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

Canada

Labour

Archived - Highlights of Major Developments in Labour Legislation (1995-1996)

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August 1, 1995 to July 31, 1996

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INTRODUCTION

Between August 1, 1995 and July 31, 1996, many significant changes were made in the different areas of labour legislation in Canada.

In the field of labour standards, the most significant changes include the proclamation of a new *Employment Standards Act* in British Columbia and of amendments to the *Employment Standards Act* in the Yukon Territory, changes to wage protection provisions in Ontario and Manitoba, other amendments to employment standards legislation adopted or proposed in Ontario, and a new *Employment Standards Code* in Alberta. There was also the repeal of Ontario's *Employment Equity Act, 1993* and the adoption of a revised *Employment Equity Act* by the federal government as well as changes to Ontario's pay equity legislation and a proposed *Pay Equity Act* in Quebec. In addition, the minimum wage rates were increased at the federal level and in New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Quebec and British Columbia (for certain farm workers).

In the area of private sector collective bargaining, a new *Labour Relations Act, 1995* was adopted in Ontario, significant amendments to the Manitoba *Labour Relations Act* have been proposed, and some changes have been made to the *Canada Labour Code* (Part I) (Industrial Relations). In the public sector, Ontario amended its *Crown Employees Collective Bargaining Act, 1993*, and, in that province and Quebec, legislation was passed with respect to interest arbitration criteria for certain groups. In addition, essential services legislation has been adopted for power utilities in Newfoundland and public service employees in the Northwest Territories, and has been proposed in Manitoba for government services. Changes were also made in health sector labour relations in British Columbia and Saskatchewan, and proposed in public school teachers labour relations in Manitoba. Moreover, during the period covered by this report, one ad hoc emergency law was passed by British Columbia, and a legislative change affecting specifically the construction industry was adopted in New Brunswick. Lastly, Ontario's *Agricultural Labour Relations Act, 1994* was repealed.

Among important changes to occupational safety and health legislation are the adoption of a new *Occupational Health and Safety Act* in Nova Scotia, changes to the Workplace Health and Safety Agency as well as an exemption regulation pertaining to certified members of joint health and safety committees in Ontario, the transfer of the responsibilities related to the administration of the Prince Edward Island *Occupational Health and Safety Act* and regulations to its Workers' Compensation Board, and a number of amendments to regulations of wide application dealing with various subjects such as noise (in Manitoba and British Columbia), fall protection (in Nova Scotia, British Columbia and New Brunswick), and hazardous substances (in the federal jurisdiction). Changes have also been made with respect to radiation protection in Saskatchewan and Alberta, mining safety in Nova Scotia, the Northwest Territories, Quebec, Alberta and Ontario, and safety in offshore petroleum operations at the federal level and Nova Scotia. With respect to the risks associated with boilers and pressure vessels, elevating devices and other installations, changes have been made in British Columbia, Alberta, New Brunswick and Ontario.

I. EMPLOYMENT STANDARDS

A. Proclamations

Yukon's Bill 28, *An Act to Amend the Employment Standards Act*, which was described in the *Highlights of Major Developments in Labour Legislation 1994-1995*, was proclaimed in force, effective October 1, 1995.

In **British Columbia**, Bill 29, the *Employment Standards Act*, which was described in the *Highlights of Major Developments in Labour Legislation 1994-1995*, was brought into force. Certain sections (i.e. s.102 to 105 and s.109 (1) c)) were proclaimed, effective September 8, 1995, and the

remainder of the Act was proclaimed in force on November 1, 1995.

The most salient amendments, relative to the former Act, include the streamlining of the investigative process, the establishment of the Employment Standards Tribunal, more stringent enforcement through penalties and the requirement to pay interest on unpaid wages, as well as new bereavement leave and family responsibility leave provisions.

The former *Employment Standards Act* was repealed, also effective on November 1, 1995.

B. Legislation of General Application

In **British Columbia**, effective November 1, 1995 were the repeal of the *Employment Standards Act Regulation* and the adoption of a new *Employment Standards Regulation*. Many of the previously existing provisions are contained in this new regulation. What follows is a description of the most important changes.

With respect to hours of work, this regulation sets out the flexible work schedules for employees not covered by a collective agreement, including the number of hours after which overtime is payable, for the purposes of section 37 of the Act. An Appendix to the regulation (i.e. Appendix 1) provides details on the actual work schedules, while other provisions deal with matters such as how to apply for a variance, or what constitutes appropriate notification of affected employees. Provisions of a more specific application include the requirement to pay a farm worker for hours of work in excess of 120 within a two week period at least double the regular rate of pay and the requirement to pay pro-rated holiday pay, according to the formula contained in the regulation, to employees who do not have a regular schedule of hours of work.

An interest rate payable on monies owing by an employer under section 88 (1) of the Act is established. The interest rate is set for a three month period and is equal to the prime lending rate on the first day of each successive three-month period beginning on October 1, January 1, April 1 and July 1. Similarly, the interest rate payable for monies received by the Director of Employment Standards under section 70 (5) or 113 (2) of the Act, or monies collected under a determination or an order of the Tribunal, is set at two per cent below the prime lending rate on the first day of each successive three month period.

A penalty in the amount of $500 is set for each contravention respecting a record-keeping requirement of the Act. Other provisions of the Act are itemized in various categories (or Parts), at Appendix 2 of the regulation, and repeated contraventions in each category entail an increasing amount of fines. The amounts range from a penalty of $0 for a first contravention to $150 (times the number of employees affected by the contravention) for a second, $250 (times the number of employees affected by the contravention) for a third, and to $500 (times the number of employees affected by the contravention) for a fourth or subsequent contravention.

Finally, the regulation contains a number of exclusions of various categories of workers from all or parts of the Act.

In **Ontario**, Bill 7, the *Labour Relations and Employment Statute Law Amendment Act, 1995,* has brought a number of changes to the *Employment Standards Act*.

There has been a change in the provisions of the *Employment Standards Act* applying in situations where the provider of certain types of services at a building is replaced by another employer providing substantially similar services (these include building cleaning services, food services and security services). The change removes the obligation of the new service provider to offer available positions to those employed by the previous employer at the premises. When the new service provider hires an employee of the previous employer to provide the services, entitlements based on length of service continue to accrue as if there had been no change in employer; the previous employer does not have to assume the cost of termination and severance pay, but must pay to the employee the amount of any earned vacation pay. If the new service provider does not hire an employee of the previous employer, he\she is responsible for termination and severance pay. This change was made retroactive to October 31, 1995.

Provisions governing an employee's right to termination pay and severance pay have also been amended to apply to situations where the termination occurs by operation of law in specified circumstances such as bankruptcy, insolvency or any operations of the employer being placed in receivership. This change was made retroactive to September 7, 1995.

In addition, the Employee Wage Protection Program (EWPP) has been modified. Employees making a claim under the EWPP are only able to apply for unpaid regular wages (including commissions and overtime wages), vacation pay (provided it is not based on termination pay) and holiday pay. Coverage for termination pay and severance pay is eliminated, and the maximum amount of compensation is lowered to $2,000 from $5,000. This change was made retroactive to September 7, 1995.

On April 4, 1996, regulations were adopted under the Ontario *Employment Standards Act* in order, among other things, to exempt a successor employer from its obligation to comply with the termination of employment provisions of Part XIV of the Act if the employer does not employ an employee of the previous employer. This exemption applies to the following classes of employees:

1. Employees who are actively employed in providing services at the premises but whose job duties were not primarily performed at the premises during the 13 weeks immediately preceding the day on which the successor employer begins to provide services at the premises;
2. Employees who are employed, but not actively employed, in providing services at the premises but whose job duties were not primarily performed at the premises during their most recent 13 weeks of active employment;
3. Employees who have not worked at the premises for at least 13 weeks in the 26 weeks immediately preceding the day on which the successor employer begins to provide services at the premises; and,
4. Employees who refuse an offer of employment with the successor employer that is reasonable, having regard to the terms and conditions of employment that the employees have with the previous employer before the successor employer begins to provide services at the premises.

With respect to the third category of employees, the regulations provide an extension of the

26 week period in cases where the services at the premises were temporarily discontinued and in cases where an employee was on a pregnancy or parental leave under Part XI of the Act.

The regulations also contain provisions dealing with information required to be given in certain circumstances.

In **Manitoba**, the *Payment of Wages Fund Regulation* under the *Payment of Wages Act* was repealed effective April 1, 1996. As a result, payments made out of the Payment of Wages Fund in respect of unpaid wages due to employees have been discontinued.

On May 24, 1996, **Alberta** adopted Bill 29, the *Employment Standards Code*, which, when proclaimed into force, will replace the existing *Employment Standards Code*. The new Code is essentially a reorganization of the existing employment standards provisions and includes the following amendments:

The application of the Code is extended to employers and employees covered by the Public Service Employee Relations Act.

- The provisions dealing with the payment of earnings upon termination of employment provide that an employee's earnings must be paid not later than 3 days after the last day of employment if the employer terminates the employee's employment by giving termination notice, termination pay or a combination of both. The 3 day limit also applies if the employee terminates employment by giving the required termination notice.
- There is no longer a need to notify the Director of employment standards prior to requiring or permitting a compressed work week arrangement. However, the new Code establishes requirements for a compressed work week schedule.
- The Code includes provisions for calculating overtime pay and general holiday pay for employees paid on commission or other

incentive-based remuneration. There is also a new provision to determine general holiday pay entitlements for an employee who works an irregular schedule.

- The Code provides that an employer may pay vacation pay at any time but no later than the next regularly scheduled pay-day after the employee starts his or her annual vacation. Also, if vacation pay has not been fully paid to an employee before the annual vacation starts, the employee may request the employer to pay vacation pay at least one day before the vacation starts and the employer must comply with the request.
- The Code contains sections dealing with termination pay in cases where there is a collective agreement containing recall rights for employees following layoff.
- The Code provides for the appointment of a Registrar of Appeals.
- The Code gives the Minister of Labour the discretion to establish a code for the ethical conduct of umpires.
- There is a provision that an action for damages cannot be brought against the Director of Employment Standards, an employment standards officer, the Registrar of Appeals and umpires for anything done or not done in good faith in the performance or exercise of their functions, powers or duties.

