Human Resources and Skills Development Canada / Ressources humaines et Développement des compétences Canada

Canada

Labour

Archived - Highlights of Major Developments in Labour Legislation (1994-1995)

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August 1, 1994 to July 31, 1995

Introduction

I. EMPLOYMENT STANDARDS
  A. Proclamations
  B. Legislation of General Application
  C. Administration and Enforcement
  D. Minimum Wages
  E. Pay Equity
  F. Proposed Legislation

II. INDUSTRIAL RELATIONS
  A. Legislation of General Application
  B. Public and Parapublic Sectors
  C. Emergency Legislation
  D. Construction Industry
  E. Artists and Producers

III. OCCUPATIONAL SAFETY AND HEALTH
  A. Proclamations and repeals
  B. Legislation of General Application
  C. Boilers and Pressure Vessels

D. Hazardous Materials and Designated Substances
E. Safety in Mines and Mining Plants
F. Offshore Petroleum Operations
G. Safety and Health in Diving and Fishing Operations
H. Safety in Other High Risk Industries or Occupations
I. Proposed Legislation

INTRODUCTION

Between August 1, 1994 and July 31, 1995, 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 adoption of a new *Employment Standards Act* in British Columbia, the proclamation of a new *Labour Standards Act* in Saskatchewan and extensive amendments to the Yukon's *Employment Standards Act*. In addition, the minimum wage rates were increased in British Columbia, Manitoba, Ontario, Quebec and the Yukon.

In the field of industrial relations, major amendments to the general collective bargaining legislation were brought into force in Saskatchewan as were laws merging labour boards in Alberta and New Brunswick. In the public sector, British Columbia modified the dispute resolution procedure applying to labour conflicts involving firefighters or police officers; some changes were also made with respect to firefighters bargaining units in Alberta and teachers collective bargaining in Saskatchewan; and the federal government amended its legislation dealing with the control of compensation in the public sector. Moreover, during the period covered by this report, two ad hoc emergency laws were passed by the federal government, and legislative changes affecting specifically the construction industry were adopted in Quebec. Lastly, the federal government proclaimed the remaining provisions of Part II of the *Status of the Artist Act* which had not taken effect.

Among important changes to occupational safety and health legislation are the adoption of a number of regulatory reform measures in Alberta, a new *Act respecting Power Engineers* in Nova Scotia, new regulations concerning diving operations, and training requirements for members of joint health and safety committees under the Ontario *Occupational Health and Safety Act*, the adoption of new permissible exposure values for gases, dusts, fumes, vapours or mists in the work environment under Quebec's *Regulation respecting the quality of the work environment*, and a new *Mine Safety and Health Act* in the Northwest Territories.

I. EMPLOYMENT STANDARDS

A. Proclamations

Alberta has proclaimed Bill 4, the *Employment Standards Code Amendment Act, 1994* (S.A. 1994, c. 14), which was described in the *Highlights of Major Developments in Labour Legislation 1993-94*, effective November 1, 1994. The *Employment Standards Code Amendment Act, 1994* provides, among other things, for the recovery of costs related to the administration of the Code, the hiring of persons to perform various services in administering the Code, the streamlining of the complaint procedure under the Code, director liability for offences committed by their corporation, and increases in the amount of the fines under the Code.

British Columbia proclaimed in force Bill 37, the *Skills Development and Fair Wage Act* (S.B.C. 1994, c. 22), effective September 1, 1994. Among other things, 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.

Saskatchewan proclaimed Bill 32, *An Act to amend the Labour Standards Act, 1994* (S.S. 1994, c. 39) effective February 3, 1995, except for the following: clause 3(f); that portion of section 8 which enacts section 13.4 of the *Labour Standards Act*; sections 26, 27, 29 and 40; and that portion of clause 45(d) which enacts clauses 84(1)(e.2) and (e.5) of the *Labour Standards Act*. That portion of section 36 which enacts section 68.4 of the *Labour Standards Act* (provision concerning the limitation period) became effective on August 1, 1995. The most notable of the provisions not proclaimed are those that would require employers to offer to part-time workers any additional hours of work that become available, in accordance with their seniority and qualifications (section 13.4 of the *Labour Standards Act*), and that would require employers to give notices of discharge and of lay-off (section 26 of that Act).

B. Legislation of General Application

The **federal government** adopted amendments to the *Canada Labour Standards Regulations* under the *Canada Labour Code* to give effect to provisions contained in *An Act to amend the Canada Labour Code and the Public Service Staff Relations Act*, which came into force on June 23, 1993, relating to modified hours of work, vacation and general holidays, as well as reassignment and leave of pregnant or nursing employees, and injured worker protection.

The regulation establishes detailed procedures for the implementation of a modified work week, postponement and waiver of an annual vacation and substitution of a general holiday. The regulation specifies the information to be contained in the notifications and agreements required by the Code, and in the records to be kept by employers. The required information respecting notifications to employees is set out in Schedule III.

The regulation requires the employer to notify the trade union when averaging of hours of work is adopted due to operational necessity. Where the averaging is part of a written agreement with a trade union, the requirement to notify the Regional Director is lifted. The regulation stipulates the reduction that must be made in the standard and maximum hours of work to account for specified periods of leave taken during an averaging period. The information to be contained in the notification to employees is set out in Schedule IV.

The regulation updates the terms and conditions under which may be applied the new provision allowing an employment year, other than the anniversary year, to be adopted for the purposes of postponing or waiving annual vacations without ministerial permit. The procedure ensures that affected employees receive an exact pro-rata of the vacation pay to which they are entitled. This formula applies to the period between the anniversary date and the chosen employment year.

The regulation specifies that the employer must allow an employee to return to work after a work-related illness or injury within 18 months of the declaration, contained in a medical certificate issued by a qualified medical practitioner authorized by the plan the employer subscribes to, that the employee is fit to return to work, with or without conditions. Moreover, where the employer cannot allow the employee to return to work within 21 days of the issuance of the certificate, he/she must notify in writing the employee and his/her trade union, where applicable, whether the return to work is reasonably practicable and, if not, the reasons it is not. An employer who lays off, terminates the employment or abolishes the functions of an employee within nine months of the employee's return, must demonstrate to an inspector that the action was not due to his/her absence because of a work-related illness or injury. The requirement to keep records is extended to this standard and the provision respecting the continuity of employment applies to it as well.

This regulation also amends Parts III, IV and VI of Schedule II (Industrial Establishments), which describes certain industrial establishments for the purposes of the group termination provisions. These amendments reflect the current organizational structure of three national companies: VIA Rail Inc., Air Canada and Bell Canada.

This regulation came into force on October 25, 1994.

British Columbia has adopted a new *Employment Standards Act* (Bill 29), which, when it is proclaimed, will repeal and replace the existing *Employment Standards Act*. The new Act implements many of the recommendations made to the Minister of Skills, Training and Labour by the Thompson Commission, in February 1994. In general, the changes include more flexible work arrangements for employers and employees, a streamlined investigative process, the establishment of an independent appeal tribunal to replace the Employment Standards Board, more stringent enforcement procedures and increased penalties for violating the Act. With respect to new substantive rights of employees, the Act provides for the payment of interest on unpaid wages, and the addition of unpaid bereavement leave, leave for jury duty and leave for family responsibilities. The following describes the salient differences between the previous legislation and this Act.

Purposes of the Act

The purposes of this Act are to: ensure that the employees covered receive at least basic standards of compensation and conditions of employment; promote the fair treatment of employees and employers; encourage open communication between employers and employees; provide fair and efficient procedures for resolving disputes over the application and interpretation of this Act; foster the development of a productive and efficient labour force; and assist employees in meeting work and family responsibilities.

Minor Derogations and Variances

The Act applies to all employees, other than those excluded by regulation, regardless of the number of hours worked. The requirements of this Act or the regulations constitute minimum requirements. However, collective agreements may derogate somewhat from the Act in the areas of hours of work and overtime, statutory holidays, annual vacations and termination of employment, provided that, on the whole, the rights of employees under the collective agreement meet or exceed those provided under the Act in each of those areas, and certain other conditions are met.

In addition, new provisions allow an employer and any of his or her employees to jointly apply, in accordance with the regulations, for a variance of any of the following provisions: the period of time defined as a "temporary layoff"; the interval constituting a regular payday; restrictions concerning special clothing; the required notice for effecting a change in shift; the minimum call-in pay; the maximum hours of work; the hours free from work each week; the overtime wages for employees not on a flexible work schedule; and the notice and the termination pay requirements for group terminations. The director of employment standards (wherever the term "director" is used, it also includes a person to which the director has delegated authority in accordance with the Act) may grant a variance if a majority of the employees to which the variance would apply are aware of its effect and approve of the application, and if the variance is consistent with the intent of the Act. The director may specify the conditions in which the variance will apply.

Flexible Work Arrangements

New provisions allow increased flexibility for employers and employees with respect to the scheduling of work. The Act provides that employers may adopt a flexible work schedule for employees *not covered* by a collective agreement if at least 65 per cent of the employees affected by the schedule approve of it. In the case of employees who are covered by a collective agreement, approval must be obtained from the trade union representing the affected employees. Certain other conditions, concerning the period of scheduling, the procedure to follow to obtain approval, the payment of overtime pay, and the cancellation of flexible work schedules, apply.

Time Banks

In addition, the Act allows the banking of overtime hours where an employee requests it and the employer agrees. A time bank is established for the employee, and the employer credits the employee's overtime wages to the time bank instead of paying them to the employee at the

overtime rate in accordance with the Act. The employer must ensure that all overtime credited to an employee's time bank are either paid to the employee, or taken as time off with pay, within six months after the overtime wages were earned. A common date for paying all employees who bank time may be established, so long as this does not result in an extension of the six month period for any employee. On termination of

employment, or upon receiving the employee's written request to close the time bank, the employer must pay the employee the amount credited to the time bank.

New Leave Entitlements

An employee is entitled to up to five days of unpaid leave each year to meet responsibilities related to the care, health, or education of a child in the employee's care or the care or health of any other member of the employee's immediate family.

