



Labour

Archived - Highlights of Major Developments in Labour Legislation (1996-1997)

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August 1, 1996 to July 31, 1997

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I. EMPLOYMENT STANDARDS

A. Proclamations

Alberta proclaimed Bill 29, the *Employment Standards Code*, which was described in the *Highlights of Major Developments in Labour Legislation (1995-1996)*, effective March 1, 1997. The new Code is essentially a reorganization of the previous employment standards provisions.

B. Legislation of General Application

In **Ontario**, Bill 49, the *Employment Standards Improvement Act, 1996*, made changes to the *Employment Standards Act* to facilitate administration and enforcement of the Act and to bring greater clarity to certain provisions. The following describes the salient differences between the previous legislation and this Act.

Clarification of Entitlement of Employees regarding Pregnancy and Parental Leave

This new Act more clearly defines employers' obligations for pregnancy and parental leave under the *Employment Standards Act*. It provides that employees earn credit for both seniority and service while on pregnancy and parental leave. It also clarifies that the 12 months of employment which must be completed in order to qualify for a two week vacation include all employment, whether or not such periods are active. As a result, the 12-month period includes time spent on pregnancy, parental and other leaves.

Limitations Periods for Proceedings, Prosecutions and Appeals

Administrative changes to the *Employment Standards Act* include the following:

- Under the previous Act, proceedings and prosecutions had to be commenced within two years after the facts upon which they were based first come to the knowledge of the Director of Employment Standards. The amending Act sets out certain exceptions to the limitations period. Also, an employment standards officer may amend or rescind an order after the two-year period expires, on the consent of the affected person.
- The time to file a request for review of an employment standards officer's order, or of a refusal to issue an order, has been extended from 15 to 45 days. Certain exceptions are set out in the Act.

Restrictions on the Recovery of Money

An employment standards officer cannot issue an order with respect to a single employee for an amount greater than the \$10,000 plus the 10% administration costs maximum specified in the Act, or less than the minimum amount prescribed in the regulations. Certain exceptions are set out in the Act. The Minister of Labour has not set a minimum claim amount at this time. However, the Minister will have the option, through regulation, of setting a minimum. The ministry continues to write orders for more than \$10,000 in cases where reinstatement or hiring is a potential remedy under the Act. For example, reinstatement is possible when employees lose their positions after taking pregnancy or parental leave, or in the case of retail workers, refuse to work on a Sunday or a holiday. Employees are able to go to court to settle claims above the maximum or below the minimum limits on claims under the Act. The maximum and minimum amounts do not apply with respect to wages that become due before the day on which the Act came into force.

Also, under the previous Act there was a limitation on the recovery of money in proceedings or prosecutions. The amendment provides that money cannot be recovered if it became owing to an employee more than six months before the facts upon which the proceeding or prosecution is based first came to the knowledge of the Director (instead of the two years permitted before). In cases where there are continuing violations of the same provision of the Act or contract, employees will be entitled to recover moneys owing up to one year before the facts upon which the proceeding or prosecution is based first came to the knowledge of the Director.

Avenues for Addressing Alleged Violations of the Employment Standards Act/Methods of enforcement

An employee to whom a collective agreement applies (including an employee who is not a member of a trade union) is not entitled to file a complaint under the Act. (The Director may permit an exception if he/she considers it appropriate in the circumstances.) The amendments oblige the employees covered by a collective agreement to resolve employment standards complaints through the grievance procedures provided in their collective agreement as if the Act formed part of that agreement. Therefore, the employee is bound by the decision of the trade union with respect to the decision of enforcing or not to seek enforcement of the Act. If the trade union decides not to seek enforcement of the Act, and the employee feels he/she has not been well represented by the union, he/she can still make a complaint to the Ontario Labour Relations Board. An arbitrator, a board of arbitration or the Ontario Labour Relations Board have the power to order payment of money owed to employees by their employers. If the employer cannot pay, the arbitrator's order may lead to the employee being reimbursed by the Ministry of Labour's Employee Wage Protection Program. An exception is set out in the Act, concerning decisions about "related employers". If during an arbitration an issue arises as to whether the employer to whom the collective agreement applies and another entity are one employer, the arbitrator (arbitration board or Ontario Labour Relations Board) will not make a decision concerning the related employers issue. If the arbitrator concludes that there has been a contravention of, or failure to, comply with the Act, he/she will notify the Director of Employment Standards that a related employer issue has arisen during arbitration and of any decisions made concerning the other matters in dispute. The Director may then arrange to have an employment standards officer investigate the matter.