The Code establishes alternative dispute resolution provisions to resolve complaints or concerns arising under the legislation.

- The Code provides that a prospective employment standards officer must meet competency and eligibility requirements in order to be certified as eligible for appointment.
- There are new complaint and appeal provisions including a prohibition to charge fees for filing or investigating a complaint, specifying the circumstances where an officer may refer a complaint to the Director, an increase in the amount of time to appeal to the Director or to the Umpire from 15 days to 21 days and the power of the Director to make an order for reinstatement or compensation.
- There are also new provisions dealing with proceedings before an umpire including the possibility of holding appeals through video-conference or electronic conferencing.

In the **federal** jurisdiction, Bill C-31, the *Budget Implementation Act, 1996*, which took effect on June 20, 1996, has amended the *Canada Labour Code* to provide for continuity of employment for the purposes of the application of Part III of the Code when there is a transfer of activities or services from the federal public service to a corporation or any federal work, undertaking or business to which Part III applies.

With respect to legislation that has been introduced but not yet adopted, Bill 49, *An Act to improve the Employment Standards Act*, was tabled in **Ontario** on May 13, 1996. The amendments would, among other things, enable employers and employees to negotiate changes to legislated standards (i.e. severance pay, hours of work, overtime pay, public holidays and vacation with pay) as long as they, as a package, provide greater rights than those in the Act; clarify that entitlement to vacation time and vacation pay is based upon 12 months of employment, whether or not the employment is active; include pregnancy leave and parental leave in the calculation of the length of employment or length of service; prohibit the filing of certain complaints dealing with the same matter through both the Ministry and the Courts; oblige an employee covered by a collective agreement to resolve employment standards complaints through the collective agreement as if the Act formed part of that agreement; limit the maximum amount of an order for wages owing to the employee to $10,000; extend from 15 to 45 days the delay to file an application for review of an employment standards officer's order, or of a refusal to issue an order; enable a private debt collector to collect money owing under the Act; and, reduce the limitation period to recover money that became due from 2 years to 6 months.

In **Quebec**, on May 15, 1996, the Minister of Labour tabled Bill 31, *An Act to amend the Act respecting labour standards*. Among other things, the amendments would enable the Labour Standards Commission to represent employees dismissed without good and sufficient cause. Furthermore, where the Commission represents an employee in such a case or, where it exercises a remedy for prohibited practices, it would be entitled to require a monetary contribution from the employee. The government would have the power, by regulation, to determine the amount of the contribution that may be required from an employee.

In addition, in **Manitoba**, the Labour Minister tabled Bill 50, the *Remembrance Day Amendment Act* on May 16, 1996. The amendments provide, among other things, that specific provisions of the *Employment Standards Act* (i.e. the right to refuse to work on Sunday and prohibition against discharge for refusing work) would apply in cases where an employee in a retail business establishment refuses to work on Remembrance Day. Also, some provisions of the *Employment Standards Act* dealing with general holidays would apply to an employee that is required to work on Remembrance Day.

C. Minimum Wages

In **Quebec**, effective October 1, 1995, the general minimum wage was increased to $6.45 per hour, from $6.00, and the rate payable to employees who usually receive gratuities was increased 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 was increased from $233 for a workweek of 53 hours to $250 for a workweek of 51 hours.

Quebec has also published a draft regulation announcing that the general minimum wage will increase from $6.45 to $6.70 per hour on October 1, 1996. Also effective October 1, 1996, the rate payable to employees who usually receive gratuities will increase from $5.73 to $5.95 per hour and the minimum wage payable to domestic workers who reside in their employer's home will increase from $250 to $260 per week.

In addition, effective November 1, 1996, the maximum amounts an employer may charge an employee for room and/or board will be raised as follows:

- $1.50 per meal, to a maximum of $20.00 per week;
- $20.00 per week for a room;
- $40.00 per week for both room and board.

In **New Brunswick**, the general minimum wage rate was raised from $5.00 to $5.25 per hour, effective January 1, 1996, and to $5.50 per hour, effective July 1, 1996. These rates are established with respect to a maximum of 44 hours of work in a week. The rate payable for hours of work in excess of 44 was set at $7.88 per hour, effective January 1, 1996, and $8.25 per hour, effective July 1, 1996.

Wages paid to piece workers cannot be less than the minimum wage for the number of hours actually worked during a pay period. The minimum wage for employees whose hours of work are unverifiable and who are not strictly employed on a commission basis was set at $231.00 per week, effective January 1, 1996, and at $242.00 per week, effective July 1, 1996. No amount can be deducted from the minimum wage for board and lodging which was not furnished by the employer.

In **British Columbia**, the *Employment Standards Act Regulation* was amended, effective March 1, 1996, to increase the minimum wage for farm workers employed on a piecework basis to hand harvest certain crops, which, effective February 16, 1996, include daffodils.

In **Prince Edward Island**, the minimum wage was increased from $4.75 to $5.15 an hour on September 1, 1996 and will be raised to $5.40 an hour on September 1, 1997.

In the **federal** jurisdiction, effective July 17, 1996, the *Minimum Hourly Wage Order, 1996* under the *Canada Labour Code* has increased the minimum hourly wage payable to employees seventeen years of age and over in order to align it to the general minimum wage rates set in the provinces and in the territories at that date.

Similarly, as a result of an amendment to the *Canada Labour Standards Regulations* under the *Canada Labour Code*, which took effect on July 1, 1996, the federal minimum hourly wage payable to employees under the age of seventeen has been increased in order to align it to the general minimum wage rates set in the provinces and in the territories.

In **Nova Scotia**, *Minimum Wage Orders* under the *Labour Standards Code* have been adopted to establish the general minimum wage and the minimum wage in road building and heavy construction as well as in logging and forestry. They repeal the previous minimum wage Orders and will take effect on October 1, 1996.

The general minimum wage rate will increase from $5.15 to $5.35 an hour effective

October 1, 1996 and to $5.50 an hour effective February 1, 1997. The rate for inexperienced employees (i.e. those who have not worked in that kind of employment for three months or more) will increase from $4.70 to $4.90 and hour effective October 1, 1996 and to $5.05 an hour effective February 1, 1997. The maximum deductions for board and lodging will be established at $49.10 per week, effective October 1, 1996 and at $50.45 per week, effective February 1, 1997; for board only, at $39.70 per week (October 1, 1996) and $40.80 per week (February 1, 1997); for lodging only, at $11.05 per week (October 1, 1996) and $11.35 per week (February 1, 1997); and for single meals, at $2.55 (October 1, 1996) and $2.60 (February 1, 1997).

Other parts of the previous general minimum wage order will largely remain unchanged.

The minimum wage rate payable to persons engaged in road building and heavy construction work will be set at $5.35 an hour effective October 1, 1996 and at $5.50 an hour effective February 1, 1997.

The minimum wage rate payable to workers employed in a logging or forest operation will be, effective October 1, 1996 and February 1, 1997 respectively, $5.35 and $5.50 an hour for time workers and, $1,045.00 and $1,075.00 per month for persons who have no fixed work week or whose hours or work are unverifiable (such as camp, gate and dam guardians, cooks and kitchen employees, stable hands, watch employees, fire rangers and wardens). The maximum deductions for board and lodging will be $7.85 a day effective October 1, 1996, and $8.05 a day effective February 1, 1997.

With respect to proposed changes in minimum wage legislation, on May 21, 1996, the **Newfoundland** Minister of Environment and Labour announced that the minimum wage applying to employees sixteen years of age and older is increased from $4.75 to $5.00 an hour effective September 1, 1996, and will be raised to $5.25 an hour, effective April 1, 1997.

In addition, in **Manitoba**, Bill 73, the *Construction Industry Wages Amendment Act*, was introduced on June 5, 1996. The amendments include, among other things, the following: new provisions defining "heavy construction sector", "house building sector" and "industrial, commercial and institutional sector"; the removal of persons employed in the house building sector from the application of the Act; the establishment of a Construction Industry Advisory Committee to represent the interests of the general public, consumers and other groups; and, additional factors to be considered by the wage boards when recommending wage levels.

D. Employment Equity

In **Ontario**, Bill 8, the *Job Quotas Repeal Act, 1995,* took effect on December 14, 1995, and repealed the *Employment Equity Act, 1993*. All orders made and policy directives issued by either the Employment Equity Commission or the Employment Equity Tribunal have been made of no force or effect. Agreements between an employer and the Commission entered into as part of a settlement under section 26 (2) of the *Employment Equity Act, 1993* have ceased to be binding on the parties. All proceedings and prosecutions instituted but not concluded under that Act before its repeal have been discontinued, without costs.

In addition, every person in possession of workforce information collected exclusively for the purpose of complying with section 10 of the *Employment Equity Act, 1993* must destroy that information as soon as reasonably possible.

Also, amendments made to the Ontario *Human Rights Code* in order to bring it in line with the *Employment Equity Act* were repealed. Similarly, provisions of the *Police Services Act* and of the *Education Act* establishing employment equity obligations were revoked.

At the **federal** level, Bill C-64, the *Employment Equity Act*, was assented to on

December 15, 1995. That Act, which repeals the *Employment Equity Act* adopted on June 27, 1986, will come into force by order of the Governor in Council when the regulations are ready. The new legislation expands its coverage to bring most of the federal public service under its scope. It also clarifies the existing employer obligations to implement employment

equity and establishes new core obligations with regards to the preparation of an employment equity plan. The legislation empowers the Canadian Human Rights Commission to ensure compliance of the employer's obligations to implement employment equity and to resolve cases of non-compliance. The Commission may issue a direction to an employer to remedy the non-compliance and, such a direction may be subject to consideration by the Canadian Human Rights Tribunal (to be named the Employment Equity Review Tribunal when hearing employment equity cases) at the employer's request for a review of the direction or, at the Commission's request for an order confirming the direction. An order of the Tribunal is final and binding except for judicial review under the *Federal Court Act*. The new legislation also encompasses provisions dealing with monetary penalties in the event that a private sector employer fails to file a report as required by the Act.

