of the employees in the bargaining unit affected be held on the acceptance or rejection of its most recent offer made during collective bargaining in respect of all matters in dispute between the parties. A request for such a vote may only be made once during each dispute and not in relation to disputes submitted voluntarily by the parties to binding arbitration or in relation to differences regarding technological change submitted to binding arbitration under the Act.

In **British Columbia**, the *Public Education Labour Relations Act* (Bill 52) came into force on June 10, 1994.

This Act provides that the *Labour Relations Code* continues to apply to school boards and trade unions representing teachers in the public school system. However, it introduces a provincial two-tiered system of collective bargaining.

An employers' association, established under the *Public Sector Employers Act*, is considered to be the accredited bargaining agent for all school boards in the province. With respect to the employees, the British Columbia Teachers' Federation is considered to be certified for the bargaining unit consisting of all teachers, as defined in the *School Act*. The bargaining agent may be changed or the bargaining rights may be revoked under the appropriate provisions of the *Labour Relations Code*.

All major monetary issues are negotiated at the provincial level. These include salaries and benefits, workload (including, but not limited to, class size), time worked and paid leave. Other provincial matters, and local matters to be determined by collective bargaining are designated by the parties. If the parties are unable to agree on the designation of any matter during the negotiations for the first provincial agreement, at their joint request or on his/her own initiative, the Minister of Skills, Training and Labour may refer that dispute to arbitration. The employers' association and the British Columbia Teachers' Federation must establish policies and procedures for the purpose of authorizing school boards and teachers' unions to enter into local agreements with respect to local matters, but they may not delegate authority to declare a strike or lockout.

The provisions of the *Labour Relations Code* on the settlement of a first collective agreement do not apply with respect to collective bargaining by public school teachers.

The new legislation does not require the early termination of a local agreement concluded before its coming into force. However, it provides a mechanism permitting the voluntary early termination of a local agreement expiring after June 30, 1994.

Also in British Columbia, effective July 8, 1994, amendments were made to the *Health Authorities Act* giving the Minister of Skills, Training and Labour the power to appoint a commissioner to inquire into trade union representation and jurisdiction in the health sector.

Among others, the commissioner must take into consideration the new employment relationships that will be established as a result of restructuring under the *Health Authorities Act*, and the need to promote integration of health care delivery and to enable the development over time of provincial consistency in terms and conditions of employment.

The commissioner must make recommendations regarding the composition of appropriate bargaining units, which may include recommendations regarding multi-employer certification and councils of trade unions for the health sector.

These amendments to the *Health Authorities Act* will be repealed 90 days after the commissioner reports to the Minister.

After the Minister has received the commissioner's report, regulations may be made to implement recommendations contained in the report.

In addition, laws dealing with the control of expenditures in the public sector have been proclaimed, amended or adopted in a number of jurisdictions.

In **Quebec**, the Act respecting the conditions of employment in the public sector and the municipal sector (Bill 102), which was described in *last year's issue of the Highlights of Major Development in Labour Legislation*, came into force on September 15, 1993, except for certain sections dealing with the reduction of 1% of annual expenses relating to remuneration and social benefits in public and municipal bodies, and of the indemnity paid to members of the National Assembly. These sections took effect on October 1, 1993. A provision allowing municipal bodies to waive the application of the legislation before September 15, 1993 had been in force since July 17, 1993.

In **Nova Scotia**, effective November 1, 1993, the *Public Sector Unpaid Leave Act* applies to a broadly defined public sector and requires every employee to take unpaid leave equivalent to 2% of the employee's annual hours or days of work. Certain categories of employees, such as public servants (other than deputy ministers), correctional officers, officers and employees of government agencies (other than Sydney Steel Corporation), the staff of the House of Assembly, and employees of hospitals, residential care facilities or nursing homes, are required to take the unpaid leave before April 1, 1994. However, if by reason of the operational requirements of the employer employees cannot take all of the unpaid leave before April 1, 1994, they are required to take the leave before April 1, 1996. The same applies to the employees of a municipality or

municipal organization or body.

The employees of a school board or of the Nova Scotia Community College and the employees of a university are required to take the unpaid leave before July 1, 1994.

The annual pay of an employee cannot be reduced by the Act to less than $22,000. The reduction of 2% in the compensation payable to employees for fiscal year 1993-1994 is scheduled to be applied in a uniform manner between November 1, 1993 and October 31, 1994.

The Act reduces in a similar way the remuneration of elected and appointed officials, and members of various courts as well as payments for insured medical services provided by physicians, dentists, pharmacists and optometrists.

Also in Nova Scotia, effective April 29, 1994, the *Public Sector Compensation (1994-97) Act* provides for the extension of compensation plans for public employees without increases in pay rates until November 1, 1997. In addition, effective November 1, 1994, the pay rate for each position covered by a compensation plan will be reduced by 3%. However, no employee's annual pay will be reduced to less than $25,000. Also, during the period covered by the Act, limitations are provided with respect to increases in pay in recognition of meritorious or satisfactory work performance, the completion of a specified work experience or length of time in employment.

The terms "public employees" include civil servants, officers and employees of government agencies (other than Sydney Steel Corporation), municipal employees, employees of school boards and post secondary educational institutions, employees of hospitals and of licensed residential care facilities as well as officers and staff of the House of Assembly.

Measures similar to those described above apply to elected and appointed public officials and judges.