An employee is entitled to up to three days of unpaid leave upon the death of a member of the employee's immediate family.

If an employee is required to attend court as a juror, the employer must provide the appropriate jury duty leave.

An employer is no longer allowed to require an employee to commence her maternity leave within 11 weeks of the estimated date of birth, where the pregnancy interferes with the performance of her duties.

An employer must grant to an employee who requests it the pregnancy, parental, family responsibility, bereavement, or jury duty leave to which he or she is entitled. The employer cannot terminate the employment of that employee, or change a condition of employment without the employee's consent, because of a pregnancy or a leave allowed by the Act. As soon as the leave ends, the employer must re-instate the employee in the same position the employee held or in a comparable one.

The periods of employment preceding the leave and following the leave are deemed continuous for the purposes of pensions, medical plans and other benefits, as well as for vacation entitlement and length of service when calculating appropriate notice of termination. In addition, the employee may opt to continue to contribute his or her share of any benefit plan during the leave, in which case the employer must also continue to contribute. If the employer pays the total cost of a plan, he or she must continue to make the payments as if the employee was not on leave. Moreover, the employee is entitled to all increases in wages and benefits, as if the employee was not on leave.

Complaints, Investigations and Determinations

The new Act allows complaints to be lodged by third parties, in addition to employees, former employees and employers. The director has increased discretion to refuse to investigate a complaint, or may stop or postpone investigating a complaint which: is not made within the limitation period (six months, as previously); does not fall within the ambit of the Act; is deemed frivolous, vexatious or trivial, or not made in good faith; is not supported by enough evidence to prove it; is the object of proceedings before a court, tribunal, arbitrator or

mediator, or has been the object of a decision or award from such; or has been settled some other way. Previous amendments to the *Employment Standards Act* introduced arbitration under collective agreements to resolve complaints, by deeming the provisions of the Act to be part of the collective agreement, wherever employees are covered by a collective agreement. In addition, proceedings in the courts or other tribunals may bear on the outcome of complaints under this Act. Therefore, it was considered advisable to give to the director the power to delay proceeding with a complaint pending the outcome of other proceedings.

The Act stipulates more clearly that the director may conduct an investigation to ensure compliance with the Act even in the absence of a complaint.

For the purposes of this Act, the director has the protection, power and authority of a commissioner under the *Inquiry Act* to summon and compel attendance of witnesses, require the production of documents, administer oaths, direct questions, etc. In addition, this Act provides powers of entry and inspection which allows the director to carry out an audit of an employer or employer group. It is also provided that the director may enter a place occupied as a private residence only with the consent of the occupant or under the authority of a warrant issued under section 120 of the Act.

If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond.

The Act makes clear the powers of the director to effect an amiable settlement of any complaint, and to make an appropriate determination, in the absence or failure of such a settlement.

Where a determination concerns an amount of unpaid wages, the amount is limited to wages due within the 24-month period (previously limited to six months) preceding the complaint, the date of the termination of employment, if earlier, or the determination, where the investigation was not the result of a complaint.

The Act now provides for the payment of interest accrued on wages or other amount (such as pay-in-lieu of notice of termination) that went unpaid in the 24-month period described above. In addition, interest at a prescribed rate is payable from the earlier of the date the employment has been terminated or the date a complaint was lodged, to the date of payment. This part of the interest is deemed to be wages, and the provisions of the Act respecting the recovery of unpaid wages apply to it. If payment is not made within 23 days of a determination that wages are due, interest begins to accrue again once those 23 days have elapsed. Except with respect to security provided or bond posted by an employer to guarantee the payment of wages, amounts collected under the Act earn interest at the prescribed rate from the date the amount is deposited to the date of remittance to the person entitled. The Act also provides that the government may, by regulation, establish different rates for different purposes.

Enforcement

The part of the Act dealing with enforcement now includes many provisions which were contained in various parts of the former Act, in order to make it flow better and facilitate its use and understanding. Regrouped under this part are provisions respecting, among other

things, liens, third party demands, certificates of judgements, seizure of assets, declarations of associated employers or corporations, liability of officers of a corporation, successor rights in the case of the sale of a business or its assets, and penalties.

A stipulation is added to the provision creating a lien for unpaid wages. It provides that the lien also has priority over a mortgage of, or debenture charging, land which was appropriately registered even *before* the registration of a certificate of judgement obtained following a determination of unpaid wages or order of the tribunal under this Act. However, this priority is limited to money paid toward the mortgage or debenture only *after* the certificate of judgement was registered.

Attachment of third party debts, or third party demands, remain possible as previously was the case, though the provision's clarity has been improved.

The court registry in which (the B.C. Supreme Court's) the director may file a determination or an order of the tribunal, and the circumstances in which the certificate of judgement obtained in this manner renders the determination or order enforceable as a judgement of that court have been specified.

The procedures respecting the seizure of assets to satisfy the amount of unpaid wages (and seizure costs) have been simplified.

The Act provides that the director may impose monetary penalties on any person (including an employee, officer, director or agent of a corporation) who has contravened the Act, in accordance with the prescribed schedule of penalties. The intention is to allow the imposition of escalating levels of penalties on persons who contravene the Act repeatedly. The penalties are attached to the determinations made by the director or the orders of the tribunal, and must be paid whether or not the person is guilty of an offence under this Act or the regulations. Where a person has been convicted of such an offence, that person is also liable to pay a fine under section 125 of the Act.

In addition, if an employer has, at any time, failed to pay wages to his\her employees, the director may require that employer to provide an irrevocable letter of credit or other satisfactory security or to post a bond under the *Bonding Act* to insure compliance with the requirements relating to the payment of wages.

The director may compile information relating to contraventions of this Act or the regulations, including information identifying the persons who, according to a determination or an order, committed the contraventions. Despite the *Freedom of Information and the Protection of Privacy Act*, the director may publish the information, and make it available for public inspection during regular business hours at offices of the Employment Standards Branch.

Employment Standards Tribunal

The Employment Standards Tribunal is established to replace the Employment Standards Board. The Board was essentially an internal review mechanism, which could be followed by an appeal to the Supreme Court of British Columbia, under certain circumstances. This mechanism gave rise to a perception of denial of natural justice with respect to the right to an

independent review. The new Tribunal is intended to preserve an appeals system which is relatively informal, with minimum reliance on lawyers, and combines the objectives of expeditiousness and minimal cost to the parties and the Ministry. The practice of allowing Ministry staff to settle as many complaints as possible without issuing a determination or order is encouraged, as long the rights of the parties to a fair and impartial hearing is respected.

The tribunal is composed of a chair appointed by the Lieutenant-Governor in Council, as many adjudicators as considered necessary appointed by the chair, and as many members as the Minister may decide to appoint, representing, in equal numbers, the interests of employers and of employees.

The tribunal is given much the same powers as the director, including those under the *Inquiry Act* and other investigative powers, and is mandated to make any decision on questions of fact or law arising in the course of an appeal or review.

The tribunal is master of its own procedure and is not necessarily required to hold an oral hearing. The decision of the tribunal on any matter in which it has jurisdiction is final and binding, and is not open to appeal or review in any court on any grounds. The tribunal may, upon request or on its own motion, reconsider a decision it has rendered. Decisions, with motives, of the tribunal on appeals and reconsiderations, as well as its recommendations to the Lieutenant-Governor in Council about the exclusion of classes of persons from all or parts of the Act, must be made available in writing in a publishable form.

Other provisions

The director may delegate *to any person* any of his or her functions, duties or powers under the Act. However, the director may not delegate to the same person the function of conducting investigations into a matter and the power to impose penalties in relation to that matter. If the director personally investigates a matter, he or she must delegate the power to impose penalties in that matter.

Except for a prosecution under this Act or an appeal to the Employment Standards Tribunal, the director or a delegate of the director may not be required by a court, board, tribunal or person to give evidence or produce records relating to information obtained for the purposes of this Act.

As mentioned above, this Act repeals and replaces the existing *Employment Standards Act* and repeals the *Labour Regulation Act*. It will come into force by proclamation.

In addition to the amendments to the Act described above, British Columbia amended its *Employment Standards Act Regulation* to implement some of the recommendations of the Thompson Commission. The *Employment Standards Act Regulation* has been amended by B.C. Reg. 62/95 and B.C. Reg. 116/95, effective March 1, 1995, to expand coverage for persons with disabilities and for various occupations which previously had been excluded, including full or partial coverage for certain farm workers, live-in domestics, live-in home support workers, taxi drivers, artists, resident caretakers, certain newspaper carriers, security personnel, firefighters, and fishers. Sitters who work more than 15 hours a week for a sole

client, which had originally been included in the above list by B.C. Reg. 62/95, remain excluded following the adoption of B.C. Reg. 116/95.

A new provision is added to the regulation requiring every employer to provide a written employment contract to a domestic, upon hiring. The contract must clearly set out the conditions of employment, including the duties to be performed, the hours of work, the wages, and the charges for room and board. If the employer requires a domestic to work any hours other than those stated in the contract, he/she must add those hours to the hours worked under that contract and remunerate them accordingly.

The regulation also provides minimum wage increases, which are described below in Section D.

Saskatchewan adopted the *Labour Standards Regulations, 1995* (R.R.S., c. L-1, Reg. 5), pursuant to its new *Labour Standards Act* (see proclamation above). This regulation repeals and replaces the *Labour Standards Regulations* (S. Reg. 317/77). However, it re-enacts most of the provisions of the previous regulation, though it removes or amends a number of the exclusions it contained.

The most salient aspect of this new regulation is the provisions respecting the extension of certain benefits to eligible part-time employees employed by employers with 10 full-time-equivalent (FTE) employees or more at their service, where the employer offers those benefits to full-time employees. The regulation sets out a formula for the calculation of the number of FTEs for use in businesses that have been in existence for at least one year, and another for businesses that have been in existence for at least 13 weeks, but less than one year. For the purpose of the calculation of FTEs, all employees (including those acting in a managerial capacity) employed by an employer at all of his/her establishments are considered.