The amendments prohibit the filing of certain complaints dealing with the same matter through both the Ministry and the Courts. An employee who files a complaint under the Act is not entitled to bring a civil action for the same matter and an employee who commences a civil action respecting specified matters is not entitled to file a complaint under the Act for the same matter. This restriction does not apply in those cases where the employee may be entitled under the Act to reinstatement to his/her former position.

An employee who has filed an employment standards claim with the Ministry has two weeks to seek legal advice and consider their options before his/her decision not to pursue the claim through the courts is considered to be final.

Powers of the Employment Standards Officer

The authority of the employment standards officer to settle complaints filed under the Act has been changed. An employment standards officer is able, with the agreement of the employer and employee, to settle a complaint without making a prior finding that wages are owing to an employee. The settlements are binding upon the parties. The employment standards officer may accept money on the employee's behalf as a result of the compromise or settlement if the person has agreed to the settlement. The officer may make an order if after a compromise or settlement the employer does not pay the amount agreed.

The officer has two years to issue an order or to refuse to issue an order. If after two years no order has been issued, the officer is deemed to have refused to issue the order. Employees may appeal a deemed refusal.

Powers of debt collectors/Use of private collection agencies

The Director of Employment Standards may appoint private sector debt collectors to collect unpaid wages, unpaid vacation pay and other money owed to employees under the Act. The collector's fees and disbursements may be added to the amount collected, if the Director authorizes it. However, the Director may not authorize a collector required to be registered under the *Collection Agencies Act* to collect disbursements.

When the Director authorizes a private debt collector to collect money owing under the Act, the Director may authorize the collector to exercise specified powers under the Act. A collector may enter into a settlement agreement on behalf of the person owed money under the Act, with the person's consent. In some circumstances, the consent of the Director to a settlement is required.

Administration

Some administrative changes and clarification have been made to the *Employment Standards Act*. Investigating officers have access to the employers' electronic records and the Ministry is able to serve notices on the parties by any form of verified delivery, including facsimiles. Claims must be filed with the Ministry on an approved form either in written or electronic form. The Act was proclaimed in force on December 1, 1996.

On April 16, 1997, **Quebec** adopted Bill 88, *An Act to amend the Act respecting labour standards as regards annual and parental leave*. This Act amends the *Act respecting labour standards* by increasing the parental leave from 34 to 52 weeks. It also enables employees having one to five years of uninterrupted service to apply for the number of days of leave without pay required to increase their annual leave to three weeks.

In addition, Quebec adopted Bill 96, *An Act to amend the Act respecting labour standards as regards the duration of a regular work week*. This Act has modified the *Act respecting labour standards* in order to progressively reduce the duration of the regular work week from 44 to 40 hours, at the rate of one hour as of October 1 every year from the year 1997 to the year 2000. The Act also contains transitional measures to govern the temporary application of every provision relating to the duration of a regular work week that is contained in a collective agreement, or an arbitration award in lieu thereof, or in a collective agreement decree in force or expired on June 19, 1997.

Lastly, Quebec adopted Bill 31, *An Act to amend the Act respecting labour standards*.

The Act amended the *Labour Standards Act* to allow the Labour Standards Commission (Commission des normes du travail) to represent non unionized employees with more than three years of uninterrupted service who believe they were dismissed without good and sufficient cause. Furthermore, it provides for the annual reimbursement by the Commission of disbursements made by the Minister of Labour in connection with the exercise of remedies for dismissal without just and sufficient cause or for prohibited practice. These amendments took effect on March 20, 1997.