The Act does not prevent increases under the *Pay Equity Act*, but any such increases, effective during the period from November 1, 1994 to October 31, 1997, will be reduced by 3%.

An administrator and other persons necessary for the administration of the Act are appointed, and a Board is established. An employer, a bargaining agent or, if there is no bargaining agent, an employee who is affected by and is not satisfied with a decision of the administrator may request and obtain that the question be referred to the Board. The Board may decide any question referred to it and its decisions are final and conclusive, unless it considers it advisable to reconsider them. The Board has the power to issue orders requiring compliance with the Act, prohibiting an employer or other person from implementing a pay increase that does not comply with the Act, and requiring an employee to pay back to the employer or other person any such increase.

In the **federal** jurisdiction, provisions contained in Part 1 of the *Budget Implementation Act, 1994* have amended the *Public Sector Compensation Act*, adopted in 1991, and several other Acts to provide, among other things, for the extension of the wage freeze in force in the federal public sector for a further period of two years. Furthermore, incremental increases are suspended for a period of 24 months beginning on June 15, 1994. These incremental increases include those based on the attainment of further qualifications or the acquisition of skills, merit or performance increases, in-range increases and performance bonuses.

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.

The above provisions took effect on June 15, 1994.

In **Prince Edward Island**, the *Public Sector Pay Reduction Act* applies to public sector employers and their employees. This includes the government of Prince Edward Island, school boards, Crown agencies and corporations, hospitals, post-secondary educational institutions and the

Legislative Assembly. Effective May 17, 1994, the pay rates for positions covered by a compensation plan were reduced by 3.75% for those whose pay rate is $28,000 or less and by 7.5% for those whose pay rate exceeds that amount (in the latter case, the pay rate cannot be reduced to less than $26,950).

No compensation plan coming into force between May 17, 1994 and May 16, 1995 may provide for an increase in pay rates or benefits. However, increases are permitted in certain circumstances, such as in the case of an adjustment under the *Pay Equity Act* and the recognition of length of time in employment when the compensation plan that applied to an employee prior to May 17, 1994 expressly provided for such an increase.

Effective May 17, 1994, the amounts paid to persons appointed as members of provincial tribunals, commissions and agencies, as annual, daily or periodical allowances were reduced by 7.5%.

It is specified that negotiations may take place between a public sector employer and its employees to achieve the purpose of the Act by a reduction in pay, offsetting considerations, reduction in other benefits or any combination of them. Negotiated agreements require the approval of Cabinet.

In the **Yukon Territory**, the *Public Sector Compensation Restraint Act, 1994* extends the collective agreement between the Government of the Yukon Territory and the Public Service Alliance of Canada (PSAC)(covering the period from April 1, 1993 to December 31, 1994) until March 31, 1998. The same applies until June 30, 1997 to the collective agreement between the territorial government and the Yukon Teachers' Association (YTA) (covering the period from July 1, 1993 to June 30, 1994).

The parties may agree in writing to amend these agreements, except with respect to compensation.

Generally, compensation is fixed and reduced for different groups of employees as follows:

- The compensation payable to employees covered by the PSAC collective agreement, and certain categories of casuals, persons employed in a confidential capacity and contract employees will not be increased before March 31, 1998. In addition, effective January 1, 1995, their wage rates will be reduced by 2%.
- The compensation payable to employees covered by the YTA collective agreement and persons employed under the *Education Act* on a relief, casual, or temporary basis will not be increased before June 30, 1997. In addition, effective January 1, 1995, their wage rates will be reduced by 2%.
- The compensation payable to employees not mentioned above, including deputy heads, managers, and certain categories of casuals and contract employees will not be increased from April 1, 1994 to March 31, 1997. In addition, effective January 1, 1995, their wage rates will be reduced by 1%.

Performance increments, experience increments or performance payments will be paid to the employees when their next entitlement arises in accordance with the PSAC or YTA collective agreement or the Personnel Policy and Procedures Manual.

The full Yukon Bonus travel benefit is standardized at $2,042 per year for eligible employees.

The Act came into force on June 7, 1994.

C. Emergency Legislation

In **British Columbia**, Part 2 of the *Educational Programs Continuation Act* (passed on May 30, 1993) provides that the Minister responsible for labour may exercise certain powers upon the designation by regulation of any board of school trustees and the trade union representing its employees. On September 10, 1993, School District No. 41 (Burnaby) and the Burnaby Teachers' Association were designated under these provisions.

By virtue of these 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 employer and the trade union may agree to modify an agreement constituted under these provisions.

Also in British Columbia, as B.C. Rail Ltd. and the Council of Trade Unions on B.C. Rail representing a number of union locals were unable to conclude a collective agreement and as the Lieutenant Governor in Council was of the opinion that an immediate and substantial threat to the economy and welfare of the province and its citizens existed, a cooling-off period of 90 days was prescribed under the *Railway and Ferries Bargaining Assistance Act* as of September 10, 1993. That cooling-off period was later extended for a further 14 days.

In **Ontario**, the *Lambton County Board of Education and Teachers Dispute Settlement Act, 1993* was passed on October 26, 1993 to settle a dispute between the Lambton County Board of Education and secondary school teachers who had been on strike since September 14, 1993.

The teachers were required to resume their duties on October 27, 1993 (exceptions were provided for those not returning to work for health reasons or by mutual consent of the teachers and the board of education). The board, for its part, was to resume the employment of the teachers and normal operation of the schools.