E. Pay Equity

In **Ontario**, Bill 26, the *Savings and Restructuring Act, 1996*, has introduced amendments to the *Pay Equity Act*, taking effect on January 1, 1997. These amendments provide that the use of the proxy method of comparison for determining whether pay equity exists at an employer's workplace will be discontinued.

Until then, the minimum standard is changed for pay equity adjustments to compensation to be made by employers who use the proxy method of comparison. For the period beginning on January 1, 1994 and ending on December 31, 1996, these employers are required to make pay equity adjustments of a minimum of 3% of the total of their 1993 Ontario payroll or such lesser amount as is required to achieve pay equity. They must pay these amounts not later than September 30, 1996. Those employers who have posted a pay equity plan before January 30, 1996 are not bound by a schedule of compensation adjustments for achieving pay equity set out in the plan or other document.

The Act states that, effective January 1, 1997, pay equity will be achieved in an establishment when every female job class in the establishment has been compared to a job class or job classes under the job-to-job method of comparison or the proportional value method of comparison and any adjustment to the job rate of each female job class that is indicated by the comparison has been made.

In addition, on May 15, 1996, the **Quebec** Minister responsible for the Status of Women tabled Bill 35, the *Pay Equity Act*.

The purpose of this Act would be to eliminate the salary gap due to the systemic gender discrimination suffered by persons occupying positions in predominantly female job classes.

The Act would apply to every employer whose enterprise employs 10 or more employees in the public sector or in the private sector. An employer's obligation would, however, be determined in relation to the size of the enterprise.

An employer whose enterprise employs 10 or more employees but fewer than 50 would have to determine the adjustments in compensation required to offer the same remuneration, for work of equal value, to employees holding positions in predominantly female jobs classes as to employees holding positions in predominantly male job classes.

An employer whose enterprise employs 50 or more employees but fewer than 100 would be required to establish a pay equity plan.

An employer whose enterprise employs 100 or more employees would be required to establish a pay equity plan and, in order to enable his/her employees to participate in the establishment of a pay equity plan, the employer would be required to set up a pay equity committee including employee representatives. A pay equity committee would be composed of at least three members of which two thirds would represent the

employees (at least half of such members would have to be women) and the other third would represent the employer. The representatives of the employees as a group and the representatives of the employer as a group would have one vote, respectively, within the pay committee.

A pay equity plan would be established in four stages: the identification of predominantly female job classes and of predominantly male job classes in the enterprise; the description of the method and tools used to determine the value of job classes and the development of a value determination procedure, the determination of the value of job classes, comparison between them, the valuation of differences in compensation and the determination of the required adjustments in compensation; and of the terms and conditions of payment. When there are no predominantly male job classes in an enterprise, the pay equity plan would be established in accordance with the regulations of the Pay Equity Commission (Commission de l'équité salariale).

Upon completion of the first two stages of the plan, the employer would be required to post the results in prominent places in such manner as they may be read by all the employees concerned, together with information concerning employee rights and the time within which they may be exercised. The employer would be required to do the same after completion of the last two stages of the plan.

The time allowed for the completion of a pay equity plan or for the determination of compensation adjustments would be four years. Adjustments in compensation could be spread over a maximum period of four years; in such a case, each adjustment would be of equal value. An employer could not, in order to achieve pay equity, reduce the compensation payable to any employee.

The Bill provides for the establishment of the Pay Equity Commission (Commission de l'équité salariale) which would be composed of three members, including a president, appointed by the Government; the other members would be appointed after consultations with bodies representative of employers, employees and women. The Commission would be responsible, among other things, to oversee the establishment of pay equity plans, to see that pay equity is maintained, to determine pay equity policies and guidelines, to investigate, to lend assistance to enterprises in the establishment of pay equity plans and to develop tools for enterprises, as well as to conduct research and studies on any matter related to pay equity.

Where the employer and the employees cannot agree or, upon receipt of a complaint, the Commission would investigate and endeavour to effect a settlement between the parties. If no settlement is possible, the Commission would determine the measures to be taken so that pay equity may be achieved as well as the time allotted for their implementation. If a party is dissatisfied, he/she could go to the Labour Court; for its part, if the Commission finds that the measures it determined are not implemented to its satisfaction, the Commission would refer the matter to the Labour Court. A decision of the Labour Court is final and without appeal.

Although the Act would not apply to enterprises with fewer than 10 employees, pay equity issues would be resolved by the Commission pursuant to the Charter of Rights and Freedom.

Provisions dealing with pay equity plans or pay relativity plans completed or in progress would, with some conditions, allow such plans to be recognized as being consistent with the Act; the employer would need to show, among other things, that the plan is exempt from gender based wage discrimination.

Penal provisions would be provided for cases where the Act has been contravened.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In **Ontario**, Bill 7, the *Labour Relations and Employment Statute Law Amendment Act, 1995*, has, among other things, enacted a new *Labour Relations Act, 1995*, which, effective November 10, 1995. replaced the *Labour Relations Act*.

Except for a number of changes, the new Act has reinstated the labour relations provisions that existed before a reform of these provisions, commonly called Bill 40, that took effect for the most part on January 1, 1993. The provisions that were repealed dealt, among others, with the following subjects:

- the purposes of the Act (there is a new purpose clause stating a number of objectives such as to recognize the importance of workplace parties adapting to change and to encourage co-operative participation of employers and trade unions in resolving workplace issues);
- the application of the Act to some groups of professionals (i.e. lawyers, land surveyors, dentists, architects and doctors) and domestic workers employed in private homes (i.e. these categories of employees are no longer covered);
- the power of the Ontario Labour Relations Board (OLRB) to certify a trade union if it considered that the true wishes of the employees concerning representation by a trade union were not likely to be ascertained due to an unfair labour practice of the employer (this power still exists if the following conditions are met: as a result of such a contravention of the Act, a representation vote does not or would not likely reflect the true wishes of the employees, no other remedy is sufficient, including the taking of another representation vote, and there is adequate membership support for the purposes of collective bargaining);
- the right to arbitration of a first collective agreement upon a request of either party to the Minister of Labour when the union and the employer had been in a legal strike/lockout position for 30 days or more, and were unable to reach an agreement (the new Act maintains the provisions permitting an application to the OLRB to settle a first collective agreement by arbitration, after conciliation, if it finds certain criteria are satisfied);
- the ban against the use of employees in the bargaining unit and/or most types of replacement workers during a legal strike or lockout;
- the reinstatement of employees if the parties did not reach an agreement on reinstatement after a lockout or legal strike (a provision that existed before the adoption of Bill 40 is reinstated; it provides that, in the case of a legal strike, an employee can make an unconditional application in writing to the employer within six months from the commencement of the strike to return to work, and that there is an obligation to reinstate the employee without discrimination on terms he/she and the employer agree upon, unless the employer no longer has persons engaged in the type of work performed by the employee prior to the cessation of work);
- organizing activity or picketing on third-party property to which the public normally has access;
- the power of the OLRB to settle one or more of the terms of a collective agreement when the duty to bargain in good faith had been violated and the Board considered that other remedies were insufficient;
- the protection of bargaining rights and collective agreements in situations in which the sale of a business caused a transfer from federal to provincial jurisdiction;
- the protection of bargaining rights and collective agreements in the case of contract tendering changes with respect to services provided at a building (e.g. building cleaning services, food services and security services);
- the duty of the employers to bargain in good faith with concerned unions towards a labour adjustment plan whenever an employer was giving notice of closure or termination of 50 or more employees; and
- various clauses deemed to be part of all collective agreements (e.g. a just cause provision for discharge and discipline and a consultation provision on workplace issues).

Some provisions introduced by Bill 40 have been kept. These include some changes to the powers of the OLRB to govern its own procedures and the following which deal with the settlement of grievances: the appointment of a settlement officer before arbitration at the request of the union or employer, if the other party does not object; the provisions concerning a consensual mediation-arbitration process; and some changes dealing with the rendering of arbitration decisions.

Other provisions dealing with representation votes as well as strike and ratification votes have been modified as follows:

- Where a trade union applies for certification, a representation vote is required in every case in which at least 40% of the employees in the

proposed bargaining unit appear to be members of the union at the time the application was filed. If the union loses the vote, it is not eligible to reapply for certification for one year. Analogous requirements are established when a person applies to the OLRB to terminate the bargaining rights of a union.

- Unless the OLRB directs otherwise, the representation vote must be held within five days (excluding weekends and holidays) after the application for certification is filed.
- A strike cannot take place or a proposed collective agreement (except if it has been imposed by order of the OLRB, settled by arbitration or accepted by a vote on the employer's last offer) cannot take effect unless it has been ratified by a majority of employees in the bargaining unit who participate in a secret ballot. A strike vote may take place at the earliest 30 days prior to the expiry of the collective agreement or, if no agreement has been in operation, on or after the day on which a conciliation officer is appointed. The requirement for a strike or ratification vote does not apply to employees in the construction industry.

With respect to bargaining units that were combined under the *Labour Relations Act* (as amended by Bill 40), the following measures apply:

- Where full-time and part-time employees have been put in the same bargaining unit after January 1, 1993, the employer or trade union can apply to the OLRB for separation of the bargaining unit within 90 days after November 10, 1995. The OLRB will separate the unit, unless it finds that there is a community of interest between the full-time and part-time employees. If the unit is separated, the affected employees
- retain their bargaining agent and the collective agreement, if any, continues to apply to the employees in each bargaining unit.
- Where on application by the employer or trade union the OLRB has combined two or more bargaining units into a single bargaining unit under section 7 of the *Labour Relations Act* (e.g. geographically separate units), this single unit is divided into the separate bargaining units that were combined. This happens 90 days after November 10, 1995, unless the parties agree otherwise in writing. The trade union continues to represent the employees in each of the bargaining units and the collective agreement, if any, continues to apply to them.
- In the case of guards who monitor other employees or protect the property of an employer, within 90 days after November 10, 1995, an employer can apply to the OLRB for a declaration that a trade union no longer represents the guards in a bargaining unit if this union (or an organization to which it is affiliated) admits to membership persons who are not guards. Also within 90 days after the coming into force of this provision, an employer can apply to the OLRB for a declaration that guards are no longer members of a bargaining unit that includes other employees. In both cases, a declaration is issued, unless the trade union satisfies the Board that no conflict of interest exists.