On December 19, 1996, **Newfoundland** brought amendments to its *Labour Standards Act* (i.e. Bill 26) to allow an employee with more than 15 years of continuous employment with the same employer to take three weeks paid vacation per year or 6% vacation pay. There was also an expansion of the list of relatives whose death gives rise to the bereavement leave to include a grandchild.

In **British Columbia**, several regulations have amended the *Employment Standards Regulation* under the *Employment Standards Act*, during the last 12 months.

A regulation, adopted on August 13, 1996, provides that farm workers involved in the hand harvesting of fruit and berry crops and employers of those farm workers are excluded from Part 5 (statutory holidays) and section 58 (vacation pay) of the Act, on condition that these employers pay those farm workers in place of a statutory holiday and vacation pay an amount for each harvest day. A section was added to the *Employment Standards Regulation* providing how the statutory holiday may be paid. The amount can be paid on the employee's scheduled pay days, by multiplying the hourly wage for the pay period by 1.036.

In addition, another regulation provides that, effective September 1, 1997, a person employed as a logging truck driver or as a logging equipment operator working in the interior area as defined by the *Timber Harvesting Contract and Subcontract Regulation*, is excluded from the application of sections 31(3) (shift change notices), 35 (maximum hours of work), and 40 and 41 (overtime wages for employees on or not on a flexible work schedule). Also, the regulation adds a requirement for employers who request or allow a logging truck driver or a logging equipment operator to work in the interior area more than 120 hours within a two week period, to pay the employee for the hours worked in excess of 120, at least double the regular wage.

A third regulation, effective March 25, 1997, excludes from the application of the *Employment Standards Act*, a person receiving income

assistance or benefits under the *BC Benefits (Income Assistance) Act*, a youth allowance or benefits under the *BC Benefits (Youth Works) Act*, or a disability allowance or benefits under the *Disability Benefits Program Act*, while the person is participating in a time-limited government program that provides on-site training or work experience and is operated under one of the above-cited Acts

On August 31, 1996, **Ontario** amended the *General Regulation*, established under the *Employment Standards Act*, to exempt the workers who are participating in a workfare program, but only with respect to that part of the program that involves participating in community participation activities, from the application of the *Employment Standards Act*.

Manitoba has adopted Bill 18, *The Payment of Wages Amendment Act*. This Act provides that not only another province of Canada but also the federal government, a territory of Canada, or the government or a state or territory of the United States, may be designated as a reciprocating jurisdiction for the purpose of enforcing in Manitoba an order, certificate or judgment made under the law of the other jurisdiction that is the equivalent of an order made or issued under the *Payment of Wages Act* for the payment of wages. The amendment took effect on November 19, 1996.

New-Brunswick amended its *Employment Standards Act* (i.e. Bill 26) on December 19, 1996, by adding provisions that permit the Lieutenant-Governor in Council to declare, by Order in Council, that a province or territory is a reciprocating province or territory for the purpose of enforcing orders, certificates or judgments for the payment of wages, public holiday pay or pay in lieu of public holidays, vacation pay or pay in lieu of vacation, pay in lieu of notice of termination or any other benefit owing to an employee.

Nova-Scotia has amended its *General Regulations* established under the *Labour Standards Code*. The regulation has replaced the provision that excluded domestics from the application of the Code, with a provision stipulating that only persons employed in a private home to provide domestic service for their immediate family or who are not employed for more than 24 hours during a seven-day period are now excluded from the application of the Code. All other persons providing domestic services are now covered by the Code. Also qualified practitioners and students of professions like architecture, dentistry, law and others that used to be excluded from the Code, while they were engaged in training, are now covered by the Code but are exempted from the application of sections dealing with hours of work and dismissal or suspension without just cause. Qualified practitioners or students while engaged in training for optometry and pharmacy are excluded only from the application of section 71 (dismissal or suspension without just cause). These amendments took effect on October 1, 1996.