If the parties could not reach agreement before November 9, 1993, the board was required to submit to the teachers a description approved by the Education Relations Commission of an offer submitted to the teachers' representatives on October 20, 1993. The offer was to be submitted to a vote by secret ballot supervised by the Commission on November 12, 1993. In the event that a majority of the teachers exercising their right to vote did not accept the offer, the parties could continue to negotiate, but the term of a collective agreement entered into by the parties after the vote would have to be at least three years.

If the offer was not accepted by a majority of the teachers participating in the vote mentioned above, and, by December 6, 1993, the parties had not entered into a collective agreement or agreed in writing on a method for resolving the conflict, the Minister of Education and Training could order the use of a specific dispute resolution method.

The parties were required to jointly submit to the Minister and the Education Relations Commission, by May 2, 1994, a plan outlining the steps to be taken to improve their relationship.

Fines provided in the *School Boards and Teachers Collective Negotiations Act* apply with respect to offences under this Act.

The Act came into force on October 26, 1993 and will be repealed on September 1, 1995 or on an earlier date announced by proclamation.

Also in Ontario, the *East Parry Sound Board of Education and Teachers Dispute Settlement Act, 1993* was assented to on November 30, 1993. This law was passed to settle a dispute between the East Parry Sound Board of Education and elementary school teachers who had been on strike since October 6, 1993.

The teachers were required to resume their duties on December 1, 1993 (exceptions were provided for those not returning to work for health reasons or by mutual consent of the teachers and the board of education). The board, for its part, was to resume the employment of the teachers and normal operation of the schools.

If the parties could not conclude a collective agreement by December 7, 1993, they were considered to have referred all matters in dispute to a board of arbitration under the *School Boards and Teachers Collective Negotiations Act*. Until March 1, 1994, the parties could withdraw from the arbitration before a decision was rendered by notifying the chair of the board of arbitration that a collective agreement was negotiated and ratified.

There was a requirement that a collective agreement negotiated by the parties have a term of at least three years from September 1, 1992. If the

agreement resulted from the decision of a board of arbitration, its term would be of three years starting from the same date.

In dealing with outstanding issues related to a local agreement under the *Social Contract Act, 1993* that have a bearing on the negotiations for the collective agreement, a board of arbitration was required to deal with those issues in accordance with that Act.

The parties were required to jointly submit to the Minister of Education and Training and to the Education Relations Commission, by May 2, 1994, a plan outlining the steps to be taken to improve their relationship.

Fines provided in the *School Boards and Teachers Collective Negotiations Act* apply with respect to offences under this Act.

The Act came into force on November 30, 1993 and will be repealed on September 1, 1995 or on an earlier date announced by proclamation.

Another ad hoc emergency law, the *Windsor Teachers Dispute Settlement Act, 1993*, was enacted in Ontario on December 14, 1993. However, the sections of the Act providing for the settlement of the dispute were not proclaimed into force.

In the **federal jurisdiction**, the *West Coast Ports Operations Act, 1994* was passed on February 8, 1994 to end a work stoppage and permit the resolution of a collective bargaining

dispute involving the British Columbia Maritime Employers Association and the International Longshoremen's and Warehousemen's Union - Canadian Area, representing some 3,600 workers. The last collective agreement between the parties had expired on December 31, 1992.

Effective February 9, 1994, the Act required the immediate resumption of longshoring and related operations at Canada's west coast ports, and provided for the settlement of issues remaining in dispute through the process of final offer selection.

Within seven days after the coming into force of the Act, the parties could provide the Minister of Human Resources Development with the name of a person mutually acceptable to serve as arbitrator for the final offer selection process. Failing agreement by the parties, the arbitrator was to be appointed by the Minister.

Within a period of 90 days after being appointed (subject to extension by the Minister), the arbitrator was to determine the matters on which the parties were in agreement as well as those remaining in dispute, and select the final offer of one of the parties on all the issues in dispute. In the event of failure by one of the parties to submit its final offer, the final offer of the other party was to be selected.

The arbitrator had to issue an award in the form of a collective agreement binding on the parties until December 31, 1995. Nothing in the legislation restricted the right of the parties to agree to amend any provision of the collective agreement, other than a provision relating to its term.

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

D. Construction Industry

In **Quebec**, *An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry and other legislative provisions* (Bill 142) was assented to on December 14, 1993.

The purpose of that Act was to establish a new process for negotiations in the construction industry. To this end, it brought amendments to the *Act respecting labour relations, vocational training and manpower management in the construction industry* having, among others, the following effects:

- to divide the industry into four sectors, the civil engineering and roads sector, the industrial sector, the institutional and commercial sector and the residential sector;
- to partially deregulate the residential sector (i.e. to exclude from the application of the Act construction work on buildings reserved exclusively for residential use and containing a total of eight dwellings or less), but to continue to require that electricians and plumbers hold qualification certificates issued under a regulation respecting manpower vocational training and qualification in sectors other than construction (this regulation is administered by the Quebec agency for manpower development (Société québécoise de développement de la main-d'oeuvre));
- to amend the definition of the word "construction" concerning the coverage by the Act of the installation, repair and maintenance of production machinery, except where such work is carried out by permanent employees of the user or of the manufacturer or by habitual employees of a person whose principal activity is the carrying out of such work and who is charged therewith on an exclusive basis by the manufacturer;
- to provide for the making of a collective agreement for each sector, including a number of common provisions, and for the expiry of the agreements on December 31 every three years, from December 31, 1994;
- to specify that the Association of Building Contractors of Quebec is in charge of coordinating negotiations in the construction industry and is the sole agent of the employers for the purposes of negotiating and making collective agreements and that it receives its mandates from the sector-based employers' associations;
- to provide that negotiations take place between the Association of Building Contractors of Quebec and one or more employees' associations whose representativeness is more than 50%;
- to establish a process for the ratification of agreements and strike or lockout votes based on the representativeness of union and employers' associations, and provide for the extension of the provisions of an agreement so ratified to all employees and employers of a sector or of all sectors in the case of common provisions;
- to prescribe mandatory mediation before any strike may be called or lockout imposed in a sector;
- to permit strikes 21 days after mediation provided that it is called for all the employees working in the sector and that it has been authorized, by secret ballot, by a majority of voting members of one or more associations whose representativeness is more than 50% in that sector;
- to prohibit strikes and lockouts at all times in respect of a matter that must be common to the collective agreements of each of the sectors (for example, union security, the procedure for settling grievances, the basic supplemental fringe benefit plan and any compensation fund considered necessary by the parties to the negotiations in each sector);
- and to provide that, among others, a collective agreement may not limit the employer's freedom to request the services of an employee directly or through the Construction Commission (Commission de la construction) or a union reference.

Amendments have also be made to the *Building Act* to remove the obligation of having a place of business in Quebec as a requirement for obtaining a contractor's licence.

In addition, the Act has modified the *Regulation respecting placement of employees in the construction industry* among others by:

- replacing its title by the following: "*Regulation respecting the hiring and mobility of employees in the construction industry*";
- providing that the *Regulation respecting the hiring and mobility of employees in the construction industry* ceases to have effect in respect of a sector of the construction industry where a first agreement made under the new provisions of the Act comes into force for that sector.

Lastly, the *Regulation respecting the vocational training of manpower in the construction industry* has been amended to provide that anyone who demonstrates, by means of a document issued by a body having competence to do so elsewhere in Canada, that he/she has qualifications equivalent to those of a journeyman in a trade or specialty is eligible for the qualification examination.

Most provisions of this Act are scheduled to come into force on dates ranging from December 14, 1993 to January 1, 1995.

Until December 31, 1994, the Act will ensure the maintenance, for employees carrying out excluded work in the residential sector, their participation in the supplemental fringe benefit plans in force under the previous negotiation system. The Quebec Construction Commission may establish, by regulation, the terms and conditions necessary for maintaining, after December 31, 1994 and for the period it determines, the supplemental fringe benefit plans for employees who, on that date, were participating in such plans.

On December 13, 1993, Quebec also adopted *An Act respecting the construction industry.* The purpose of that Act was to ensure, from 7:00 a.m. on December 14, 1993, the resumption and normal performance of construction work interrupted by reason of concerted action by employees or a lockout by employers in the construction industry, and to provide for the working conditions of the employees governed by the *Construction Decree*.

This Act applies in respect of construction work covered by the *Act respecting labour relations, vocational training and manpower management in the construction industry*, until December 31, 1994. It extends the *Construction Decree*, with some modifications, until that date.

Obligations designed to ensure compliance with the Act are imposed on employees and employers in the construction industry as well as on their associations.

The following sanctions are provided in cases of contravention of the Act:

- administrative sanctions which include, among others, the suspension of the checkoff of union dues in respect of the construction work performed in a region (this suspension could be effective for twelve weeks per day or part of a day during which the government is of the opinion that the employees have not complied with the Act in sufficient number to ensure adequate performance of construction work in that region);
- civil liability for an association of employees and any representative association of which it is a member, to which it belongs or with which it is affiliated;
- penal sanctions which include, among others, fines for employees and employers in the construction industry as well as for their associations and individuals acting as officials or representatives of labour or employers organizations, and the suspension of an employee's competency certificate or a contractor's licence for a period ranging from one to three months for each infraction.

In addition, by an Order in Council dated April 27, 1994, the government of Quebec approved the Ontario-Quebec Agreement on the Mutual Recognition of Construction Workers' Qualifications, Skills and Work Experience.

Effective June 8, 1994, amendments were made to the *Regulation respecting the issuance of competency certificates*, the *Regulation respecting the vocational training of manpower in the construction industry* and the *Regulation respecting the hiring and mobility of employees in the construction industry* in order to make those regulations compatible with the agreement mentioned above.

The purpose of the amendments to the *Regulation respecting the issuance of competency certificates* is, among others, to make it easier for workers residing elsewhere in Canada to obtain competency certificates. These workers specify the region of Quebec within which they wish to benefit from preference of employment.

With respect to the *Regulation respecting the hiring and mobility of employees in the construction industry*, an amendment provides that an employer may assign an employee holding a journeyman competency certificate, an occupation competency certificate or an apprentice competency certificate anywhere in Quebec, if that employee has worked for him/her 1500 hours or more in the construction industry in Quebec or elsewhere in Canada during the first 24 of the 26 months preceding the issuance or renewal of his/her competency certificate.

In **Ontario**, amendments to the *Labour Relations Act* were adopted on December 14, 1993. These amendments concern the relationship between

local trade unions in the construction industry and their parent trade unions. Except for a section dealing with the administration of employment benefit plans, the amendments are deemed to have come into force on June 25, 1992.