Benefits which employers are required to offer also to part-time employees (if full-time employees are entitled) include: a dental plan, a group life plan, an accidental death and dismemberment plan, and a prescription drug coverage plan, if the employer makes contributions to any such plan on behalf of employees, or if they are self-funded by the employer.

In addition to the above requirements, part-time workers can become eligible for benefits only if they work an average of 15 hours per week or more. Moreover, the regulation imposes a qualifying period of 26 weeks of continuous employment after the date of hire before any part-time employee can become eligible. Full-time students are excluded regardless of the number of hours they work per week.

The regulation also establishes the employees' entitlements to the various benefits. In essence, part-time employees will be entitled, in the absence of any other benefit formula, to a somewhat less generous version of each plan, which exclude vision care subsidies, disability insurance, and paid sick leave.

Where a benefit plan requires contributions to be made by eligible employees, those contributions must be made on a pro-rated basis, and be shared between the employer and the employee in the same proportion as that for full-time employees.

The provisions concerning the benefit plans will come into force with respect to employees who are represented by a trade union, on the date the collective agreement expires, or February 1, 1996, whichever is earlier. With respect to non-unionized employees, these provisions became effective August 1, 1995.

All other provisions of the regulation became effective on February 3, 1995.

On May 3, 1995, the **Yukon Territory** adopted Bill 28, *An Act to amend the Employment Standards Act*, which makes a number of substantive changes to the *Employment Standards Act* and brings greater clarity to certain provisions. For example, the definitions of "employer", "wages" and "week" are amended to make the Act simpler to apply, and the weekly rest-days provision is amended to apply to "hours of work" rather than "standard hours of work". What follows is a summary of the salient changes.

Hours of Work and Overtime

The Act allows employers and employees to enter into a written agreement for compensatory time off in lieu of overtime pay. Each overtime hour

worked must be compensated at a rate of one and one-half hours of paid time off work, given within the following 12 months. Compressed work-weeks arrangements are made more flexible, by spreading working time over a two week period. Variances to hours of work provisions can be approved by the Director of Employment Standards, to accommodate the extension of split shifts over longer periods than 12 hours, where the employer and employee agree. Subject to operational requirements, an employer must make reasonable efforts to give an employee who is required to work overtime a reasonable advance notice of this requirement. Where there is an emergency, the employer can give a shorter notice of the requirement to work overtime than would otherwise have been provided. An employee may refuse to work overtime for just cause but is required to state the refusal and the cause to the employer in writing. An employee who considers that he or she is being required to work an excessive number of hours or that the hours of work are detrimental to his or her health or safety may file a complaint with the director, who will inquire into, and make a determination on, the matter.

Public Holidays

An employee may be required to work on a holiday. In such a case, the employer must pay the employee his or her regular rate for the day, plus: a) the overtime rate for all hours worked, or b) his or her regular pay for all hours worked plus another day off which may be added to an employee's annual vacation or taken at a time convenient to the employer and employee. In addition, an employee who has already been absent for 14 consecutive days immediately preceding a holiday on a leave of absence without pay requested by the employee, is not entitled to pay for a general holiday on which that employee did not work.

Parental Leave

Employees who have worked for an employer for 12 months or more and who provide at least four weeks' notice are entitled to take 12 weeks of unpaid parental leave. The leave is to be taken within 52 weeks of the birth or adoption of a child, or the date the child comes into the actual care and custody of the parents. The leave may be taken by either parent, or it can be shared between them. If the natural mother of a child takes both maternity leave and parental leave, the leaves must be continuous unless the employer and employee agree otherwise, or a collective agreement provides otherwise. If both parents work for the same employer, the leave cannot be taken at the same time, except in certain circumstances. Employees are required to give at least four weeks' notice to their employer of the date of return to work if they intend to return before the leave entitlement is over.

Other Leaves

Unpaid sick leave can accrue to 12 days in a year, an increase from six days. Bereavement leave provisions have been amended to increase the duration of unpaid leave from three days to up to one week, and to expand the list of relatives whose death gives rise to the leave. The list now includes the spouse (including a common-law spouse), parent, child (including a foster parent's child), brother, sister, father of the spouse, mother of the spouse, step-mother, step-father, grandparent, grandchild, son-in-law, daughter-in-law, and any other relative permanently residing with the employee. The bereavement leave provisions also apply in cases of First Nations employees to let them prepare for funerals and potlatches according to clan customs.

Notice of Terminations

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

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

Payment of Wages

Record-keeping rules have been clarified. Employers are now required to keep complete and accurate records concerning an employee for at least one year after the last day worked. Wages must be paid within ten days after the regular pay period, and seven days after termination (up from seven and three days, respectively). Termination pay may be paid in instalments. Deductions from wages are prohibited, except for statutory deductions and the direction by an employee to pay his or her wages to a spouse or another member of the immediate family. However, written assignment of wages may be honoured by the employer. An employer who intends to reduce an employee's pay rate must give at least one pay period's notice to the employee.

Recovery of Unpaid Wages

The limitation period for filing a complaint is shortened from one year to six months. The rules for referrals to the Employment Standards Board and for appeals of the Board's decisions have been clarified. If an employer makes an application for review of the director's certificate of unpaid wages, the employer must deposit an amount equal to the wages owing, or $250, whichever is less.

Provisions respecting the priority of wages, the liability of directors of a corporation for unpaid wages, and the establishment of secured debts for wages have been clarified.

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

Fair Wages

Finally, with respect to the fair wages provisions, the schedule to the Act is clarified and provision is made for the adoption of regulations.

This Act came into force on October 1, 1995.

C. Administration and Enforcement

In addition to the several items described in Section B above which relate to this topic, the following specifically deal with administration and enforcement.

Alberta adopted the *Fees and Costs Regulation* under the *Employment Standards Code*. This regulation provides that, for the purposes of recovering the government costs in administering the Code, the Director of Employment Standards shall charge fees in accordance with a Schedule prescribed by the Minister. In addition, the Director may charge fees relating to, among other things, contracted services, audits, payment orders, third party demands, the lodging of appeals and hiring an umpire. This regulation applies in relation to complaints concerning the recovery of unpaid wages, overtime pay, benefits or parental leave, only in respect of complaints made after the coming into force of the regulation or, in the case of termination, if the termination occurred after the coming into force. This regulation came into force on November 1, 1994.

Ontario adopted Bill 175, the *Statute Law Amendment Act (Government Management and Services), 1994*, which amended, among other legislation, the *Employment Standards Act* to provide that, when a complaint against an employer is made, an employment standards officer may require the complainant and the employer or a representative of the employer to attend a meeting with the officer and to bring specified documents to the meeting. A provision is added to the Act to permit the reciprocal enforcement of employment standards orders and judgements with other jurisdictions in Canada, as well as with other countries. An order in council declaring a particular jurisdiction to be party to a

reciprocal enforcement agreement is necessary to trigger this process. These amendments came into force on December 9, 1994.

Quebec has adopted Bill 44, an *Act to Amend the Act respecting labour standards and the Act respecting the Ministère du Revenu*. This Act transfers to the Ministry of Revenue (ministère du Revenu) the functions relating to the levying of the employers' contributions to the financing of the Labour Standards Commission (Commission des normes du travail). A chapter is added to the *Act respecting labour standards* concerning matters specific to the levying of contributions, except the rate of the contributions which will continue to be determined by regulation by the Commission. The Act provides that the provisions of the new chapter constitutes a law administered by the Minister of Revenue and to render the provisions of the *Act respecting the Ministère du Revenu* applicable and enforceable in respect of the collection of contributions. The *Act respecting the Ministère du Revenu* is also amended to make certain necessary adjustments resulting from the above-mentioned provisions and to provide that the more severe penalties imposed in fiscal matters do not apply to the contributions. This Act came into force on December 21, 1994, except section 13, which came into force on January 1, 1995.

D. Minimum Wages

British Columbia amended its *Employment Standards Regulation* to provide, among other things, minimum wage increases from $6.00 to $6.50 per hour, effective March 1, 1995, and to $7.00 per hour, effective October 1, 1995. The lower minimum wage rate for youth has been eliminated, also effective March 1, 1995. In addition, the minimum wage rates for live-in home support workers, resident caretakers and farm workers employed on a piece-work basis to hand harvest certain fruit, vegetable or berry crops have been increased.

Manitoba adopted an amendment to the *Minimum Wages and Working Conditions Regulation* under the *Employment Standards Act* to provide increases in the general minimum wage, for work done during standard hours, from $5.00 to $5.25 per hour on July 1, 1995, and to $5.40 per hour on January 1, 1996.

Ontario has raised its minimum wage rates by amending the *General Regulation* under the *Employment Standards Act*, effective January 1, 1995. The general rate has been increased from $6.70 to $6.85 an hour. 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 $6.40 per hour, up from $6.25. Employees serving alcoholic beverages in licensed establishments are entitled to $5.95 per hour, up from the previous rate of $5.80 per hour. Hunting and fishing guides who work five consecutive hours or more in a day are entitled to $68.50 for that day, up from $67.00, whereas those who work less than five hours are entitled to $34.25, up from $33.50 per day. The increase in the general minimum wage rate automatically entails an increase in the rate payable to homeworkers, who are entitled to 110 per cent the general rate (the 10 per cent premium is intended to cover overhead costs normally borne by the employer). Homeworkers are therefore entitled to $7.54 per hour, up from $7.37 per hour.

Effective the same date, the regulation also revises the maximum deductions for room and board, as follows:

- $31.70 a week for a private room, up from $31.00 a week, or $15.85 a week if the room is not private, up from $15.50 a week;
- $2.55 for a single meal and not more than $53.55 a week, up from $2.50 for a single meal and $52.50 a week; and
- $85.25 a week for both a private room and board, up from $83.50, and $69.40 per week for both room and board, if the room is not private.

In addition, Ontario has amended the *Fruit, Vegetable and Tobacco Harvesters Regulation*, effective January 1, 1995. The minimum wage rate payable to fruit, vegetable and tobacco harvesters has increased from $6.70 to $6.85 per hour. Students under 18 years of age who work not more than 28 hours in a week or during a school holiday to harvest fruit, vegetables or tobacco are entitled to $6.40 per hour, up from $6.25 per hour.