Saskatchewan has adopted an amendment to the *Labour Standards Regulations, 1995* pursuant to the *Labour Standards Act*. The new regulation provides for a new definition of "care provider" and amends the definition of "domestic worker". A care provider is defined as an employee who provides services in the private residence of the employer or of a member of his/her immediate family, that relate to the provision of care and supervision of a member of the employer's immediate family. The immediate family includes the spouse of an employer or a parent, grandparent, child, brother or sister of an employer or of the spouse of an employer. A domestic worker is an employee who provides services in the private residence of the employer that relate to the management and operation of that residence. The new regulations make also a distinction between a live-in care provider and a live-in domestic worker who resides in the residence in which they provide services. Under the new regulations, a live-in care provider and a live-in domestic worker are entitled to a rest period of two consecutive days in every seven days, at a time that is mutually acceptable to the employer and the employee and to minimum wages established by Part II of the Act for the first eight hours worked in one day. Where the cash value of board and lodging received by a live-in care provider or a live-in domestic worker, has not been determined by the Minimum Wage Board, the charge for room and board that an employer may make is not to exceed \$250 per month. The new regulations also stipulate that sections 43 and 44 of the Act which relates to notice of termination and termination pay apply only to care providers who are live-in care providers.

These amendments were effective January 28, 1997.

Saskatchewan has also adopted *The Minimum Wage Board Order, 1997* under the *Labour Standards Act*. This Order has repealed and replaced three previous minimum wage board orders (*The Minimum Wage Board Order No. 2 (1981)*, *The Minimum Wage Board Order No. 3 (1981)* and *The Minimum Wage Board Order, 1996*). It came into force on July 18, 1997.

The Minimum Wage Board Order, 1997 has brought together, with minor modifications, the provisions of the repealed orders. However, some substantive changes have been made to provisions applying to hotels, restaurants, educational institutions, hospitals and nursing homes, except for employees and employers exempted by regulation. A provision dealing with meal period and meal charges has been removed, while another one now requires that an employer provide each employee (instead of every female employee, as stated previously) who is required or permitted to finish work between the hours of 12:30 a.m. and 7:00 a.m. with free transportation to his/her place of residence.

Alberta has adopted a new *Employment Standards Regulation* under the *Employment Standards Code*. Effective March 1, 1997, the new regulation has consolidated the text of the following 14 regulations under the *Employment Standards Code* into a single regulation:

- *Adolescents and Young Persons Employment Regulation*
- *Construction Industry and Brush Clearing (Vacation Pay and General Holiday Pay) Regulation*
- *Exemption Regulation*
- *Fees and Costs Regulation*
- *Hours of Work and Overtime Pay (Ambulance Drivers and Attendants) Regulation*
- *Hours of Work and Overtime Pay (Field Services) Regulation*
- *Hours of Work and Overtime Pay (Highway and Railway Construction and Brush Clearing) Regulation*
- *Hours of Work and Overtime Pay (Irrigation Districts) Regulation*
- *Hours of Work and Overtime Pay (Nursery Industry) Regulation*
- *Hours of Work and Overtime Pay (Oilwell Servicing) Regulation*
- *Hours of Work and Overtime Pay (Taxi Cab Industry) Regulation*
- *Hours of Work and Overtime Pay (Trucking Industry) Regulation*
- *Minimum Wage Regulation*
- *Reciprocating Provinces Regulation*

Most of the previously existing provisions are contained in the new regulation. Some changes were made to format, style and language, to bring consistency with the new *Employment Standards Code*. The following changes are the most important amendments to previous provisions: exemptions to receive notice of termination and certain exemptions for hours of work and overtime are part of the regulation instead of being part of the Code as it used to be; the fee charged for the issuance of a post-judgement third party demand and the filing of a judgement with the land titles office has been deleted; and Ontario has been added as a reciprocal jurisdiction for the collection of judgements in favour of employees owed money under employment standards legislation.

In **Ontario**, on June 3, 1997, the government has introduced Bill 136, the *Public Sector Transition Stability Act, 1997*. If approved by the legislature, that Bill will enact the *Public Sector Dispute Resolution Act, 1997* and the *Public Sector Labour Relations Transition Act, 1997*, and will, among others, amend the *Employment Standards Act*.