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

A parent trade union cannot, without just cause, alter the jurisdiction of a local trade union as the jurisdiction existed on May 1, 1992. A local trade union can make a complaint to the Ontario Labour Relations Board concerning the alteration of its jurisdiction by a parent trade union.

The provisions just described apply within the existing province-wide bargaining structures.

A parent trade union or council of trade unions is prohibited from interfering without just cause with a local trade union in such a way that the autonomy of the local trade union is affected. They are also prohibited from penalizing local trade union officials or members without just cause.

Effective January 28, 1994, local trade unions are entitled to appoint some of the trustees of employment benefit plans (exclusive of trustees appointed to represent employers).

In **Nova Scotia**, an amendment to the *Trade Union Act*, approved on June 30, 1994, provides that an accredited employers' organization in the construction industry only acquires collective bargaining rights on behalf of an employer with a union in the following circumstances: the union has been certified under the *Trade Union Act* or has been voluntarily recognized as bargaining agent by the employer, or the employer has authorized, in writing, the employers' organization to bargain collectively on its behalf with that union.

This amendment may result in the situation where an employer in the construction industry who is unionized with respect to some trades will be able to engage non-unionized employees or subcontractors with respect to other trades.

The legislation described above has effect from October 1, 1972, but does not affect any money paid before February 3, 1994.

E. Agriculture, Horticulture and Fishing Industries

In **British Columbia**, the *Fishing Collective Bargaining Act* was assented to on June 30, 1994.

Effective on the date of assent, this Act provides for the application with modifications of the *Labour Relations Code* to persons engaged in commercial fishing activities.

"Employees" are defined as persons engaged in commercial fishing, including those who accept as remuneration a share of the proceeds of a fishing venture, and "employers" are defined as persons who employ one or more employees, including those who purchase fish from a commercial fisher, provide as remuneration a share of the proceeds of a fishing venture, and employers' organizations.

An employer or authorized employers' organization and a trade union may conclude a collective agreement providing for fish prices, share arrangements between fishing vessel owners and crew members, hours of work or other conditions of employment. Written agreements entered into before the coming into force of the Act and that are still in force are considered to be collective agreements for the purposes of the Act.

In **Ontario**, the *Agricultural Labour Relations Act, 1994* took effect on June 23, 1994.

The Act applies to employees, trade unions, councils of trade unions, employers 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 Act lists the provisions of the *Labour Relations Act*, as they read on June 23, 1994, that apply to the agriculture and horticulture industries. Some of the applicable provisions, such as those relating to the determination of bargaining units in the case of seasonal employees and access to employer property, are modified.

Labour relations statutes, collective agreements and trade union constitutions, by-laws or rules must 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.

A vote to ratify a proposed collective agreement must be by secret ballot. All employees in a bargaining unit are entitled to participate in such a vote and must have ample opportunity to do so.

Strikes and lockouts are prohibited. The parties can avail themselves of mediation procedures. If a mediator has reported to the Minister of Labour 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) must select all of the final offer made by one party or the other on the matters remaining in dispute. If one party fails to transmit its final offer, the selector must select the final offer of the opposite party. The parties may, however, continue to negotiate, and the selector will 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 in writing to refer all matters in dispute to an arbitrator or a board of arbitration for final and binding settlement.

The Lieutenant Governor in Council is required to appoint a person to review Part V of the Act (Dispute Settlement) and its operation within five years after its coming into force.

The legislation also provides that the Agricultural Labour Management Advisory Committee established by the Minister is continued.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Proclamations

Alberta proclaimed in force certain sections of the *Safety Codes Act*, effective March 31, 1994, by proclamations published in the *Alberta Gazette* of March 31, 1994 and April 30, 1994. These proclamations give effect to the *Safety Codes Act* provisions concerning the safe management and control of fire prevention measures as well as to ensure, among other things, the safe design, construction, operation, and maintenance of buildings. Such measures with respect to electrical systems, elevating devices, gas systems, plumbing and private sewage disposal systems and pressure equipment, contained in the Act, will come into force at a later date. This Act makes possible occupational health and safety inspections carried out by "delegated regulatory organizations" (i.e. agencies, companies, individuals or municipalities accredited by the Minister), as well as the charging fees for such services as examinations and reviews of plans and specifications, and the issue of permits.

Saskatchewan proclaimed in force, effective October 30, 1993, its *Occupational Health and Safety Act, 1993*, described in the last issue of the *Highlights of Major Developments in Labour Legislation*.

B. Legislation of General Application

Alberta adopted the *Administrative Items Regulation* under the *Safety Codes Act*. This regulation provides a number of measures designed to

give effect to various provisions of the Act. The regulation provides for the identification and the probationary certification of safety codes officers selected from within and outside the public service. It regulates the service of orders, as well as their content and format. The regulation establishes the procedures for the reporting of fires and of accidents or unsafe conditions involving a gas system, plumbing or electrical installations, elevating devices and boilers and pressure vessels, as well as the reporting of building failures that cause or have the potential to cause injury or loss of life. In addition, the regulation requires that, when submitting an application for a building permit, a person must comply with the seals and stamps requirements of this regulation. Seals and stamps can be obtained from an architect or an engineer qualified in the type of design involved. An architect or an engineer must also carry out a review during the construction of the building. This regulation repeals the *Lightning Rod Installer Qualification Regulation* (Alta. Reg. 75/83), the *Lightning Rod Sales, Installation and Maintenance Regulation* (Alta. Reg. 37/83), the *Delegation Regulation* (Alta. Reg. 136/86), the *Fire Training School Allowance Regulation* (Alta. Reg. 128/87), the *Witness and Interpreter Fees and Expenses Regulation* (Alta. Reg. 296/83), and the *Industrial Buildings Single Seal Regulation* (Alta. Reg. 64/88). This regulation came into force on March 31, 1994.