This regulation also included a revision of the maximum permissible deductions for room and board as in the *General Regulation*, described above, and as follows with respect to housing accommodation:

- $99.35 per week for serviced housing accommodation, up from $97.15 per week; and
- $73.30 per week for housing accommodation, up from 71.70 per week.

Quebec has raised its minimum wages on October 1, 1994, by amendment to the *Regulation respecting labour standards* under the *Act respecting labour standards*. The general minimum wage has increased to $6.00 per hour, from $5.85. The rate payable to employees who usually receive gratuities has increased from $5.13 to $5.28 per hour and that payable to domestic workers who reside in their employer's home has increased from $227 to $233 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, 1995. The general minimum wage will increase to $6.45 per hour, from $6.00, and the rate payable to employees who usually receive gratuities will increase from $5.28 to $5.73 per hour. Effective on the same date, the minimum wage payable to domestic workers who reside in their employer's home will increase from $233 to $250 per week, and their standard workweek will be reduced from 53 to 51 hours.

The **Yukon Territory** amended its *Minimum Wage Order* under the *Employment Standards Act*, in order to increase the minimum hourly rate from $6.24 to $6.72 per hour, effective October 1, 1994, and to $6.86 per hour, effective October 1, 1995.

E. Pay Equity

Ontario adopted the *Statute Law Amendment Act (Government Management and Services), 1994*, which among other things, amended the *Pay Equity Act* to enable public sector employers created between January 1, 1988 and July 1, 1993 to phase-in pay equity adjustments in compensation in the same way that pre-1988 employers can. This also allows them to use the "proportional value method of comparison", and require some of them to use the "proxy method of comparison", to determine whether pay equity exists in their workplace. These amendments came into force on December 9, 1994.

Prince Edward Island adopted Bill 27, *An Act to amend the Pay Equity Act* (S.P.E.I. 1995, ch. 28), in order to remove the reference to the obligation to maintain pay equity in the Public Service, once achieved. The prohibition against establishing or maintaining discriminatory pay rates is amended by removing the words "or maintain". In addition, the Act removes the right to lodge a complaint for failing to maintain pay equity, once achieved. Moreover, the Act replaces the requirement to report to the Minister every six months by one requiring to report "upon request". This Act came into force on May 4, 1995.

F. Proposed Legislation

On December 6, 1994, the **federal government** introduced Bill C-62, the *Regulatory Efficiency Act*. This new regulatory reform tool would provide that where businesses or individuals find new and more efficient ways to comply with government regulations, they could seek permission to implement them by presenting the government with a proposed compliance plan. If the proposal fully respects the public interest and the objectives of the statutes, the Act would enable the government to enter into agreements to permit their use. The Act would also allow certain departments to enter into agreements with other government agencies, including provincial and foreign governments, concerning the administration of federal regulations.

The Act would apply only to specified regulations, designated by regulation after pre-publication in the *Canada Gazette* and tabling in the House of Commons and in the Senate. In addition, specific terms and conditions would be set on how the Act would apply to those designated regulations.

The Minister responsible for a designated regulation would be required to publish in the *Canada Gazette* the criteria for evaluating and the procedures for obtaining approval of a proposed compliance plan. After receipt of a proposed compliance plan, the Minister would be required to

make all reasonable efforts to consult with the persons, governments or governmental agencies affected by the change. In certain cases, a notice of a compliance plan would be published in the *Canada Gazette* at least 60 days before it is approved. In all cases, a notice of a compliance plan would be published in the *Canada Gazette* within 60 days of its approval.

The approval of any compliance plan could be cancelled if its objectives are being compromised and penalties for breaching a compliance plan would correspond to those that would be imposed if the regulation it replaced had been breached.

On December 12, 1994, the federal government also introduced a new *Employment Equity Act* (Bill C-64), which would replace the existing Act. Bill C-64 would provide several new measures, including the following:

- expanding coverage to include the federal public service, agencies and commissions;
- clarifying existing employer obligations to implement employment equity;
- ensuring that the requirements of the Federal Contractors Program are comparable to those under the *Employment Equity Act*;
- empowering the Canadian Human Rights Commission to ensure compliance of all public and private sector employers covered by the legislation by enabling it, among other things, to conduct audits; and
- providing that the Canadian Human Rights Tribunal (to be named the Employment Equity Review Tribunal when hearing employment equity cases) hear requests from employers to review directions received from the Commission or applications from the Commission to confirm a direction given to an employer who has failed to comply. The decisions of the Tribunal would be final and binding, except for judicial reviews initiated under the *Federal Court Act*.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

Three Acts, which were described in the *Highlights of Major Developments in Labour Legislation 1993-1994*, were brought into force.

In **Alberta**, the *Labour Boards Amalgamation Act* (Bill 1) was proclaimed into force on September 1, 1994.

In **New Brunswick**, the sections of the *Labour and Employment Board Act* (Bill 59) providing for the creation of a Labour and Employment Board were brought into force on August 15, 1994. Other sections dealing with its duties, functions and powers came into force on November 14, 1994.

In **Saskatchewan**, the *Trade Union Amendment Act, 1994* was brought into force on October 28, 1994, except for an amendment enacting subsection 26.6(2). This subsection provides that where the Minister or the Labour Relations Board is required to appoint an arbitrator pursuant to the *Trade Union Act* or a collective agreement, that appointment must be made from a list of designated arbitrators to be established by the government after consultation with labour organizations and employer associations.

B. Public and Parapublic Sectors

In **British Columbia**, the *Fire and Police Services Collective Bargaining Act* took effect on June 29, 1995. This Act provides that if a firefighters' union or a police officers' union and an employer have bargained collectively and have failed to conclude or renew a collective agreement, the trade union or the employer may apply to the Minister of Skills, Training and Labour for an order that the dispute be resolved by arbitration.

The Minister may direct that the dispute be resolved by arbitration if a mediation officer has been appointed (i.e. under section 74 of the *Labour*

Relations Code) and has conferred with the parties, and the associate chair of the mediation division of the Labour Relations Board has made a report to the Minister which:

- sets out the matters on which the parties have agreed and those that remain in dispute;
- indicates whether in his/her opinion the party seeking arbitration has made every reasonable effort to reach a collective agreement; and
- states whether in his/her opinion the dispute or some elements of it should be resolved by using the final offer selection method.

If the Minister directs that the dispute be resolved by arbitration, no strike or lockout may be declared, and if one is in progress, it must be terminated immediately.

An arbitrator or arbitration board may encourage settlement of the dispute and, with the agreement of the parties, may use mediation or other procedures to achieve this at any time during the arbitral proceedings.

In **Alberta**, the *Managerial Exclusion Act* was assented to on April 24, 1995. Effective on that date, the Act provides that the Labour Relations Board may exclude from a bargaining unit firefighters who, in its opinion, exercise managerial functions or are employed in a confidential capacity in matters relating to labour relations. The Board did not previously have this power under the *Labour Relations Code*.

In **Saskatchewan**, the *Education Act, 1995* received royal assent on May 18, 1995. The Act, which will come into force by proclamation, governs, among other things, collective bargaining for teachers in elementary and secondary schools. The provisions it contains on that subject will replace, without significant changes, those of the current *Education Act*.

At the **federal** level, the implementation of certain provisions of the February 27, 1995 budget has entailed amendments to the *Public Sector Compensation Act*. Among other things, these amendments provide that, notwithstanding any federal Act (except the *Canadian Human Rights Act*) or any directive, policy, regulation or agreement made under such legislation, the Work Force Adjustment Directive that came into force on December 15, 1991, any term or condition of employment relating to job security or work force adjustment or any matter in relation to which the Directive may be issued or amended may not be the subject of collective bargaining, or be embodied in a collective agreement or arbitral award within the meaning of the *Public Service Staff Relations Act*, in respect of departments and other portions of the public service for which the government represented by the Treasury Board is the employer for a period of three years.

However, the Treasury Board and bargaining agents may, by agreement in writing, amend the Work Force Adjustment Directive but only as it relates to their collective agreements or arbitral awards, whether these are in force or have ceased to operate.

In addition, the Governor in Council, on the recommendation of the Treasury Board, may amend the Work Force Adjustment Directive in relation to any of the following matters:

- the suspension of the separation benefit;
- geographical limitations with respect to guaranteed offers of appointment made as a result of privatization and contracting out situations within the meaning of the Directive; and
- proceeding with a contract in a contracting out situation within the meaning of the Directive.

Any such amendment to the Work Force Adjustment Directive ceases to have effect three years after the coming into force of the above provision.

The parties to any collective agreement or arbitral award that includes a compensation plan covered by the *Public Sector Compensation Act* may, by agreement in writing, amend the terms and conditions they contain otherwise than by increasing wage rates or allowing incremental increases. No such amendment may be introduced if the Governor in Council on the recommendation of the Treasury Board, or the appropriate employer for some compensation plans, determine that the combination of all modifications made to a compensation plan directly result in any increase in total expenditures for the department or other portion of the public service of Canada (or part thereof) to which the plan relates.

All the amendments to the *Public Sector Compensation Act* mentioned previously took effect on June 22, 1995, and will cease to be in force three years after that date.

C. Emergency Legislation

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

On March 16, 1995, the *West Coast Ports Operations Act, 1995* (Bill C-74) was passed to end a work stoppage and permit the resolution of a collective bargaining dispute between the Waterfront Foremen Employers Association involved in the supervision of longshoring and related operations at west coast ports and the International Longshoremen's and Warehousemen's Union, Ship and Dock Foremen, Local 514. The last collective agreement between the parties had expired on December 31, 1992.

Effective March 17, 1995, the Act required the immediate resumption of the supervision of longshoring and related operations at ports on the west coast, and provided for the appointment of a mediator-arbitrator to deal with all matters remaining in dispute between the parties. If the mediator-arbitrator was unable to bring about agreement in respect of any such matter, he/she was to render a decision after taking cognizance of the report of the conciliation commissioner released to the parties on February 10, 1995. The term of the collective agreement was extended to include the period from January 1, 1993 to a date, not earlier than December 31, 1996, fixed by the mediator-arbitrator.