In the **federal** jurisdiction, Bill C-3, *An Act to amend the Canada Labour Code (nuclear undertakings) and to make a related amendment to another Act* took effect on May 29, 1996.

This Act contains amendments to the *Canada Labour Code* and the *Non-smokers' Health Act,* which create an incorporation-by-reference mechanism that, when triggered, allows for the application of provincial labour laws to specified federal undertakings whose activities are regulated in whole or in part by the *Atomic Energy Control Act*.

Also in the federal jurisdiction, Bill C-31, the *Budget Implementation Act, 1996*, which took effect on June 20, 1996, brought amendments to the *Canada Labour Code* (Part I). These include a revision of section 47 governing the transfer of activities or services from the federal public service to a crown corporation to which Part I applies. As a result of the revision, the application of this section is broadened to cover activities or services that are transferred from the federal public service to a business to which Part I applies. In such a situation, any applicable collective agreement or arbitral award that is in force continues to apply until its term expires, subject to determinations that may be made by the Canada Labour Relations Board (for example, concerning bargaining unit structure). However, the Governor in Council has the power to exclude any portion of the federal public service from the above provisions, if this is considered to be in the public interest.

With respect to proposed legislation, in **Manitoba**, Bill 26, the *Labour Relations Amendment Act*, was tabled in the Legislature on May 21, 1996. The main proposed amendments to the *Labour Relations Act* deal with the following subjects.

Certification

Upon an application for certification by a trade union, a representation vote would be required when the Manitoba Labour Board is satisfied that, as of the date of the filing of the application, at least 40% of the employees in the proposed bargaining unit wished to have the union represent them as their bargaining agent; if the percentage is below 40%, the Board would dismiss the application.

There would be a requirement that a representation vote be held within seven days (excluding holidays and days on which the offices of the Board are closed) after the application for certification is filed. However, the Board would have the power to extend the time for taking a vote in exceptional circumstances.

Ratification of a proposed collective agreement

All employees in the bargaining unit, not union members only as currently provided in the Act, would be entitled to participate in the mandatory vote on the acceptance or rejection of a proposed collective agreement. However, this right would not extend to replacement workers due to the temporary nature of their employment.

Votes on last offer

After the commencement of a strike or lockout, the Minister of Labour would have the authority to order a vote of the employees in the bargaining unit on the employer's last offer on all matters remaining in dispute.

Before or after the commencement of a strike or lockout, the employer could make one request for a vote of the employees in the affected unit on his/her last offer on all matters remaining in dispute. The Minister could, on any terms and conditions he/she considers necessary, order that such a vote be held immediately.

Votes on the employer's last offer ordered by the Minister would be conducted by the Board, and the result would be binding if the offer is accepted by a majority of employees participating in the vote.

Strike-related misconduct

The application of the provisions prohibiting strike-related misconduct would be expanded to specifically include unions and employees.

Use of union dues for political purposes

Every union would be required to develop and implement a process for consulting each employee in a unit governed by a collective agreement between the union and an employer about whether they wish their union dues to be used for political purposes.

An employee who objects to the use of his/her union dues for political purposes could so advise the union in writing and direct that any amount of such dues proposed to be used for political purposes be remitted by the union to a registered charity designated by him/her. The union would be required to remit the dues to the registered charity on an annual basis.

It would be an unfair labour practice for a union to fail to comply with these provisions.

Costs of mediator

One third of the remuneration and expenses of a mediator appointed to mediate a collective bargaining impasse would be paid out of the Consolidated Fund and two thirds would be paid in equal shares by the parties. At present, the government pays all the costs associated with the remuneration and expenses of a mediator.

Expedited grievance mediation/arbitration procedures

A bargaining agent could refer a grievance under a collective agreement to the Board for settlement only in the case of an employee's dismissal or suspension for a period exceeding 30 days. Such a grievance could be referred to the Board only if the grievance procedure under the collective agreement has been exhausted or 14 days have elapsed since the grievance was first brought to the attention of the other party.

Disclosure of information by unions

For each fiscal year ending on or after June 30, 1996, there would be a requirement that a union file with the Board, not later than six months after the end of its fiscal year, its audited financial statement and a compensation statement for that fiscal year. The compensation statement, certified to be correct by its auditor, would state the amount of compensation the union provides in the fiscal year, directly or indirectly, to, or for the benefit of, each of its officers and employees whose compensation was $50,000 or more (i.e. the name of the individual, his/her position(s) and total compensation). The term "compensation" would include the total value of all cash and non-cash salary, payments, allowances, bonuses, commissions and perquisites.

The financial statement of a union would set out the union's income and expenditures for the fiscal year in sufficient detail to disclose accurately the financial condition and operation of the union and the nature of its income and expenditures. A union would not be required to disclose the amount of its strike fund, but would have to indicate the expenditures made out of its strike fund during a fiscal year.

The first compensation statement filed by a union would contain, in addition to what is mentioned above, comparative information about the compensation of each affected person for the preceding fiscal year.

The Board would permit an employee in a unit for which the union is the bargaining agent to inspect its financial statement and compensation statement during normal office hours. An employee whose union is a member of an organization or federation of unions would also be permitted to inspect the financial statement and compensation statement of that organization or federation.

On payment to the Board of any reasonable administrative fee it may require, such an employee would be entitled to receive a copy of the financial statement and compensation statement of the union, and could request further information.

On receipt of a request for further information, the Board could, if it is satisfied that the financial statement or the compensation statement filed by the union does not meet the requirements prescribed by the legislation, order the union to prepare a revised financial

statement or compensation statement in any form and containing any information that the Board considers appropriate. It could also require that the revised financial statement or compensation statement be certified by an auditor.

If a union fails to file with the Board a financial statement or compensation statement or revised financial statement or compensation statement within the prescribed time, a concerned employee could ask the Board to issue an order confirming the non-filing. If the union fails to file such a statement within 30 days after being served with such an order, the Board would order the employer of the employee who sought the order to stop deducting union dues from the wages of employees in the unit affected and remitting them to the union. If at any time the union files the necessary statement, the Board would order the concerned employer to resume the check-off of union dues.

Other sanctions, including fines, could apply in the case of an organized group or federation of unions that does not file a financial statement or compensation statement or revised financial statement or compensation statement as required by the legislation.

Teachers

Persons and organizations covered by Part VIII (Collective Bargaining) of the *Public Schools Act* would remain excluded from the application of the *Labour Relations Act,* except for the provisions relating to the use of union dues for political purposes and the disclosure of information by unions.

Coming into force

This new legislation would take effect on January 1, 1997.

B. Public and Parapublic Sectors

In **British Columbia**, the *Health Sector Labour Relations Regulation* under the *Health Authorities Act* establishes five appropriate bargaining units in the health sector, and specifies that the bargaining units are multi-employer units. It also provides for the consolidation of bargaining units and the establishment of new units, and lists the trade unions which must be certified for each of the five appropriate bargaining units. No application to replace any of these certified trade unions may be made during the three years following the coming into force of the regulation. In addition, certain trade unions listed in the regulation as certified in respect of a bargaining unit are required to form associations of bargaining agents (to be certified by the Labour Relations Board) for collective bargaining purposes.

The regulation took effect on July 28, 1995, but an amendment was made and new sections were added on August 4, 1995.

In **Saskatchewan**, Bill 120, the *Health Labour Relations Reorganization Act*, took effect on July 12, 1996.

The Act provides for the appointment of a commissioner to examine the organization of labour relations between health sector employers and employees.

In conducting the examination, the commissioner must consider, among other things:

- the new employment relationships that have been (and will be) established as a result of restructuring the delivery of health services under the *Health Districts Act*;
- the need to promote integration of health care delivery; and
- the need to facilitate the development over time of provincial consistency in terms and conditions of employment amongst health sector employers and employees.

The commissioner must also make regulations reorganizing labour relations between health sector employers and employees and resolving issues arising out of that reorganization. Such regulations must be approved by the Lieutenant Governor in Council before coming into effect. A regulation made by the commissioner that has come into effect has the same force and effect as an order of the Labour Relations Board.

In case of conflict, the Act, regulations or Board orders made under it prevail over the *Trade Union Act*, any other Act, regulations made under other Acts, any Board order or collective bargaining agreement.

In **Ontario**, Bill 7, the *Labour Relations and Employment Statute Law Amendment Act, 1995*, has, among other things, amended the *Crown Employees Collective Bargaining Act, 1993.*

Ontario Public Service employees (except for essential services providers) continue to have the right to strike. However, changes to the Act include the following:

- A technical change has been made in the relationship between the *Crown Employees Collective Bargaining Act, 1993* and the labour relations statute applying to the private sector. The *Labour Relations Act, 1995* (which replaces the *Labour Relations Act*) does not directly apply to the Crown and to certain Crown agencies; it is incorporated into the *Crown Employees Collective Bargaining Act, 1993*. This change does not in itself affect the legal obligations of employers, unions and employees.
- The provision of the *Labour Relations Act* enabling the OLRB to deem employers who carry on related activities to be one employer for the purposes of the Act has been made inapplicable to the Crown (this change is retroactive to February 14, 1994, the date on which the *Crown Employees Collective Bargaining Act, 1993* came into force, and extends to the application of the corresponding provision of the new

Labour Relations Act, 1995).