British Columbia adopted an amendment to the *Industrial Health and Safety Regulations*, concerning violence in the workplace, which became effective November 1, 1993. The *Regulations for the Protection of Workers from Violence in the Workplace* under the *Workers' Compensation Act* define "violence" as the attempted or actual exercise by a person, other than a worker, of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe that he or she is at risk of injury.

These regulations require that a risk assessment be performed in every place of employment where a risk of injury may be present. The risk assessment must take into consideration the previous experience in that place of employment, the occupational experience in similar places of employment, and the location and circumstances in which work will take place. If risk of injury is identified, the employer must establish procedures, policies and work environment arrangements to eliminate the risk to workers from violence or, where the elimination of the risk is not possible, establish procedures, policies, and arrangements to minimize the risk. The employer must also establish procedures for reporting, investigating and documenting incidents of violence in accordance with section 6 of the Regulations.

The employer is required to inform workers of the nature and extent of the risk of violence to which they may be exposed. This includes warning workers about particular persons that have a history of violent behaviour which the employees may encounter in the course of their work. The employer must instruct workers in the means for recognizing potential for violence, the procedures, policies, and work environment arrangements which have been established to minimize or eliminate the risk of violence, the appropriate response to incidents of violence, including how to obtain assistance. The employer must also instruct workers in the procedures for reporting, investigating and documenting incidents of violence.

Corrective actions must be taken by the employer in response to incidents of violence in accordance with section 6 of the Regulations. The employer must ensure that a worker reporting an injury or averse symptom as a result of the an incident of violence is advised to consult a physician for treatment or referral.

These requirements are based on the recognition that violence in the workplace constitutes an occupational hazard. As such, it must be addressed by the occupational health and safety program following the same procedures required for any other hazard by the Industrial Health and Safety Regulations.

British Columbia also adopted a regulation under the *Workers' Compensation Act* entitled *New or Amended Permissible Concentrations for Selected Substances*. This regulation establishes permissible concentrations for enflurane, halothane and nitrous oxide. It amends the permissible concentrations for acetone, carbon monoxide, chlorine, cobalt, ethylene oxide, lead, nickel, nitrogen dioxide and sulphur dioxide. This regulation became effective November 1, 1993.

In addition, British Columbia adopted *Occupational First Aid Regulations* under the *Workers' Compensation Act*, which repealed and replaced, effective January 1, 1994, the *Industrial First Aid Regulations* (B.C. Reg. 343/79). The main thrust of the new regulations is to modernize first aid requirements to better reflect the improvements that have occurred during the last decade in the accessibility to hospitals and health care facilities in the various areas of the province as well in the level of ambulance service. Accordingly, for example, readily accessible health care facilities with an emergency resuscitation area may serve as a workplace's first aid facility, under certain circumstances. In addition, certification

requirements for first aid attendants have been modified to provide for three levels of certification. The level of certification as well as the number of first aid attendants required are determined according to the hazard classification of a workplace and the number of workers per shift. The instructors of level 1 first aid courses must be certified by the Workers' Compensation Board. The instructors of levels 2 and 3 courses must be trained and certified by the Board. Only training agencies registered with the Board may conduct board-approved first aid courses. The registration requirements for training agencies are outlined in the regulations.

Newfoundland adopted *Electrical Regulations* under the *Occupational Health and Safety Act*. This regulation provides the basic qualifications of persons permitted to do electrical work. No person may do electrical work or advertise their services to do electrical work unless he or she is a registered electrical contractor who holds an Installation and Repair Permit or a Maintenance Permit, is the employee of the holder of such a permit and is the holder of either a Category A or Category B Electrical Registration Certificate, or is a registered electrical apprentice working under the direct supervision of a qualified person. Special permits may be issued by the Director responsible for the administration of these regulations for employees of companies hired to supply and maintain highly specialized electrical equipment such as medical equipment or computer systems, controls and instrumentation. The regulation also establishes the criteria to be applied by the Electrical Inspection Authority in issuing the appropriate permits and certificates. In addition, the regulation requires that the standard for the design, construction, and installation of any electrical work must be in accordance with the current edition of the Canada Electrical Code, Part I. Electrical equipment and appliances sold or installed must also be certified by an agency accredited by the Standards Council of Canada. This regulation repeals Newfoundland Regulation 246/82, and sections 1 to 8, 10, 12 and 13 of Newfoundland Regulation 144/90, as well as sections 1 to 7 of Schedule 3 of Newfoundland Regulation 144/90. The provisions of Newfoundland Regulation 144/90 respecting fees payable remain in force for the purposes of this regulation.