All costs incurred by the Government of Canada relating to the appointment of the mediator-arbitrator and the exercise of his/her duties under the Act were considered to be debts due to the government, and could be recovered as such in any court of competent jurisdiction (i.e. one half from the employers, and one half from the union).

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

On March 26, 1995, the federal government also adopted the *Maintenance of Railway Operations Act, 1995* (Bill C-77). That Act was passed to end work stoppages and permit the resolution of collective bargaining disputes between the Canadian National Railway Company, Canadian Pacific Limited and VIA Rail Canada Inc. and unions representing some 30,000 workers. The last collective agreements between the parties had expired on December 31, 1993, except for certain CN shopcraft agreements which had expired on December 31, 1991.

The Act was divided into three parts: Part I pertaining to CN Rail, Part II applying to CP Rail and Part III covering VIA Rail. Although there were some differences in the provisions contained in the three Parts, their main points were similar. They all took effect on March 27, 1995, but did not apply in respect of any collective agreement entered into in 1995 prior to the coming into force of the Act.

Effective March 27, 1995, the Act required the resumption of railway operations and related services across Canada, and provided for the extension of each collective agreement, or the continuation of the terms and conditions of employment with respect to a bargaining unit of CN shopcraft employees, until a new collective agreement between the parties came into effect.

After the coming into force of the Act, a mediation-arbitration commission had to be established for each bargaining unit of the three rail companies and the Minister of Labour was to refer to it all matters remaining in dispute. However, the Minister could defer the establishing of a commission when an employer and a union had reached a tentative agreement or had agreed to a process for the final resolution of the matters in dispute. A commission needed not be established in respect of bargaining units for which a new collective agreement was entered into. Notwithstanding the deferring of the establishment of a commission, one was established if the Minister subsequently considered that this was

necessary.

The appointment of the chairperson of each commission was made by the Minister. The employer and the union representing the bargaining unit concerned had to each appoint one member to the appropriate commission. In the event any party failed to appoint a member within the prescribed time, the Minister would do so on its behalf.

Within 70 days after its establishment (or such longer period the Minister may allow), each commission was required to:

a. mediate the matters in dispute and bring about an agreement between the parties;
b. arbitrate any issues remaining in dispute following mediation (the commission was to hear the parties before rendering a decision);
c. fix the termination date of the new agreements established by the Act (not earlier than December 31, 1997); and
d. report to the Minister on the resolution of all matters.

Each commission was to be guided by the need for terms and conditions of employment that are consistent with the economic viability and competitiveness of a coast-to-coast rail system in both the short and the long term, taking into account the importance of good labour-management relations.

All costs paid by the Government of Canada with respect to the establishment of each commission and the exercise of its duties could be recovered from the parties on an equal basis in any court of competent jurisdiction. The employer and the union representing a bargaining unit in respect of which a commission was established had to each pay their own costs incurred in relation to the application of the Act, including the fees and expenses of the member of the commission who was appointed, or deemed to be appointed, by it.

Nothing in the legislation restricted the right of the parties to agree to amend any provision of any 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 an employer or a union (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 46) was adopted to modify certain components of the collective bargaining system applying in the construction industry. The Act contains, among others, the following measures:

- to provide that, in the exercise of its functions, the Construction Commission must cooperate in the fulfilment of the commitments of the Government of Quebec under intergovernmental agreements respecting labour mobility or the mutual recognition of qualifications, skills and work experience for construction trades and occupations;
- to give the Construction Commission the power to order the suspension of construction work when any person who carries out such work or causes construction work to be carried out fails to comply within the prescribed time with its request to prove to it that he/she is the holder of the appropriate licence issued under the *Building Act* and, where applicable, of the appropriate competency certificate or proof of exemption, and that any person hired to carry out construction work or whom he/she assigns to construction work is the holder of such a competency certificate or proof of exemption or of such a licence (a review of such a suspension may be requested by a concerned party within ten days of being notified of the decision) (these provisions took effect on June 28, 1995);
- to extend the scope of the Act to re-include construction work relating to buildings reserved exclusively for residential use and containing a

total of eight dwellings or less, which was excluded since January 1, 1994. However, certain specialized construction work in respect of a single-family dwelling is excluded; this includes the installation of gutters, garage doors, central vacuum cleaner systems and landscaping work;

- to provide that the ratio of apprentices to journeymen in a given trade employed by the same employer may exceed for the residential sector the general standard that is prescribed and reach the ratio of one apprentice for each journeyman;
- to provide that the building commissioner (instead of a council of arbitration), on the application of any interested party, hears and settles disputes as to competency which relate to the practice of any trade or occupation, and that he/she may refer such a dispute to a building deputy-commissioner;
- to eliminate certain rules introduced in 1994 for determining the sectoral representativeness of employees' associations for collective bargaining purposes;
- to provide that the Association of Building Contractors of Quebec is the sole agent of the employers as regards common provisions found in the collective agreements of each sector of the industry, and that, in that respect, it is given its mandates by the sector-based employers' associations (it also provides them with assistance in labour relations matters);
- to provide that each sector-based employers' association is, for its sector, the sole agent of the employers as regards matters other than those addressed in common provisions found in the collective agreements of all sectors of the industry; each sector-based employers' association may, however, entrust the Association of Building Contractors of Quebec with a mandate to fulfil that function, in whole or in part, for its sector (bargaining thus takes place between the employees' associations whose representativeness is more than 50% and, according to their respective role, a sector-based employers' association or the Association of Building Contractors of Quebec);
- to stipulate that the expiry date of sector-based collective agreements is April 30 (instead of December 31) every three years, from April 30, 1995;
- to specify that a collective agreement may not introduce a provision inconsistent with the commitments of the Government of Quebec under an intergovernmental agreement respecting labour mobility;
- to allow a sector-based employers' association and one or more employees' associations whose representativeness is more than 50% to make a special agreement on the conditions of employment that will apply to a major construction project (i.e. where the parties estimate that at least 500 employees will work simultaneously at any time during the project), and provide that, except for the common provisions found in the collective agreements of all sectors of the industry, these conditions of employment may be different from those applicable in the sector concerned; and
- to grant the Construction Commission additional powers to better provide for its financing, to make allowances for regional particularities and intergovernmental agreements to which the Government of Quebec is party and to favour the access of women to, and their maintenance and greater representation on, the labour market in the construction industry.

In addition, the Act amends the *Regulation respecting the issuance of competency certificates* in order to provide that the Commission must issue, on request, an exemption from the obligation to hold an apprentice competency certificate to any person 16 years of age or older who is domiciled in the territory of a state or province having a bilateral agreement with the Government of Quebec with respect to the mutual recognition of qualifications, skills and work experience in trades and occupations in the construction industry. To obtain such an exemption, this person must hold an apprenticeship booklet issued by a body having competence to do so authorizing him/her to carry on, in that state or province, a trade that, under the agreement, corresponds to a trade for which the exemption is applied for. The person must also meet the requirements applicable to training in occupational health and safety. The exemption is valid for a term of one year and is renewable where a monthly report filed with the Commission by a registered employer establishes that the holder worked in the construction industry during the fourteen months preceding the renewal. An exemption from the obligation to hold an occupation competency certificate is provided in similar circumstances where the person making the request proves that he/she is working, or has worked, in that state or province, in the carrying out of tasks corresponding to one or more occupations recognized in Quebec as forming part of the construction industry.

An employee holding such an exemption is deemed to be domiciled in the region where the work for which he/she is hired is carried out, throughout the period of employment. This also applies to an employee holding a journeyman competency certificate issued by the Commission who is domiciled in the territory of a state or province having a bilateral agreement with the Government of Quebec respecting the mutual recognition of qualifications, skills and work experience in trades and occupations in the construction industry.

Transitional measures are provided in order to issue, under certain conditions, with respect to the residential sector an exemption from the obligation to hold an apprentice competency certificate or an occupation competency certificate where any person proves that he/she carried out, for at least 300 hours in 1994, construction work relating to buildings reserved exclusively for residential use (containing eight dwellings or less), including related installations and equipment. In the case of workers who, in 1994, were resident in a state or province the government of which is, together with the Government of Quebec, party to an intergovernmental agreement providing for the mutual recognition of qualifications and work experience in trades and occupations in the construction industry, the 300 hours of work mentioned above can have been performed in the territory of that state or province. Such an exemption is valid until December 31, 1995.

It is specified that the amendments made to the Act must be interpreted in a manner consistent with the commitments of the Government of Quebec under an intergovernmental agreement respecting labour mobility or the mutual recognition of qualifications, skills and work experience for all construction trades and occupations.

Unless otherwise indicated, the provisions mentioned above came into force on February 8, 1995.

E. Artists and Producers

In the **federal** jurisdiction, Part II of the *Status of the Artist Act* was brought into force on May 9, 1995, except for certain sections relating to the establishment of the Canadian Artists and Producers Professional Relations Tribunal, which had taken effect on June 11, 1993. While excluding persons holding employee status under Part I of the *Canada Labour Code* or the *Public Service Staff Relations Act*, Part II of the *Status of the Artist Act* establishes a framework for collective bargaining between professional artists, who are independent contractors working in the federal jurisdiction, and producers.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Proclamations and repeals

Effective October 1, 1994, **Alberta** proclaimed in force all remaining sections of the *Safety Codes Act* (S.A. 1991, ch. S-0.5, as amended) which had not taken effect, except section 70(9), which was proclaimed in force December 15, 1994. Certain sections of the Act had previously been proclaimed on March 31, 1994 and others on April 30, 1994.

Alberta's *Administrative Items Regulation* under the *Safety Codes Act* was amended by Alta. Reg. 360/94 to, among other things, repeal the *Enforcement Regulation* (Alta. Reg. 71/79) effective December 31, 1994.