- In the case of first agreement arbitration, an arbitrator or board of arbitration cannot require an employer to guarantee a job offer to employees whose positions have been or may be eliminated or otherwise compel the employer to continue to employ them. This new rule does not apply when the employer is a designated Crown agency.
- The provision of the *Labour Relations Act* concerning successor rights when a business is sold has been made inapplicable to the Crown, to people who buy a business from, or sell a business to, the Crown and to the union representing the Crown employees concerned (this change is retroactive to October 4, 1995, and extends to the application of the corresponding provision of the new *Labour Relations Act, 1995*).
- The provisions governing essential services agreements have been modified to provide that such an agreement cannot prevent an employer from using a person to perform work during a strike or lockout.
- Also, the Act declares that a provision of any agreement providing for the determination by an arbitrator, an arbitration board or another tribunal of classification issues, including creating or amending a classification system or changing an employee's classification, is void.

Also in Ontario, Bill 26, the *Savings and Restructuring Act, 1996*, has modified the *Fire Departments Act*, the *Hospital Labour Disputes Arbitration Act*, the *Police Services Act*, the *Public Service Act* and the *School Boards and Teachers Collective Negotiations Act.*

Effective January 30, 1996, the above Acts governing collective bargaining for municipal firefighters, hospital employees, municipal police officers, the Ontario Provincial Police Force and elementary and secondary school teachers have been amended to require that, in cases of interest arbitration, the arbitrator, board of arbitration, arbitration committee or selector (in final offer selection cases) consider specific criteria when making an award. These include the following:

- The employer's ability to pay in light of its fiscal situation.
- The extent to which services may have to be reduced, in light of the decision, if current funding and taxation levels are not increased.
- The economic situation in Ontario and in the municipality (for municipal firefighters and police officers, hospital employees (i.e. the municipality where the hospital is located), and elementary or secondary teachers (i.e. the municipality or municipalities served by the school board)).
- A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
- The employer's ability to attract and retain qualified employees.

Two other criteria already had to be considered in the case of a decision concerning municipal police forces:

- the interest and welfare of the community served by the police force, and
- any local factors affecting that community.

In **Quebec**, Bill 27, *An Act to amend the Labour Code,* became effective June 20, 1996. This Act amends certain provisions of the *Labour Code* concerning the collective bargaining dispute resolution mechanism applicable to municipal police officers and firefighters. It contains, among others, the following measures:

- to replace mandatory mediation at the request of either party by optional mediation accessible on the joint request of the parties;
- to give the parties an opportunity to jointly request a mediator-arbitrator (arbitration at the request of either party continues to apply in the absence of an agreement between the parties);
- to give the parties an opportunity, whatever form of arbitration is used, to agree on the selection of an arbitrator from a list drawn up by

the Minister of Labour specifically for the arbitration of disputes involving municipal police officers and firefighters;

- to make mandatory instead of discretionary certain criteria that an arbitrator must take into account in rendering an award, specifically:
    - the conditions of employment of the other employees of the concerned municipality or municipalities which are part of an intermunicipal board;
    - the conditions of employment prevailing in similar municipalities or intermunicipal boards or in similar circumstances;
    - and to add the following criteria:
        - the prevailing and anticipated wage and economic conditions in Quebec.

In **Newfoundland**, most provisions of the *Electrical Power Control Act, 1994* were proclaimed in force on January 1, 1996. This includes provisions on essential services applying to public utilities (other than those exempt from the *Public Utilities Act*) which buy or generate power and whose primary business is the sale or resale of power.

Under these provisions, a public utility and a concerned bargaining agent may jointly formulate a written statement of the number of employees in each classification in a bargaining unit who are considered to be essential employees. Once filed with the public utilities board, the statement is binding upon the parties.

If no such statement is filed, either the public utility or the bargaining agent may apply to the public utilities board to determine the number of essential employees in each classification. Within 15 days of making such an application, the public utility must provide the bargaining agent and the board with a written statement of the number of employees it considers essential in each classification. The number of employees determined to be essential by the board may not exceed that number.

A procedure permits the public utilities board to amend, at any time, an order of joint settlement by the parties or a determination it has made with respect to essential employees.

The public utility must notify in writing each employee concerned, and their bargaining agent, that he/she has been named as an essential employee. Such an employee must report for work as if a strike or lockout were not taking place. If an essential employee does not comply with this requirement, the public utility must immediately terminate his/her employment, unless it is satisfied that there are reasonable grounds for the employee not so reporting.

Also in Newfoundland, *An Act to Amend the Hydro Corporation Act, the Electrical Power Control Act, 1994, and Other Acts* was proclaimed into force on January 19, 1996.

Among other things, this Act provides for the application of the *Labour Relations Act* instead of the *Public Service Collective Bargaining Act* to Newfoundland and Labrador Hydro. All collective bargaining agreements continue in force, while they remain subject to section 11.1 of the *Public Sector Restraint Act, 1992* dealing with agreements that continue in force on the expiry of the restraint period. The certification of a trade union or council of trade unions that is a party to a collective bargaining agreement with that corporation is also continued.

In the **Northwest Territories**, Bill 2, *An Act to Amend the Public Service Act*, came into force on February 21, 1996. This Act has brought several changes to the sections of the *Public Service Act* governing the negotiation of collective agreements between the Government of the Northwest Territories and public service employees. The most significant of these changes are described below.

The Act has established three bargaining units (i.e. for employees of the Northwest Territories Power Corporation, for teachers and for other public service employees) and has clarified which positions are excluded from collective bargaining.

In addition, provisions requiring the parties to submit to arbitration differences that arise during the negotiation of a collective agreement have

been repealed. New provisions permit employees who are members of a bargaining unit to strike if the following conditions are met: an essential services agreement is in effect, the employees are not required to provide essential services or to respond to an emergency situation (as described in more details below); no collective agreement covering the employees is in effect; 21 days have elapsed since the appointment of a mediator and the employees' association has delivered to the Minister responsible for the public service a strike notice of at least 48 hours. Offences are established for an illegal strike by employees or an unlawful declaration of a strike by an employees' association.

With respect to essential services, new legislation ensures a continuation of minimal services to protect the health and safety of the public, and to prevent destruction or serious deterioration of machinery, equipment or premises, or disruption of the administration of the courts. Essential services also include those services provided by the most senior employee at each power plant who has responsibility for the on-site operation of the plant. The essential services provisions stipulate that, within 20 days after notice to bargain has been given or within such further time as the parties may agree to, the employees' association and government representatives must bargain in good faith and make every reasonable effort to enter into an essential services agreement. The agreement must address the following issues: the essential services to be provided during a strike, the number of employees in the bargaining unit who are necessary to provide the essential services and the positions of those required to provide those services, the number of employees, in addition to those providing essential services, who are necessary to respond to an emergency situation and the positions of those required to perform such work, as well as a protocol on unanticipated emergency situations.

If the parties are unable to reach an essential services agreement within 20 days after notice to bargain has been given or within such further time as they may agree to, either party may give notice in writing to the other setting out the unsettled issues and stating that it wishes that the differences be submitted to arbitration. A list of persons who could act as arbitrator must be submitted by the party giving such a notice. If the parties cannot agree on such a person within the time period mentioned above, an arbitrator is appointed by the Supreme Court on the application of either party. Within 14 days after his/her appointment or such longer period the parties may agree to, the arbitrator must make an award in respect of each issue submitted to him/her.

Once an essential services agreement (including any award) is in place, the Minister must notify each employee in the bargaining unit who, under the agreement, is required to work during a strike, and must indicate whether the employee is to provide essential services or to respond to an emergency situation. Employees who have been notified that the Minister is entitled to require them to provide essential services may not strike, while those who have been notified that they are required to respond to an emergency situation may not strike during that emergency.

In addition, after notice to bargain has been given, the Minister has the power to change any term and condition of employment applicable to a bargaining unit 21 days following the appointment of a mediator, provided an essential services agreement is in place and there is no longer a collective agreement in effect for that unit. As a consequence, the Act provides that the renewal provisions existing in collective agreements at the time it was passed no longer have any effect.

In the **federal** jurisdiction, Bill C-31, the *Budget Implementation Act, 1996*, which took effect on June 20, 1996, brought amendments to the *Public Service Staff Relations Act* (PSSRA). This includes successor rights provisions similar to those contained in Part I of the *Canada Labour Code*, as outlined previously in Section A, for portions of the federal public service transferred from Part I of Schedule I of the PSSRA (i.e. Departments and other portions of the public service in respect of which the government as represented by Treasury Board is the employer) to Part II of Schedule I of the PSSRA (i.e. portions of the public service that are separate employers).

In addition, there is a suspension for three years of the operation of certain sections of the PSSRA permitting the use of arbitration as the dispute resolution process when the parties fail to reach an agreement.

In **Manitoba**, two recently proposed laws (i.e. Bill 17 and Bill 72) would affect some aspects of collective bargaining for certain groups in the public and parapublic sectors.

Bill 17, the *Government Essential Services Act*, which has not yet been adopted, would apply to the Government of Manitoba, a union that represents its employees and every employee covered by a collective agreement between them.

The Bill contains a schedule in which services provided by certain departments are declared to be essential. In addition, other essential services could be declared by regulation. Essential services are defined as services that are necessary to enable the employer to prevent danger to life, health or safety, the destruction or serious deterioration of machinery, equipment or premises, serious environmental damage, or disruption of the administration of the courts or of legislative drafting. When a work stoppage occurs or is anticipated, the employer would notify the union with respect to the classifications, number and names of employees required to work during the work stoppage to maintain essential services. If the union believes that the essential services could be maintained using fewer employees, it could apply to the Manitoba

Labour Board for a variation of the number of employees in each classification who must work during a work stoppage. The parties are bound by an order of the Board with respect to such an application. However, on application by the employer or the union, the Board may vary the order.

An employee who contravenes the legislation would be liable to a fine not exceeding $1,000, while the employer, a union or a representative of either of them would be liable to a maximum fine of $50,000. Further fines of $200 and $10,000 respectively would be applicable to each day or part of a day during which the offence continues.

With respect to Bill 72, the *Public Schools Amendment Act (2)*, it would modify the part of the Act that deals with the collective bargaining process applying to public school teachers.

Selection of procedure to reach an agreement

After notice to bargain has been given, the parties could make a joint written request to the Minister responsible for the administration of the Act to appoint either a conciliation officer or a mediator-arbitrator.

If no such joint request has been made within 60 days after notice to begin collective bargaining was given, either party could request the Minister to appoint a mediator-arbitrator.