Similarly, **Nova Scotia** adopted amendments to the *Industrial Safety Regulations* under the *Occupational Health and Safety Act*, respecting work on live electrical lines. It prohibits the use of rubber gloves on live electrical lines or equipment energized in excess of 15,000 volts to ground. It also requires that a Code of Practice concerning the use of rubber gloves only to handle lines energized up to and including 15,000 volts be developed by the employer, that the code be communicated to all persons on site, and that these persons adhere strictly to the code.

The **Northwest Territories** adopted *An Act to amend the Safety Act* to increase the maximum fines payable by a person found guilty of an offence under that Act. Every employer or person acting on behalf of an employer found guilty of an offence upon summary conviction is liable to a fine not exceeding $500,000 (up from $10,000) and/or to a term of imprisonment of up to one year. A worker or an employee guilty of an offence is liable to a fine not exceeding $50,000 (up from $1,000), and/or to a term of imprisonment of up to six months. Where an employer is guilty of an offence under this Act, every worker or employee who has condoned the offence is liable to a fine not exceeding $25,000 (up from $500) and/or to a term of imprisonment of up to one month. This Act came into force on April 1, 1994.

Ontario adopted the *Joint Health and Safety Committees - Exemptions - Regulation* under the *Occupational Health and Safety Act*. This regulation revokes and replaces *Regulation 853 of the Revised Regulations of Ontario 1990*. The regulation provides that the exemption from the requirement for a certified member in the workplace in accordance with subsection 9 (12) of the *Occupational Health and Safety Act* applies to workplaces with fewer than 500 workers, effective August 1, 1994. This number will decrease to 50 workers, effective January 1, 1995, and decrease further to 20 workers, effective April 1, 1995.

C. Boilers and Pressure Vessels

Nova Scotia adopted the *Boilers and Pressure Vessels Act* (S.N.S. 1993, Ch. 2). This Act provides for the licensing and inspection of boilers, pressure vessels and pressure piping systems. The powers of an inspector to enter, at all reasonable times, premises for the purpose of making an inspection or an investigation are specified. These normally relate to the design, construction, testing, installation, condition, inspection, maintenance, repair, operation or use of a pressure plant (defined as: boilers, pressure vessels, pressure piping systems or any assembly of one of these), and include, for example, the power to examine books and records, and to require full disclosure either orally or in writing of persons knowledgeable of any matter relevant to the inspection or investigation. The Act contains many corresponding obligations on the part of the

owners or persons in charge of a pressure plant and their employees.

An inspector has the power to issue orders requiring changes to be made for making the pressure plant comply with the Act and the regulations. Such orders may be appealed to the Chief Inspector. If an emergency situation is deemed to exist, an inspector may also determine what emergency measures must be taken to ensure compliance with the Act and the regulations. Such orders are not appealable and must be complied with within the time prescribed by the inspector, unless the person to whom the order is issued is otherwise advised in writing by the Chief Inspector. The Act specifies that no person can install, operate or use the pressure plant until any order has been complied with and the inspector has been notified in writing of that fact.

The Act provides extensive power to make regulations respecting various matters related to its application. This Act, which repeals and replaces the *Steam Boiler and Pressure Vessel Act*, will come into force on a date fixed by proclamation.

D. Health of Non-Smokers

The **federal government** adopted an amendment to the *Non-Smokers' Health Regulations* under the *Non-Smokers' Health Act*. This amendment postponed the ban on smoking on flights between Canada and Japan until September 1, 1994. The ban on all other international flights came into effect as planned on July 1, 1994. Air carriers nonetheless were required to restrict the designated smoking areas to a maximum of 15 per cent of all passenger seats made available in any month on flights between Canada and Japan.

Manitoba amended its *Act to Protect the Health of Non-Smokers* in order to ensure that a proprietor is not permitted to designate a smoking area in the following enclosed public places:

a. a day care centre or nursery school;
b. an elementary or secondary school;
c. an instructional facility other than a post-secondary educational institution;
d. any part of a retail store or shopping mall other than a restaurant;
e. an elevator; or
f. a banking institution.

Newfoundland adopted the *Smoke-free Environment Act*, which prohibits smoking in a workplace or in a public place. However, smoking may be permitted in public places in a designated smoking area or room if certain requirements are met, except in a day care centre or nursery school, a primary or secondary school, an acute health care facility, a retail store, a recreational facility or a vehicle designed or used for carrying passengers for a fee.

An employer and his/her representative must ensure that there is no smoking in a workplace under his/her control other than in a designated smoking room. The employer may, as prescribed by regulation, designate for smoking enclosed rooms other than those normally occupied by non-smokers. To the extent reasonably practicable, these rooms must conform to the requirements of the regulations respecting independent ventilation of designated smoking rooms. The employer must post signs that identify designated smoking rooms in a workplace.

Inspectors may be appointed by the Minister of Health to inspect public places or by the Minister of Employment and Labour Relations to inspect workplaces. Their powers are described in the Act.

Employees acting in accordance with the Act or seeking its enforcement are protected against dismissal, suspension or disciplinary measures (or the threat of such action) and against another penalty or intimidation.

Where the Act is in conflict with another Act or a regulation, or a municipal by-law, respecting smoking in a workplace or public place, the provision that is the more restrictive of smoking prevails.

This Act binds the Crown and came into force on June 17, 1994.