Manitoba proclaimed *An Act to Amend the Act to Protect the Health of Non-Smokers (2)*, which was described in the *Highlights of Major Developments in Labour Legislation 1993-1994*, effective October 31, 1994.

B. Legislation of General Application

Alberta further amended the *Safety Codes Act*, by passing Bill 47, which allows municipalities and accredited agencies to collect from persons

who apply for, or hold certificates or permits or who apply to register, or register designs, certain levies which the Safety Codes Council is authorized by the Minister to impose for the purpose of enabling it to carry out its activities and services. The Council, established three years ago under the *Safety Codes Act* with its own administration and fee schedules, will set industry safety standards and accredit inspecting agencies. This Act also provides that, upon its coming into force, a person who is an inspector under by-laws passed pursuant to section 159(i) of the *Municipal Government Act*, is deemed to be appointed as a safety codes officer with the same powers and duties that the person had under that Act or By-law. (The *Safety Codes Act* previously provided the same treatment for inspectors appointed under the *Fire Prevention Act*, the *Uniform Building Standards Act*, the *Electrical Protection Act*, the *Elevator and Fixed Conveyances Act*, the *Gas Protection Act*, the *Plumbing and Drainage Act*, or the *Boilers and Pressure Vessels Act*). Similarly, upon the coming into force of this Act, a municipality with any powers under the above-mentioned Acts is deemed to be an accredited agency with the same powers and duties. Electrical inspectors who worked under the jurisdiction of the *Municipal Government Act* are now empowered to act as inspectors under the *Safety Codes Act*. In addition, the Minister of Labour is designated as the Minister responsible for the administration of the *Safety Codes Act*. This Act came into force on November 10, 1994.

Alberta adopted the *Administrative Items Amendment Regulation* under the *Safety Codes Act*, to give effect to various provisions of the *Safety Codes Act*. Among other things, this regulation extended the current periods of appointment of fire and building inspectors until June 1, 1995, and that of electrical, elevator and fixed conveyance, gas, plumbing and drainage inspectors until August 31, 1995. The regulation simplifies the reporting of electrical fires, contacts or accidents. It also provides for the establishment of an information system with respect to any or all matters under the Act. This regulation came into force on October 1, 1994.

Alberta's Bill 48, the *Occupational Health and Safety Amendment Act, 1994* (S.A. 1994, ch. 43), was proclaimed into force on February 17, 1995. Its purpose is to clarify the responsibilities and obligations of "prime contractors", i.e. the principal contractor or the owner of a site. It provides that every work site must have a prime contractor responsible for ensuring compliance with the Act. In addition, the amendment defines the terms "contractor", "occupation", "owner", and "prime contractor", and establishes a process which prime contractors must follow for reporting specific types of serious injuries or accidents to the Director of Inspections. The Act also repealed Aberta's *Designation of Occupations Regulations* (Alta. Reg. 288/76) and *Designation of Serious Injury and Accident Regulation* (Alta. Reg. 298/81) under the *Occupational Health and Safety Act*, effective February 17, 1995.

Alberta adopted the *Farming and Ranching Exemption Regulation* under the *Occupational Health and Safety Act*, which exempts farming and ranching from the definition of "occupation" under the Act.

In addition, Alberta amended its *General Safety Regulation* under the *Occupational Health and Safety Act* in order to establish safe clearances from overhead power lines and to update references to safety standards established by the Canadian Standards Association (CSA), American National Standards Institute, and other similar institutions, relating to, among other things, protective headwear, fall arresting systems, cranes, hoists and suspended platforms.

Manitoba adopted the *Hearing Conservation and Noise Control Regulation* under the *Workplace Safety and Health Act*, which repeals and replaces Manitoba Regulation 103/88R by the same name. The regulation clarifies many existing requirements by making them more precise or explicit. For the most part, this regulation is a consolidation of, and is declaratory of the law contained in the former regulation. In particular, the regulation provides alternative means of dealing with exposure to sound in excess of 80 dBA and 90 dBA. The regulation requires education programs be provided to workers whose exposure level is or is likely to be in excess of the permissible levels and to their supervisors. In addition, the regulation contains new provisions concerning the licensing of industrial audiometric technicians.

New Brunswick adopted Bill 82, the *Workplace Health, Safety and Compensation Commission Act*, which establishes the Workplace Health, Safety and Compensation Commission. The new Commission replaces the New Brunswick Occupational Health and Safety Commission and the Workers' Compensation Board. It is vested with the powers and duties of the organizations it replaces and is vested with some additional responsibilities. This Act came into force, for the most part, on December 16, 1994. The remaining provisions came into force on January 1, 1995.

New Brunswick also adopted Bill 83, *An Act Respecting the Workplace Health, Safety and Compensation Commission Act*, which amends various

statutes in order to replace references to the New Brunswick Occupational Health and Safety Commission and the Workers' Compensation Board with references to the new Workplace Health, Safety and Compensation Commission. This Act came into force on December 16, 1994.

Ontario adopted Bill 175, the *Statute Law Amendment Act (Government Management and Services), 1994*. Among other statutes, the *Occupational Health and Safety Act* is amended to enable the Minister of Labour to approve the establishment of a single joint health and safety committee for an employer with workplaces at more than one location. The *Occupational Health and Safety Act* is also amended to correct a drafting error in the English version of the Act which requires workers participating in a medical surveillance program to be paid only at the premium rate. The amendment allows such a worker to be paid at "his or her regular or premium rate, as may be proper" for the time the worker spends. This Act came into force on December 9, 1994.

Ontario also adopted a *Regulation to amend the Industrial Establishments Regulation* under the *Occupational Health and Safety Act*. This regulation establishes the procedures for disconnecting, locking-out of service and tagging the power supply to electrical installations, equipment or conductors. It regulates the use of rubber gloves, mats, shields and other protective equipment to ensure protection from electrical shock and burns while performing work on live and exposed parts of an installation, equipment or conductor. In addition, it regulates work performed on electrical transmission systems or outdoor distribution systems rated at more than 750 volts. The regulation amends the provisions concerning the use of electrical equipment and tools. It also amends the definition of "chicot" to include a dead tree as well as any dead branches of a tree that may endanger a worker. This regulation came into force December 15, 1994.

The *Industrial Establishments Regulation* was further amended to review provisions concerning molten material and health and safety in foundries. The regulation provides, among other things, that every employer must develop and implement measures and procedures to prevent molten material from coming into contact with damp, rusty or cold surfaces, moisture or water, or other substances, if the contact might endanger the health or safety of workers. In doing so, the employer must consult with the health and safety committee or the health and safety representative, if any. Every employer must use engineering controls to the fullest extent possible to prevent spillage of molten material that could endanger the health or safety of workers. If the use of engineering controls is not reasonably possible, the employer must develop and implement, either in combination with engineering controls or as alternative means, other measures and procedures to prevent spillage. Adequate means of egress from all locations where workers may be exposed to molten material must be provided; the regulation requires specific means of egress from a location that is a runout, pouring or moulding pit or other working space situated below the adjacent floor level. In addition, the employer must provide an adequate emergency communication system. This regulation came into force on May 1, 1995.

On December 31, 1994, Ontario adopted the *Regulation concerning Training Programs* under the *Occupational Health and Safety Act*. This regulation requires employers to carry out the training programs necessary to enable a committee member to become a certified member pursuant to the Act. The training programs must be selected in accordance with the policies and guidelines of the Workplace Health and Safety Agency. The regulation specifies that "carry out" includes paying for the training.

Amendments were made to Ontario's *Adoption of Training Requirements Regulation* under the *Occupational Health and Safety Act* in order to recognize as valid in Ontario equivalent certificates of qualification for various specified trades issued by the Province of Quebec.

The *Joint Health and Safety Committees - Exemption From Requirements - Regulation* under the Ontario *Occupational Health and Safety Act*, has established exemptions from the requirement to have certified members of the joint health and safety committee in a workplace, in accordance with subsection 9(12) of the Act. Workplaces with fewer than 20 workers are exempted. In addition, the Schedules list certain categories of workplaces in the retail and wholesale trade and in other services that are temporarily exempted. Those that employ 50 to 499 workers were exempted until July 15, 1995, while those with 20 to 49 workers were exempted until October 1, 1995. This regulation repealed and replaced Ont. Reg. 362/94.

As announced in the *Highlights of Major Developments in Labour Legislation 1993-1994* under the title "Proposed Regulations", Ontario adopted a *Regulation respecting the Criteria to be Used and Other Matters to be Considered by Adjudicators* under the *Occupational Health and Safety Act*. For the purposes of subsection 46(6) of the Act, the following criteria are prescribed for determining whether the constructor or employer has demonstrated a failure to protect the health and safety of workers:

1. The record of accidents, death, injuries and work-related illnesses in the workplace.
2. The constructor's or employer's occupational health and safety policies and the length of time they have been in place.
3. The training, communications and programs established to implement those policies, and the length of time they have been in place.
4. The constructor's or employer's health and safety record under the Act, including:
    a. complaints made to the Ministry of Labour against the constructor or employer;
    b. work refusals under section 43 of the Act;
    c. adjudicators' decisions under section 46 of the Act;
    d. work stoppages under sections 45 and 47 of the Act;
    e. the results of inspections conducted by the Ministry;
    f. convictions for contraventions of the Act or the regulations;
    g. the record of compliance with inspectors' orders.
5. Any other factor that would be reasonable to consider in the circumstances.

In addition, the regulation prescribes matters that must be considered by an adjudicator in deciding upon an application made under section 46. These include:

1. Any previous occasion on which an adjudicator found that the procedure for stopping work set out in section 45 of the Act would not be sufficient to protect the constructor's or employer's workers.
2. The constructor's or employer's course of conduct with respect to the establishment and operation of the committee and the appointment of certified members.
3. A pattern, if any, of the constructor or employer dealing in bad faith with the committee.
4. The nature and extent of the health and safety hazards at the workplace, including the risks they pose and whether adequate measures have been established to respond to them.
5. If those measures are not adequate, the length of time that would be required to establish adequate ones and the degree of intervention by an inspector that would be necessary.
6. Any other matter that would be reasonable to consider in the circumstances.