Unless there has been a request for the appointment of a conciliation officer, the Minister would appoint a mediator-arbitrator if requested to do so.

Conciliation

The remuneration and expenses of a conciliation officer would be shared equally by the parties.

If a conciliation officer cannot bring about an agreement between the parties, the Minister would appoint an arbitrator at the request of either party or on his/her own initiative.

Arbitration

The following matters could not be referred for arbitration and could not be considered by an arbitrator or included in an arbitration award:

- the selection, appointment, assignment and transfer of teachers and principals;
- the method for evaluating the performance of teachers and principals;
- the size of classes in schools;
- the scheduling of recesses and the mid-day break.

However, subject to the *Public Schools Act* and any other Act, collective bargaining could be carried out in respect of the matters just mentioned.

With respect to matters that might reasonably be expected to have a financial effect on a school division or district, an arbitrator would be required to base his/her decision primarily on the school division's or district's ability to pay, as determined by its current revenues, including

funding received from the government of Manitoba or Canada and its taxation revenue.

The arbitrator would determine the ability to pay while also taking the following factors into consideration:

- the nature and type of services that the school division or district may have to reduce in light of the decision or award, it its current revenues are not increased;
- the current economic situation in Manitoba and in the school division or district;
- a comparison between the terms and conditions of employment of the teachers in the school division or district and those of comparable employees in the public and private sectors, with primary consideration given to comparable employees in the school division or district or in the region of the province in which it is located;
- the need of the school division or district to recruit and retain qualified teachers.

An arbitrator's award is binding on the parties.

Mediation-Arbitration

Where a mediator-arbitrator is appointed as mentioned above under the heading "Selection of procedure to reach an agreement", and the parties fail to conclude or revise a collective agreement within 60 days after the appointment, either party could require the mediator-arbitrator to settle a collective agreement by arbitration, or the mediator-arbitrator could decide to proceed if he/she believes an impasse has been reached in the mediation process.

The provisions described above under the heading "Arbitration" would apply to a mediator-arbitrator.

Right to strike or to lock out

Teachers would continue to be prohibited from striking and school boards would not be permitted to declare a lockout of teachers.

Remuneration of arbitrator or mediator-arbitrator

The remuneration and expenses of an arbitrator or a mediator-arbitrator would be shared equally by the parties to a dispute.

Coming into force

The Act would apply to every collective agreement (whether new, renewed or revised) whose term of operation begins on or after January 1, 1997, and for this purpose the provisions described above would be deemed to have come into force on October 1, 1996.

C. Emergency Legislation

In **British Columbia**, Bill 21, the *Education and Health Collective Bargaining Assistance Act* came into effect on April 28, 1996 and was scheduled to be repealed on June 30, 1996 or on an earlier date set by regulation. However, there was a requirement that a collective agreement constituted under this Act remain in force until the end of the term stated in it.

Upon designation by regulations, the Act applied to a board of school trustees, a member of the Post Secondary Employers' Association or a member of the Health Employers Association of British Columbia (H.E.A.B.C) as well as to their employees and the trade unions representing them. On June 8, 1996, a regulation was adopted to designate employers accredited with the H.E.A.B.C. and several trade unions for the purposes of the Act.

It provided that, if an industrial inquiry commission, a mediation officer or a special mediator had been appointed under the *Labour Relations Code* and the parties had been provided with recommendations to settle the terms and conditions of a collective agreement, the recommendations, including any matters to which they had previously agreed, were considered to constitute the collective agreement between the parties. Such a collective agreement could be modified when both parties agreed.

D. Construction Industry

In **New Brunswick**, effective March 22, 1996, an amendment to the *Industrial Relations Act* has repealed a provision of that Act which prohibited the making of a regulation designating a construction project within a described geographic area as a major project after June 30, 1995.

E. Agriculture and Horticulture

In **Ontario**, the *Agricultural Labour Relations Act, 1994* was repealed on November 10, 1995, and agriculture as well as horticulture (except employees who work for municipalities or in silviculture, or for an employer whose primary business is not horticulture or agriculture) are excluded from the new *Labour Relations Act, 1995*. Employees are protected from reprisals for exercising their rights under the *Agricultural Labour Relations Act, 1994*, while it was in force.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Legislation of General Application

In **Ontario**, amendments to the *Occupational Health and Safety Act* contained in Bill 15, the *Workers' Compensation and Occupational Health and Safety Amendment Act, 1995*, have provided, among others, for the replacement of the board of directors of the Workplace Health and Safety Agency by an executive director appointed by the Lieutenant Governor in Council. The executive director performs the functions of the Agency and manages its operations, in accordance with the directions, if any, of the Lieutenant Governor in Council or the Minister of Labour. These amendments were made retroactive to August 23, 1995.

Also in Ontario, a *Joint Health and Safety Committees - Exemption from Requirements - Regulation* has been adopted under the *Occupational Health and Safety Act*. It provides, among other things, that every workplace with fewer than 20 workers is exempted from the requirement to ensure that at least one member of the joint health and safety committee representing the employer or constructor and at least one member representing workers are certified members. In addition, workplaces described in a Schedule contained in the regulation and having 20 or more but fewer than 500 workers were also exempted from this requirement until January 1, 1996. This date was later changed to July 1, 1996.

In **Manitoba**, some amendments have been made to the *Hearing Conservation and Noise Control Regulation* under the *Workplace Safety and Health Act.* These include updating standards for hearing protectors and procedures for the measurement of occupational noise exposure. Also, where an assessment indicates that the equivalent sound exposure level of a worker in the workplace exceeds 80 dBA but is not more than 85 dBA, and the employer takes sound control measures that have the effect of reducing the equivalent sound exposure level of some workers in the workplace to 80 dBA or less, he/she must now, in addition to meeting other requirements, implement a hearing surveillance program with respect to the remaining workers.

In **Nova Scotia**, amendments were made to regulations issued under the *Occupational Health and Safety Act*.

Under amendments to the *General Blasting Regulations*, the Board of Examiners was given discretion to make the renewal of any blaster's certificate or group of certificates conditional upon proof of completion of a Blaster's Refresher Course it has approved or to require certified

blasters (whether generally, individually or by category) to complete such a course.

These amendments took effect on January 3, 1996.

In addition, new *Fall Protection and Scaffolding Regulations* have been adopted. Effective January 3, 1996, these regulations apply to all workplaces covered by the *Occupational Health and Safety Act*.

As a result of their adoption, certain provisions of the *Construction Safety Regulations* have been repealed (i.e., Part 15, "Flooring During Construction", Part 18, "Guardrails and Openings", Part 32, "Scaffolds", and Part 40, "Working Over Water"). Also, Part 15, "Scaffolds" of the *Industrial Safety Regulations* has been repealed.

Also in Nova Scotia, Bill 13, *An Act Respecting Occupational Health and Safety*, replacing the existing *Occupational Health and Safety Act,* was assented to on May 17, 1996.

The new *Occupational Health and Safety Act* introduces various changes, including the following:

- to add a provision setting out the Internal Responsibility System upon which the Act is based;
- to require the Occupational Health and Safety Division of the Department of Labour to annually submit a report on a review of the Act to the Advisory Council on Occupational Health and Safety;
- to allow the Minister to appoint, in addition to officers appointed under the *Civil Service Act,* officers not appointed under that Act to administer and enforce the *Occupational Health and Safety Act* and regulations (i.e., employees in the field of occupational health and safety with the federal government or another provincial government or their agencies, another Nova Scotia department or agency, a municipal government or an agency created by a combination of the government of Nova Scotia and other federal or provincial governments);
- to require every employer to provide such additional training of members of joint occupational health and safety committees as may be prescribed by regulations;
- to make it an obligation for an employer to establish an occupational health and safety policy or occupational health and safety program where required by the Act or the regulations;
- to provide for duties that must be carried out by a contractor (other than a dependent contractor or a constructor), a constructor, an owner, a person or body who, for gain, is a provider of an occupational health and safety service, and an architect or a professional engineer who gives advice or seals or stamps documents;
- to make it an offence for an architect or a professional engineer to give advice or seal or stamp documents negligently or incompetently thereby endangering a person at a workplace;
- to require that the curricula of trade schools or home study courses within the meaning of the *Trade Schools Regulation Act,* of programs of instruction at community colleges and of any other educational institutions or class of educational institutions designated pursuant to the regulations include instruction in the principles of occupational health and safety contained in the Act (this provision will take effect on July 1, 1999 or at an earlier date announced by proclamation);
- to provide for a means of determining the degree of responsibility carried by a person upon whom a duty is imposed pursuant to the Act;
- to make it mandatory for the Minister to establish an Occupational Health and Safety Advisory Council, and to appoint to it persons who have knowledge and experience relating to the protection and promotion of occupational health and safety;
- to require the employer to prepare and review, at least annually, a written occupational health and safety policy in consultation with any joint occupational health and safety committee, health and safety representative or the employees concerned where five or more employees are regularly employed by an employer (in the case of a constructor or contractor, this includes those directly employed and not those whose services have been contracted) (such a policy may also be required by the regulations or may be ordered by an officer)(this

provision will take effect on July 1, 1997);