In addition, Newfoundland adopted the *Smoke-free Environment Regulations, 1994,* under the *Smoke-free Environment Act*. This regulation requires that specified signs and graphic symbols be posted in conspicuous places indicating that smoking is either prohibited in the workplace or permitted in certain designated areas. It also establishes the ventilation requirements concerning the separately ventilated designated smoking areas. The employer or owner of a building must ensure that signs and symbols are posted no later than September 17, 1994. Either person must also ensure that air cleaning systems or independent ventilation systems are installed in designated smoking areas no later than September 17, 1994.

E. Safety in Mines

The **federal government** adopted an amendment to the *Uranium and Thorium Mining Regulations* under the *Atomic Energy Control Act*. This regulation clarifies the powers of inspectors to issue to the holders of a license under the Act, the person in charge of the mining facility or of any part of a mining facility, or to anyone who may be in contravention of the Act a notice requiring, among other things, preventing, correcting a situation that is capable of threatening, or minimizing such a threat to health, safety, security or the environment.

British Columbia adopted the *Mines Regulation* under the *Mines Act*. This regulation enables inspectors to investigate any matter relating to the health and safety of any person during the exploration, development, operation, closure or abandonment of a mine, including an investigation pertaining to a death or injury, accidents, dangerous or unusual occurrences or complaints or allegations relating to health or safety. Management must provide the inspector with full access to the mine, including the underground and surface portions, and to all mine records.

The **Northwest Territories** adopted the *Shift Boss and Hoist Operators' Certificate Regulation* under the *Mining Safety Act*, which authorizes the Chief Inspector of mines to issue shift boss certificates and hoist operators' certificates on behalf of the Minister.

Ontario adopted amendments to the *Mines and Mining Plants Regulation* (R.R.O. 1990, Reg. 854) under the *Occupational Health and Safety Act* in order to provide that:

- the design of a trolley line system having an operating voltage greater than 300 volts must be submitted, together with drawings, plans and specifications for review by an engineer of the Ministry;
- the mine design must, among other things, describe the mining method including stope sequencing and blasting methods;
- notice must be given to the Director of any unexpected and uncontrolled run of material, water or slimes in excess of one cubic metre that could have endangered a worker;
- safe procedures for performing non-routine hazardous tasks must be developed by the employer and the joint occupational health and safety committee or the health and safety representative;
- the employer must inform the workers of the nature of the task and instruct them in the safe performance of the task;
- the use of safety fuses by workers is prohibited in an underground mine or for blasting operations in chutes, passes or millholes;
- machines equipped with movable or extendable booms must not be operated near energized electrical supply lines except under the prescribed circumstances;
- dumbwaiters, escalators and moving walks installed after March 31, 1994, must meet the requirements of National Standard CAN/CSA B44-M90, "Safety Code for Elevators";
- safe procedures for raising or lowering workers by hoist, derrick, crane or similar device must be developed jointly by the employer and

the joint health and safety committee or the safety representative;

- a power driven raise climber must be equipped with an overspeed safety device approved by the manufacturer that will stop and hold the climber if it travels faster that its design speed;
- an operator of mobile cranes, shovels, and boom trucks, or other similar equipment must have a subsisting hoisting engineers certificate issued under the *Trades Qualifications and Apprenticeship Act*, or other approved qualifications;
- a clutch of a drum hoist must be interlocked with the braking system so that the brakes will, among other things, apply if the clutch begins to disengage inadvertently;
- a device must be installed on drum hoists that indicates to the operator whether or not the clutch is fully engaged;
- operators of mine hoists, including those used to transport persons, must be over 18 years of age; and
- suitable sanitary conveniences must be provided in accordance with the requirements of this regulation.

F. Proposed Regulations

British Columbia's Workers' Compensation Board has prepared draft *Ergonomics Regulations* aimed at protecting workers from adverse physiological effects from the organisation of work, while maintaining employer flexibility as to how this protection will be provided.

The **Nova Scotia** Occupational Health and Safety Advisory Board established a working group to draft a new general *Occupational Health and Safety Regulation* under the *Occupational Health and Safety Act*. The proposed regulation deals with worker exposure to chemical substances, physical agents, biological substances and ergonomic conditions. In particular, the regulation will focus on issues such as: illumination, noise, temperature, and personal protective equipment. The review will include an examination of the occupational exposure limits as well as the monitoring and control measures of substances such as isocyanates, lead, silica and asbestos.

The **Ontario** Minister of Labour has announced that firefighters of Ontario's municipal fire departments will be covered by a new occupational health and safety regulation. The Ontario Fire Service Advisory Committee, established under the *Occupational Health and Safety Act*, will advise the Minister about issues related to firefighters' health and safety.

In addition, the Ontario Workplace Health and Safety Agency and the Ministry of Labour are developing new first aid training standards and a new first aid regulation for workplaces in Ontario.

The Ontario Minister of Environment has announced that a new regulation aimed at protecting workers' health and safety and the environment will cover dry cleaning facilities. The draft regulation would require at least one full-time worker at every dry cleaning facility in Ontario to be trained and certified in the proper handling, use and disposal of the various chemicals used in such facilities. This requirement also would help limit the release of dry cleaning solvents into the air.

Finally, the Ontario Ministry of Labour has issued proposed regulations that establish criteria used by an Occupational Health and Safety Adjudicator for determining whether to grant certified joint health and safety committee members and ministry of labour inspectors the unilateral authority to issue a stop-work order in dangerous circumstances. The regulation would also be designed to help determine whether a constructor or employer has demonstrated a failure to protect their workers' safety or health.

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