This regulation came into force on May 20, 1995.

Prince Edward Island adopted Bill 32, the *Provincial Affairs and Attorney General (Miscellaneous Amendments) Act*. Among other things, this Act increases the level of fines payable for offences under the *Occupational Health and Safety Act*. The amount of the maximum fine payable for a contravention to the Act or the regulations, or a failure to comply with an order or requirement of an officer or the Director, or an order or direction of the Minister has been increased from $2,000 to $50,000. The amount of the maximum fine for continuing offences has been increased from $1,000 to $5,000. This Act came into force on May 4, 1995.

C. Boilers and Pressure Vessels

Alberta adopted the *Boilers Delegated Administration Regulation* under the *Government Administration Act*. This regulation provides that, under certain conditions, the powers, duties and functions of Administrator under section 54 of the *Safety Codes Act*, as well as those of a safety codes

officer under several Acts and regulations (including, among others, the *Boilers and Pressure Vessels Regulations*, the *Design, Construction and Installation of Boilers and Pressure Vessels Regulations* and the *Safety Codes Act*) are delegated to the Boilers Association. The Association is authorized to impose and collect assessments, fees and charges with respect to its programs or services, and is mandated to provide advice to the Minister relating to any matter delegated to it. The Boilers Association is exonerated from legal liability where its powers, duties or functions are carried out in good faith by its directors, officers or agents, or by an accredited agency hired to carry them out on its behalf. A person who is affected by an action or decision of the Boilers Association may, when an appeal is not otherwise provided under the *Safety Codes Act*, appeal the matter to the Minister. In carrying out its powers, duties and functions, the Boilers Association must keep records and provide access to them in accordance with this regulation. It must also report to the Minister on its activities at least once a year. This regulation came into force on April 1, 1995.

Alberta also adopted the *Administration and Information Systems Regulation* under the *Safety Codes Act*, which requires an Administrator to maintain, if the Minister requests it, an information system on pressure equipment that includes information pertaining to the:

a. registration and approval of designs for new equipment; repair and alteration procedures; welding procedures; inspection reports concerning the construction, installation, repair or maintenance of pressure equipment; refusals to register designs or to permit procedures; and the location, ownership and inspection records of such equipment;
b. registration, testing for and issuance of certificates of competency to power engineers (as defined) and pressure welders;
c. registration of organizations permitted to carry out activities related to pressure equipment under the Act;
d. recording of accident or unsafe conditions investigation reports;
e. recording of orders;
f. recording of the issuance of variances;
g. recording of appeals lodged under the *Boilers Delegated Administration Regulation*; and
h. any other matter required by the Minister.

In addition to the above requirements, an information system may include more detailed records, such as copies of reports, orders and variances or records respecting the issuance of certificates, identification numbers, permits, notices and appeals. Moreover, the system may contain information concerning the payment of levies, fees and charges for any service or anything issued by the Administrator.

This regulation also provides that safety codes officers may assess candidates for the issuing of certificates of competency under the *Engineers' Regulations* or *Pressure Welders' Regulations*, evaluate the equivalency of educational requirements and of extra-provincial certificates of competency, and recommend to an Administrator the issuance of certificates. This regulation came into force on April 1, 1995.

New Brunswick amended Regulation 84/177 under the *Boiler and Pressure Vessels Act* in order to update references to standards of the American Society of Mechanical Engineers, the American National Standards Institute, the Underwriters' Laboratories of Canada, the Canadian Standards Association and the Canadian Gas Association.

Nova Scotia adopted Bill 29, *An Act Respecting Power Engineers* (S.N.S. 1994-95, ch. 8). This Act, which repeals and replaces the *Stationary Engineers Act* (R.S.N.S. 1989, ch. 440), establishes the framework for regulating the operation of boilers, boiler plants, compressor plants, pressure vessels and refrigeration plants. The Minister of Labour is charged with the general supervision and management of the Act. The Act provides for the appointment of an Inspector-Examiner and of such inspectors as may be required for ensuring compliance with the Act and its regulations. Appropriate powers of entry and inspection, as well as to consult records and collect evidence as may be required, are conferred upon inspectors.

The Act establishes the Power Engineers and Operators Board, which is composed of a professional engineer, a person representing owners, a first class power engineer representing labour organizations, a first class power engineer representing management and one other first class

power engineer, as well as the Inspector-Examiner who chairs the Board. The Board advises the Minister on the administration and effectiveness of the Act and the regulations. The Board may also, on its own initiative, review and, if appropriate, revoke any decision made or action taken by the Department. In addition, an Appeal Committee, composed of three persons, is created to hear appeals as provided in the regulations.

The Minister may prescribe, by regulation, different levels of classification for a power engineer or an operator, and establish fees and examinations for obtaining certification in a particular classification. Conditions for maintaining appropriate certification may also be imposed. Moreover, the Inspector-Examiner, after consultation with his or her immediate supervisor, may suspend or revoke any certificate of qualification for any contravention to the Act or the regulations.

Similarly, the Minister may prescribe different classifications of plants. The Inspector-Examiner may attach various conditions to obtaining, maintaining or transferring the appropriate certification. Moreover, plant certification may be suspended or revoked, in the manner described above, where any contravention has occurred.

Except in certain circumstances specified in the Act, no other person than a power engineer or an operator holding the appropriate certification can perform the work duties of the class of power engineer or operator authorized by the certificate of qualification and/or plant classification.

A contravention of the Act or the regulations, or a failure to comply with an order issued by virtue of this Act or the regulations, is punishable, upon summary conviction, by the imposition of a fine not exceeding $100,000 or a term of imprisonment of up to 12 months. An additional fine of up to $5,000 per day may be imposed for each day that the non-compliance persists.

The Act empowers the Minister to make regulations respecting various aspects of its administration. The Act will come into force on a date fixed by proclamation.

Quebec also updated references to codes establishing standards for pressure vessels from the Canadian Standards Association, the American Society of Mechanical Engineers, and the American National Standards Institute, contained in the *Regulation respecting pressure vessels* under the *Act respecting pressure vessels*. The regulation also establishes new fees for certain services rendered by inspectors.

In addition, Quebec amended its *Regulation respecting stationary enginemen* under the *Act respecting stationary enginemen* in order to, among other things, update Schedules A, C and D, which respectively deal with the classification of refrigerants, the types of surveillance of stationary engines, and the classification of installations.

D. Hazardous Materials and Designated Substances

Alberta amended the *Explosives Safety Regulations* in order to designate explosives as hazardous material under the *Occupational Health and Safety Act*, to exclude coal mines and quarries from its application, and to fix at 18 years (down from 21) the minimum age of employment for employees required to handle or transport explosives.

Ontario amended its *Control of Exposure to Biological or Chemical Agents Regulation* under the *Occupational Health and Safety Act* in order to reduce the time-weighted average exposure value and the short-term exposure values of certain biological or chemical agents. This regulation came into force on October 31, 1994.

Ontario also amended its *Designated Substance - Asbestos - Regulation* under the *Occupational Health and Safety Act* with respect to threshold limit values for amosite and crocidolite. This regulation came into force on October 31, 1994.

Quebec amended its *Regulation respecting the quality of the work environment* under the *Act respecting occupational health and safety*. This regulation revises permissible exposure values for gases, dusts, fumes, vapours or mists in the work environment, for certain substances designated in Schedule A. In most cases, the regulation establishes a time-weighted average exposure value as well as a short-term exposure

value. However, some designated substances do not have a specified short-term exposure value but have been assigned a ceiling value, which should never be exceeded during any length of time whatsoever. The ceiling value is indicated by the letter "C" preceding a time-weighted average exposure value.

In other cases where no short-term exposure value is specified with respect to a designated substance, excursions beyond the time-weighted average exposure are allowed and may exceed three times that value for a cumulative period not exceeding 30 minutes per day, provided the time-weighted average exposure value is not exceeded. However, no such excursion may exceed five times the time-weighted average exposure value during any length of time whatsoever.

The designation "Skin" in the Remark column of Schedule A refers to the potential significant contribution to the overall exposure by the cutaneous route. Exposure can occur by contact with a substance in suspension in the air or, of probable greater significance, by direct skin contact with the substance. The cutaneous route includes contact with mucous membranes and the eyes.

Moreover, Schedule A classes carcinogens according to their known carcinogenic effect in humans (C1), their suspected carcinogenic effect in humans (C2), or their known carcinogenic effect in animals (C3). In this latter case, the results of studies relating to the carcinogenicity of these substances in animals are not necessarily applicable to humans.

With respect to carcinogens and to isocyanates, this regulation will require, effective September 22, 1995, employers to ensure that a worker's exposure to any substance listed in Part V of Schedule A is reduced to a minimum, even where that exposure remains within the prescribed limits.

This regulation also provides that the employer must provide to a worker, free of charge, personal protective equipment for protecting the respiratory passages included on the *NIOSH Certified Equipment List* dated September 30, 1993 and published by the National Institute for Occupational Safety and Health, where existing technology does not permit an employer to comply with the prescribed values during normal operations. The same applies during repairs outside of the workshop, during regular maintenance work and inspections or, where the technology exists but its implementation has not yet been completed. The employer must also ensure that every worker wears that equipment. The equipment must be selected, adjusted, used and cared for in accordance with CSA Standard Z94.4-93 entitled Selection, Use and Care of Respirators.

Where the employer has implemented all necessary measures to respect its obligation to reduce, at the source, the dangers to the health, safety and well-being of the workers from exposure to asbestos fibres suspended in the air and the exposure nonetheless exceeds the time-weighted average exposure value while remaining inferior to five times that value, the employer may provide to a worker, free of charge, and ensure that the worker wears it, a mask certified at a minimum FFP2, pursuant to the EN-149 Standard of the European Committee for Standardisation.

An employer cannot, however, provide a self-contained or air-supplied breathing apparatus equipped with an automatic device which interrupts or restricts the air supply in the part of the apparatus covering the face.