- to require the employer to establish and maintain a written occupational health and safety program in consultation with any joint occupational health and safety committee or health and safety representative for implementing the employer's policy, the Act and the regulations, where twenty or more employees are regularly employed by an employer (in the case of a constructor or contractor, this includes those directly employed and not those whose services have been contracted) (such a program may also be required by the regulations)(this provision will take effect on January 1, 1998);
- to specify minimum requirements for the contents of a written occupational health and safety policy or program;
- to require a constructor to establish and maintain a joint occupational health and safety committee at a project where there are twenty or more persons employed for the project;
- to require that the time an employee takes to undergo training prescribed by regulations be deemed work time for which the employee must be paid;
- to add to the functions of committees, namely to cooperatively identify hazards to health and safety and effective systems for responding to them and audit compliance with health and safety requirements, and to advise the employer regarding a policy or program required pursuant to the Act or regulations, rather than establish the program;
- to provide that where there are five or more employees at a workplace or at a construction project and there is no requirement for a joint health and safety committee at least one health and safety representative must be selected by the employees from among those not connected with management;
- to provide that where there are fewer than five employees at a workplace, the Executive Director of Occupational Health and Safety or any person designated by the Director to act on his or her behalf, may consult with the employer and employees to obtain their views regarding whether there should be a health and safety representative at the workplace, and order that one be selected by the employees from among those not connected with management;
- to specify that a health and safety representative is entitled to paid time off from work to carry out his/her duties;
- to provide that the functions of health and safety representatives include the co-operative identification of hazards to health and safety and effective systems for responding to them and the auditing of compliance with health and safety requirements
- in the workplace, the receipt and, in collaboration with the employer, the investigation and prompt disposition of matters and complaints concerning workplace health and safety, and participation in occupational health and safety inspections, inquiries and investigations;
- to provide that an employer who receives written recommendations from a committee or representative with a request to respond must do so in writing within 21 days or, if this is not reasonably practicable, to provide a reasonable explanation for the delay and indicate when the response will be forthcoming;
- to require that reports of workplace occupational health and safety inspections and of workplace occupational health and safety monitoring or tests taken at the workplace be made available to the committee, representative and employees, and that an employer reply to a request in writing for other information of a health or safety nature;
- to give an employee who exercises his/her right to refuse to work for occupational health or safety reasons the right to accompany the officer, joint health and safety committee or health and safety representative on a physical inspection of the workplace to ensure others understand the reasons for the refusal, and to clarify that payment for the refusing employee, for the period of time spent accompanying the officer, will depend on whether the refusal is a reasonable one;
- to provide that a complaint of discriminatory action or failure to pay a salary or benefit due pursuant to the Act or regulations, made by an employee not subject to a collective agreement, must be investigated by an occupational health and safety officer (this also applies if an employee, subject to a collective agreement, chooses to make a complaint to an occupational health and safety officer rather than having the complaint dealt with by arbitration under the collective agreement);
- to give officers more latitude and additional powers in exercising their duties under the Act (including the power, in certain circumstances,

to order an employer, owner, contractor or constructor to obtain an expert report or have tests carried out);

- to provide that when an officer makes an order under the Act or regulations, unless the officer records in it that compliance was achieved before he/she left the workplace, the person against whom the order is made must submit to the officer a compliance notice within the time specified in the order;
- to provide the appeal process of an order or a decision made by an officer to the Director and the appeal process of an order or decision made by the Director to an appeal panel (the decision of the appeal panel is final and binding and not open to review except for error of law or jurisdiction);
- to provide that a final decision or order of an arbitrator, an officer, the Director or an appeal panel can be made an order of the Supreme Court of Nova Scotia and be enforced as such;
- to give the power of arrest without warrant in certain instances to a police officer when he/she has reasonable and probable grounds to believe that a stop work order is being contravened, and to provide for the process to be followed subsequent to such an arrest;
- to increase the following: the maximum fine from $10,000 to $250,000, the maximum term of imprisonment from twelve months to two years, and the fine for a continuing offence from $1,000 to $25,000 per day, and to provide for other sanctions in addition to fines and imprisonment;
- to permit the imposition of an additional fine in an amount equal to the estimation of monetary benefits accrued where a court is satisfied that such benefits have accrued to an offender;
- to clarify the circumstances in which an employer is not liable for the wrongdoing of a person who exercises management functions for the employer;
- to provide for additional regulation-making powers, including the power to make regulations prescribing charges to recover the cost of services pursuant to the Act and fees in relation to appeals, deviations, certificates, licences, permits, and reviews or filing of documents;
- to permit an application to be made to the Executive Director of Occupational Health and Safety for a deviation for a workplace from regulations that apply to the workplace, and to provide for the process that must be followed for such a deviation to be authorized; and,
- to repeal the *Coal Mines Regulation Act* and the *Metalliferous Mines and Quarries Regulation Act* on a date to be announced by proclamation.

Except as otherwise mentioned, this Act will take effect on January 1, 1997.

In **British Columbia**, several regulations have amended the *Industrial Health and Safety Regulations under the Workers' Compensation Act*, effective May 1, 1996.

One regulation has, among other things, introduced a special part on fall protection, and has consequently amended a number of existing fall protection provisions, such as the ones dealing with workers on platforms, scaffolds, ladders, roofs, bridges and chimneys. In addition, another regulation has repealed provisions dealing with safety-belts, safety-straps and life-lines.

A third regulation has repealed the existing noise control provisions and has added new ones. Under the new provisions, the employer must ensure that a worker is not exposed to noise levels above the exposure limits of 85 dBA Lex (1 Pa^2h) daily exposure, and to noise levels above the exposure limits of 135 dBA peak sound level. If the noise exceeds either of the exposure limits, the employer must develop and implement an effective noise control and hearing conservation program. Such a program must be in writing and must address the following issues: noise measurement, education and training, engineered noise control, hearing protection, posting of noise hazard areas, hearing tests, and annual program review. There are also other new provisions, such as the requirement to measure the noise exposure in certain circumstances, the equipment required for the noise measurement, the record keeping of the noise exposure measurement results and, the education and training of workers whether they are below or above the exposure limits. Furthermore, the regulation clarifies existing provisions dealing with engineered noise control, hearing protection, noise hazard areas and hearing tests.

In the **federal** jurisdiction, Part X of the *Canada Occupational Safety and Health Regulations* under the *Canada Labour Code* dealing with hazardous substances stored, handled and used in the workplace has been amended and restructured. The amendments include, among others, the following: a requirement for keeping and maintaining a record of hazardous substances found in the workplace; a provision as part of a hazardous material investigation for the development of a written procedure for the control of a hazardous substance; a requirement for the inspection, testing and maintenance of ventilation systems designed to control the concentration of airborne hazardous substances; specific provisions referenced in the National Fire Code for the storage and handling of controlled products; a requirement for information to be disclosed on labels of laboratory samples which are controlled products; a provision prescribing the information to be disclosed on hazardous waste labels and signs; and provisions for the prevention of over exposure to ionizing and non-ionizing radiation in the workplace. These amendments took effect on June 13, 1996.

In **New Brunswick**, amendments have been made to the *General Regulation* under the *Occupational Health and Safety Act.* They include, among others, new provisions dealing with a fall restraint system for employees engaged in the weatherproofing of a roof and other provisions dealing with formwork and shoring, structural framework and wooden trusses.

In **Prince Edward Island**, Bill 10, *An Act to Amend the Occupational Health and Safety Act,* came into force on April 1, 1996. Its most important features consist in the abolition of the Occupational Health and Safety Council and in the transfer of the responsibilities related to the administration of the Act and the regulations to the Workers' Compensation Board. This Act also repeals the *Construction Safety Act.* The *Construction Safety Act Regulations* have also been repealed effective April 1, 1996.

In **Alberta**, the *Vinyl Chloride Monomer Regulation* under the *Occupational Health and Safety Act* was repealed on October 11, 1995.

In the **Northwest Territories**, an amendment has been made to the *General Safety Regulation* under the *Safety Act* to provide, among other things, for the adoption by reference, in respect of commercial diving operations, of the CSA Standard CAN/CSA-Z275.2-1992, *Occupational Safety Code for Diving Operations*.

B. Radiation Protection

In **Saskatchewan**, Bill 22, the *Radiation Health and Safety Amendment Act, 1996*, has amended the *Radiation Health and Safety Act, 1985* and will come into force by proclamation. The amendments include new provisions dealing with the qualifications required for managing, controlling and operating an ionizing radiation installation or any ionizing radiation equipment.

There is also a new section which entitles the minister, at his discretion, to approve and issue a code of practice for the purpose of providing practical guidance with respect to the requirements of any provision of the Act or regulations. *The Occupational Health and Safety Act, 1993* will also be amended to include references to *The Radiation Health and Safety Act, 1985*.

In **Alberta**, effective April 1, 1996, the *Radiation Health Administration Regulation* under the *Government Organization Act* has provided for the delegation, under certain conditions, of the powers, duties and functions of the Minister, the Director of Radiation Health and radiation health officers under various sections of the *Radiation Protection Act* to authorized radiation health administrative organizations, or to authorized radiation protection agencies in the case of certain powers, duties and functions of radiation health officers.

The authorized entities (i.e. authorized radiation health administrative organizations and authorized radiation protection agencies), may impose, with the approval of the Minister, assessments, fees and charges and collect such money with respect to the powers, duties and functions delegated to them under the regulation.

In order to ensure that this regulation is reviewed for ongoing relevancy and necessity, with the option that it may be readopted in its present or amended form, it is scheduled to expire on December 31, 2000.

C. Mining Safety

In **Nova Scotia**, Bill 13, the new *Occupational Health and Safety Act*, which was outlined previously in Section A, will replace, on a date to be announced by proclamation, the *Coal Mines Regulation Act* and the *Metalliferous Mines and Quarries Regulation Act.*

In the **Northwest Territories**, the *Mine Health and Safety Act*, which was assented to on October 21, 1994 and was described the *Highlights of Major Developments in Labour Legislation 1994-1995*, was brought into force on December 15, 1995.

On the same date, comprehensive *Mine Health and Safety Regulations* were adopted under the new Act. They deal with a vast number of mining health and safety issues, such as the following: ground stability design, means of egress, ventilation, water and drainage, mine plans, requirements for surface mines, examination of workings, hours of work, occupational health and safety committees established under the Act (i.e., when more than 15 persons are employed at a mine), the right of an employee to refuse to work when he\she has reasonable grounds to believe that to do so would endanger the health or safety of any person, employee training, the certification of persons carrying out certain functions, personal protective equipment, confined spaces, emergency procedures, first aid, refuge stations in underground mines, exposure levels to noise and to airborne concentrations of chemical or physical substances, ergonomic facilities, radiation hazard, mechanical equipment, mobile equipment, internal combustion engines, raise climbers, rail haulage, fuel pipelines, conveyors, winching and hoisting equipment, welding and cutting, transport of persons, communication and signalling, fire protection, electrical power system, explosives, as well as reportable incidents and dangerous occurrences.