In addition, this regulation provides that samples of dusts, gases, fumes, vapours and mists present in the work environment must be taken and analyzed so as to obtain a degree of accuracy equal to that obtained in accordance with the methods described in the *Guide d'échantillonnage des contaminants de l'air en milieu de travail* (Guide for the sampling of airborne contaminants in the work environment) published by the Institut de recherche en santé et sécurité du travail du Québec (Quebec Occupational Health and Safety Research Institute), as amended from time to time. The strategy for sampling such contaminants must be applied in accordance with the common practices of industrial hygiene summarized in the above-mentioned guide.

Finally, this regulation provides amendments of a housekeeping nature. It came into force, except as otherwise mentioned, on September 22, 1994.

E. Safety in Mines and Mining Plants

Manitoba adopted the *Operation of Mines Regulation* under the *Workplace Safety and Health Act*. This regulation, which repealed and replaced another Manitoba regulation by the same name, extensively regulates the operation of both surface mines, and underground mines. Among other things, it establishes clear provisions relative to the duties of employers and workers, notices and records, fire protection, travelways, platforms, and ladderways, the use and care of explosives, the ventilation of mines, mobile equipment, residual water, shafts and conveyances, mine hoisting plants, open-cut workings, pits and quarries, protection near machinery, conveyors, cranes and derricks, work in confined spaces, metallurgical work, as well as the use of electricity. This regulation came into force on March 5, 1995.

The **Northwest Territories** adopted Bill 5, the *Mine Health and Safety Act*. This Act replaces the *Mining Safety Act* with a simpler Act that emphasizes the duties and responsibilities of persons engaged in mining, including owners, corporate directors, mine managers, supervisors and workers, to ensure occupational health and safety.

The Act provides for the establishment of Occupational Health and Safety Committees for mines, and sets out the responsibility of the Committees to conduct worksite inspections and to participate in inspections conducted by inspectors.

The Act permits mine employees to refuse work that could endanger the health or safety of any person. Mine owners may not discipline or discriminate against employees for actions taken in compliance with the Act.

The Act sets out the powers of inspectors to inspect or search a mine and the duties of persons at a mine to co-operate with an inspection or search. An inspector may order immediate remedial action to correct deficiencies at a mine and require the stoppage of work until the remedial action is taken. A decision of an inspector may be appealed to the chief inspector, with a further appeal to the Supreme Court.

The Act also provides for the appointment of a chief inspector and various inspectors, sets out the penalties for offences under the Act and the regulations, and provides for the enactment of regulations respecting mine health and safety. This Act will come into force by proclamation.

Ontario adopted amendments to the *Mines and Mining Plants Regulation* under the *Occupational Health and Safety Act* in order to require, among other things, notification to the Director of Occupation Health and Safety of a mine owner's intention of entering a mine that has been closed for more than three months. In addition, it amends the blasting procedures, the requirements respecting trolley lines, diesel-powered equipment, hoists and elevators, as well as hoisting ropes and shaft ropes.

F. Offshore Petroleum Operations

The **federal government** has adopted various regulations under the *Canada-Newfoundland Atlantic Accord Implementation Act* as well as a set of similar regulations under the *Canada - Nova Scotia Offshore Petroleum Resources Accord Implementation Act* to establish requirements for petroleum drilling operations in the Newfoundland and the Nova Scotia offshore area. Some of these measures relate to the safety and training of personnel, or specifically deal with oil and gas occupational health and safety within the particular context of offshore area drilling operations, geophysical operations, diving operations, petroleum production and conservation, and petroleum installations.

G. Safety and Health in Diving and Fishing Operations

British Columbia has adopted *Fishing Operations Regulations* under the *Workers' Compensation Act*, which deal with the health and safety of those working aboard licensed commercial fishing vessels. Effective January 1, 1995, they contain general requirements for a variety of subjects such as owner, master and crew member responsibilities, emergency procedures, vessel preparation, first aid, protection from falling, deck openings, propane installations, sensors and alarms, confined spaces, and immersion suits. They also contain requirements for specific fishing

operations.

Ontario adopted a *Diving Operations Regulation* under the *Occupational Health and Safety Act*. This regulation applies in respect of all diving operations and functions in support of a diving operation, except training for recreational diving, snorkelling, or a diving operation undertaken voluntarily in response to an emergency situation involving danger to the life, health or safety of any person. The regulation requires notice of any diving operation to be given to the Ministry of Labour at the Diving Notice Address, Facsimile Transmission Number or Telephone Number. It establishes the duties of diving supervisors, divers and standby divers, and of divers' tenders. It establishes specific requirements respecting the choice, use and maintenance of equipment, breathing mixtures, medical procedures, SCUBA diving, surface-supplied diving, deep diving, submersible compression chambers, saturation chambers and atmospheric diving systems, as well as the keeping of records. The regulation also deals with special hazards such as water-flow hazards, the use of explosives and diving in contaminated environments. This regulation repealed and replaced Regulation 848 of the Revised Regulations of Ontario and Ontario Regulation 514/92. This regulation came into force on December 19, 1994.

H. Safety in Other High Risk Industries or Occupations

Nova Scotia adopted Bill 30, *An Act Respecting Crane Operators*, which establishes the framework for regulating the operation of cranes. The Minister of Labour is charged with the general supervision and management of the Act. The Act provides for the appointment of a Chief Examiner and of such inspectors as may be required for ensuring compliance with the Act and its regulations. Appropriate powers of entry and inspection, as well as to consult records and collect evidence as may be required, are conferred upon inspectors. Owners of cranes must comply with every direction given pursuant to this Act or the regulations and must provide any assistance required for the purpose of inspecting or examining any crane or making an inquiry concerning any crane.

The Act establishes an Examination Committee composed of three to five persons, each of who must possess the qualifications prescribed by regulation. The Minister may appoint the Chief Examiner as chair of the Committee. The Committee's mandate essentially consists in prescribing and conducting examinations for the issuance of certificates of qualification as crane operators and reporting thereupon to the Minister each year. The Committee advises the Minister on the administration and effectiveness of the Act and the regulations, and performs such other duties as may be prescribed. In addition, an Appeal Board, composed of three persons, is created to hear appeals from any person aggrieved by a decision of the Committee or an employee of the Department.

The Minister may prescribe, by regulation, different levels of classification for crane operators, and establish fees and examinations for obtaining certification in a particular classification. Conditions for maintaining appropriate certification may also be imposed. Moreover, the Committee may suspend, cancel or revoke any certificate of qualification for any contravention to the Act or the regulations.

Except in certain circumstances specified in the Act, no other person than a crane operator holding the appropriate certification can perform the work duties of the class of operator authorized by the certificate of qualification.

A contravention of the Act or the regulations, or a failure to comply with an order issued by virtue of this Act or the regulations, is punishable, upon summary conviction, by the imposition of a fine not exceeding $50,000 or a term of imprisonment of up to 12 months. An additional fine of up to $1,000 per day may be imposed for each day that the non-compliance persists.

The Act empowers the Minister to make regulations respecting various aspects of its administration. The Act will come into force on a date fixed by proclamation.

Ontario amended its *Construction Projects Regulation* under the *Occupational Health and Safety Act* with respect to, among other things, ladders, platforms supported by cranes and hoisting devices, and prefabricated or hydraulic support systems used in excavations. This regulation came into force on November 15, 1994.

As announced in the *Highlights of Major Developments in Labour Legislation 1993-1994*, Ontario adopted the *Firefighters - Protective Equipment - Regulation* under the *Occupational Health and Safety Act*. This regulation provides occupational health and safety protection to firefighters employed by municipal fire departments. It repeals and replaces the *Fire Fighters - Protective Equipment - Regulation* (R.R.O. 1990, Reg. 849) as well as Ontario Regulations 249/91 and 289/91. The regulation re-enacts requirements respecting head protective equipment and protective turn out clothing for protection against heat and flame contained in the former regulation.

The regulation also contains new requirements that outline the manner in which chassis mounted aerial devices used to position persons, handle materials, or discharge water must be inspected and tested, and the service records that must be kept with respect to them. In addition, requirements respecting new fire trucks have been adopted. Fire trucks put into service on or after December 15, 1995 must be equipped with an enclosed cab capable of accommodating enough seats for every firefighter travelling on the vehicle and stowage space to secure all fire fighting equipment and paraphernalia carried in the cab. Until December 15, 1999, firefighters will be permitted to travel on the tailboard of fire trucks only if specified conditions, intended to provide better safety, are met.

I. Proposed Legislation

On December 6, 1994, the **federal government** introduced Bill C-62, the *Regulatory Efficiency Act*. For a description of what this Bill contains, the reader is referred to the summary at page 14 of this document.

In addition, the federal government has pre-published in Part I of the *Canada Gazette* of June 24, 1995 proposed amendments to Part X (Hazardous Substances) of the *Canada Occupational Safety and Health Regulations* under the *Canada Labour Code*. A number of new provisions will be added to ensure the following:

- the maintenance and retention of records of hazardous substances;
- the development of written procedures for the control of hazardous substances;
- the disclosure of hazard information on labels of laboratory samples which are controlled products;
- the incorporation of provisions of the *National Fire Code of Canada* for the handling and storage of controlled products; and
- the inspection, testing and maintenance of ventilation systems designed to control the concentration of airborne hazardous substances.

The federal government also pre-published in Part I of the *Canada Gazette* of June 24, 1995 proposed amendments to the *Canada Occupational Safety and Health Regulations* with regard to removing barriers to the employment of persons with disabilities.

The new provisions will ensure the following:

- the words "alternate media" are defined, and employers are required, where necessary, to provide information, instruction, training and warnings specified in the regulations in alternate media for the benefit of persons with disabilities;
- all barricades and guardrails required by the regulations must be made highly visible;
- signs and warnings must be located at a height that is visible or a volume that is audible to persons with disabilities;
- high capacity, portable, open-frame heating devices must be so located as to be protected from accidental contact, damage or overturning;
- the employer must consult with employees having special needs in developing emergency procedures;
- the employer is required to appoint monitors, when needed, for persons who require special assistance in evacuating the building.

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