Many previously adopted regulations dealing with various aspects of mining safety have been repealed, including the *Blasting Certificate Regulations*, the *Mine Hazardous Materials Information System Regulations*, the *Mine Occupational Health and Safety Board Regulations*, the *Mining Safety Regulations*, the *Radiation Hazard Regulations* and the *Shift Boss and Hoist Operator's Certificate Regulations*.

In **Quebec**, a *Regulation respecting pulmonary health examinations for mine workers* was adopted under the *Act respecting occupational health and safety.*

The purpose of this regulation is to ensure the medical monitoring of workers who perform work in a mine where they are exposed to asbestos or silica, in order to prevent and screen for pulmonary diseases caused by those contaminants. To this end, the regulation requires, under certain circumstances, a pre-employment pulmonary checkup as well as medical examinations during employment. An annex to the regulation provides for much of the detail of such medical monitoring, notably with respect to the medical questionnaire, the physical examination and the lung X-ray.

Also in Quebec, a regulation has amended the *Occupational Health and Safety in Mines Regulation* under the Act respecting *occupational health and safety* in order to, among other things, update references to an approval, certification or homologation of the *Bureau de normalisation du Québec* or of other standardizing bodies.

Moreover, the regulation deals with worker training, and establishes new safety standards concerning, among other things, underground excavations, haulage and service roads, dump trucks, vehicles used for the transportation of workers, rolling stock and locomotives, conveyors, compressors and compressed air tanks, as well as rappelling techniques fall-arresting devices.

In **Alberta**, the government of the province announced by proclamation the coming into effect on March 30, 1996 of section 28 of the *Occupational Health and Safety Amendment Act,* which was passed in 1979, providing for the repeal of the *Coal Mines Safety Act* and the *Quarries Regulation Act*.

Effective March 31, 1996, a comprehensive new *Mines Safety Regulation* has been adopted under the *Occupational Health and Safety Act*.

The regulation contains nine parts dealing with the following subjects: general requirements, workers training and certification, fire prevention and emergency response, electrical hazards, rubber-tired, self-propelled mobile equipment, conveyors, explosives, particular requirements for

underground coal mines, and fees for licences, certificates or permits issued or services or material provided under the regulation.

The *Coal Mines Safety Regulations*, the *Order Classifying Sand and Gravel Operation as a Quarry* and the *Quarries Regulations* have been repealed.

In **Ontario**, a regulation has amended certain sections of the *Mines and Mining Plants Regulation* under the *Occupational Health and Safety Act* with respect to training programs, diamond drill holes, safety fuses, conveyors, platforms used to transport workers, free fall tests of cages, and examinations of equipment. These amendments came into force on February 29, 1996.

D. Offshore Petroleum Operations

The **federal government** has adopted several regulations under the *Canada Oil and Gas Operations Act*.

The *Canada Oil and Gas Certificate of Fitness Regulations* deal with the issuance of certificates of fitness for offshore oil and gas production, drilling, accommodation and diving installations operating in areas where the *Canada Oil and Gas Operations Act* applies.

The *Canada Oil and Gas Geophysical Operations Regulations* contain provisions dealing with occupational safety and health in geophysical operations in relation to exploration for oil and gas in any area to which the *Canada Oil and Gas Operations Act* applies. Among other things, these provisions relate to radio communication, safe working practices, smoking prohibitions, hours of work, proper training of the geophysical crew, access to the Oil and Gas Occupational Safety and Health Regulations, and the reporting and investigation of accidents.

Finally, the *Canada Oil and Gas Installations Regulations* establish the minimum safety requirements which must be met by all persons engaged in the exploration, development and production of oil and gas in areas where the *Canada Oil and Gas Operations Act* applies. They ensure that the various components that make up an installation function according to specifications.

These regulations are concerned with technical requirements in the design of the installation and take into consideration environmental factors such as waves, wind and ice at the location as well as the seabed conditions, and loading conditions. Other requirements include the following: the analysis of the installation in terms of structural integrity; appliances and systems for lifesaving; winterization of the installation to protect personnel; equipment and systems for active fire fighting; the design and protection of the helicopter deck; and quality control and assurance programs.

Regulations have also been adopted by **Nova Scotia** under the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*.

The *Nova Scotia Offshore Area Certificate of Fitness Regulations* deal with the issuance of certificates of fitness in respect of offshore oil or gas production installations, drilling installations, accommodation installations and diving installations.

Other regulations, the *Nova Scotia Offshore Area Petroleum Diving Regulations* apply to any diving operation conducted in the Nova Scotia offshore area in connection with the exploration or drilling for petroleum or its production, conservation, processing or transportation.

They deal with various subjects, including diving programs, operators of diving programs, diving contractors, diving safety specialists, diving supervisors, diving certificates, diver's duties, pilots of an atmospheric diving system as well as persons who have first aid or medical training.

E. Elevating Devices, Boilers and Pressure Vessels, and Other Installations

In **British Columbia**, a regulation has updated the *Elevating Devices Safety Regulation* under the *Elevating Devices Safety Act* and has added new provisions concerning temporary elevating devices. The changes deal notably with requirements for personnel hoists.

In **Alberta**, effective April 1, 1996, the *Elevating Devices Administration Regulation* under the *Government Organization Act* has provided for the delegation, under certain conditions, of powers, duties and functions of safety codes officers under various sections of the *Safety Codes Act* to the Elevating Devices Association (i.e. the Alberta Elevating Devices and Amusement Rides Safety Association). The powers, duties and functions of an Administrator under the *Safety Codes Act* for the purposes of registering designs in respect of elevating devices have also been delegated to the Elevating Devices Association.

The Elevating Devices Association, with respect to the powers, duties and functions delegated to it under the regulation, is authorized to impose, with the approval of the Minister responsible, assessments, fees and charges and collect such money from persons who apply for or are provided a service, material or program.

The powers, duties and functions of safety codes officers under various sections of the *Safety Codes Act* are delegated to Authorized Agencies under certain conditions when they are working pursuant to a contract with the Elevating Devices Association.

In order to ensure that this regulation is reviewed for ongoing relevancy and necessity, with the option that it may be readopted in its present or amended form, it is scheduled to expire on March 31, 2001.

In **New Brunswick**, *An Act to amend the Boiler and Pressure Vessel Act*, *An Act to amend the Electrical Installation and Inspection Act*, *An Act to amend the Elevators and Lifts Act*, and *An Act to amend the Plumbing Installation and Inspection Act* became effective March 22, 1996.

These Acts provide, among other things, that the Minister responsible can authorize the inspectors appointed under their respective Acts, other than the Chief Inspectors, to exercise the powers and duties conferred upon them by the applicable provisions of the other Acts (i.e. the *Boiler and Pressure Vessel Act*, the *Electrical Installation and Inspection Act*, the *Elevators and Lifts Act* and the *Plumbing Installation and Inspection Act*) or any regulation under those Acts, as the Minister may specify at the time of their appointment.

In **Alberta**, a regulation has amended the *Administration and Information Systems Regulation* under the *Safety Codes Act*. Among other things, it provides that an Administrator must, if requested by the Minister, maintain an information system with respect to the following:

- storage tank systems (such as those used for gasoline in gas stations), as defined in the *Alberta Fire Code*;
- Authorized Accredited Agencies, as defined in the *Authorized Accredited Agencies Regulation* under the *Government Organization Act* and agency-permits, as defined in the *Permit Regulation* under the *Safety Codes Act*;
- authorized contractors, as defined in the *Permit Regulation*, and work registered by them pursuant to that regulation.

In addition, a *Permit Regulation* was adopted under the *Safety Codes Act.* It establishes the circumstances in which a permit may or may not be required to carry out work in the following disciplines to which the *Safety Codes Act* apply: electrical work; construction, alteration, renovation or addition work to a building; work to plumbing equipment or systems or to a sewage disposal system; or work to a gas installation. Two classes of permits are established, other than those that can be issued by an accredited municipality or corporation under the Act: agency-permits and authorized contractors permits. The regulation provides for various exceptions where such permits would not be required, the information that must be included in an application, applicant eligibility and qualifications, and the renewal of permits.

In **Ontario**, Bill 54, the *Safety and Consumer Statutes Administration Act, 1996,* came into force on July 22, 1996. The intent of this legislation is to facilitate the administration of designated Acts such as the *Boilers and Pressure Vessels Act*, the *Elevating Devices Act*, the *Gasoline Handling Act* and the *Operating Engineers Act*, by delegating to designated administrative authorities certain powers and duties relating to the administration of those Acts. An administrative authority is a not-for-profit corporation without share capital that operates in Ontario, but that is not part of government (whether Ontario or any other government) or a governmental agency.

The Lieutenant Governor in Council may, by regulation, designate an Act (such as one of those mentioned above), a regulation made under it or provisions of that Act or regulation as designated legislation, and may in the same way designate one or more administrative authorities for the

purpose of administering designated legislation when the Minister responsible for the Act and an administrative authority concerned have entered into an administrative agreement. The Lieutenant Governor in Council may also revoke designations in certain circumstances.

The Minister may appoint one or more removable members to the board of directors of a designated administrative authority as long as they do not constitute a majority of the board. These members may include representatives from consumer groups, business, government organizations or such other interests as the Minister determines.

A designated administrative authority may set and collect fees, administrative penalties, costs or other charges related to the administration of the designated legislation delegated to it if it does so in accordance with a process and criteria approved by the Minister and there is no conflict with any provision of the designated legislation or the regulations made under it. If there is a conflict, the administrative authority must give written notice to the Minister of the provisions of the designated legislation or the regulations that are involved in the conflict and allow 60 days to pass since the giving of the notice. The money that a designated administrative authority collects in carrying out the administration delegated to it is not public money and may be used by it in carrying out its activities in accordance with its objects or any other purpose reasonably related to its objects.

The board of a designated administrative authority must report to the Minister on a yearly basis on its activities and financial affairs. Fines are provided for a designated administrative authority and any of its directors, officers, employees or agents in the case of an offence under the Act.

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