The provisions of the *Employment Standards Act* concerning continuity of employment following the sale of a business will be made applicable to the Crown. Also, if an employer who sells a business indicates that it is paying severance pay to an employee transferred to the purchaser, and if the amount paid is at least equal to the amount of severance pay to which the employee would have been entitled had he/she not been transferred to the purchaser, the amount paid will be treated as severance pay under the Act.

In addition, other amendments to the *Employment Standards Act* will discontinue the Employee Wage Protection Program (EWPP), which compensates employees for unpaid wages and vacation pay up to a maximum of \$2,000 (Ontario is currently the only jurisdiction in Canada with

a government-funded program of this kind).

The EWPP will continue to apply with respect to wages that become due before the program is discontinued

C. Minimum Wages

In the **federal** jurisdiction, effective December 18, 1996, the *Act to amend the Canada Labour Code (minimum wage)* (i.e. Bill C-35) has aligned the minimum hourly wage payable to employees covered by Part III of the *Canada Labour Code* with the general minimum wage rates established from time to time by the provinces and the territories. The rate paid to any particular employee is that based on the employee's province or territory of employment. The Governor in Council retains the authority to establish a minimum wage rate that can apply to employees on a provincial or territorial basis and that differs from the rate set by a province or territory.

In **Saskatchewan**, *The Minimum Wage Board Order, 1996* established under the *Labour Standards Act*, has repealed and replaced *The Minimum Wage Board Order, 1992*. It provided an increase in the general minimum wage from \$5.35 to \$5.60 per hour, effective December 1, 1996. The minimum call-in pay, payable to employees who report for duty at the call of their employer, whether or not they remain on duty for three hours on that occasion, was increased from \$16.05 to \$16.80. The exclusions from this regulation have not been amended, nor has the provision stipulating that if the employer provides rest periods, the time is considered to be time worked.

In **Manitoba**, *The Construction Industry Wages Amendment Act*, passed on November 19, 1996, included, 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 considered by the wage boards when recommending wage levels. The provisions dealing with the establishment of the Construction Industry Advisory Committee took effect on November 19, 1996. The other provisions outlined above took effect on May 1, 1997. Some definitions have been deleted from the regulations (see Man. Reg. 72/97, Man. Reg. 73/97 and Man. Reg. 74/97) and included in the Act. The definition of "Greater Winnipeg" in the Act has been repealed. For greater flexibility, the Act now allows for a definition of "Winnipeg" to be included in the *Building Construction (Greater Winnipeg) Minimum Wage Regulation*, and in the *Building Construction (Rural) Minimum Wage Regulation*.

British Columbia has amended its *Employment Standards Regulation* established under the *Employment Standards Act*. These amendments provide a new definition of "live-in camp leader". A "live-in camp leader" is defined as a person employed by a charity at a summer or seasonal camp for persons under 19 years of age, who provides instruction and counseling to campers, and who provides those services on a 24 hour per day live-in basis without being charged for room and board. The amendments also provide that the minimum daily wage for a live-in home support worker is \$70.00 and \$56.00 for a live-in camp leader, for each day or part of day worked. Also, these amendments specify that live-in camp leaders are excluded from the application of Part 4 of the *Employment Standards Act* which deals with hours of work and overtime. These amendments took effect on February 21, 1997.

In **Quebec**, effective October 1, 1997, the general minimum wage will increase from \$6.70 to \$6.80 per hour, and the hourly rate payable to employees who usually receive gratuities will increase from \$5.95 to \$6.05. Effective on the same date, the minimum wage payable to domestic workers who reside in their employer's home will increase from \$260 to \$264 per week, and their standard workweek will be 49 hours instead of 51.

In addition, Quebec has adopted a *Regulation respecting the minimum wage payable to employees of the woodworking and flat glass industries* under the *Act respecting labour standards*. This regulation stipulates that the minimum wage payable to any employee performing work which, if it has been carried out before August 1, 1997, would have come under the jurisdiction of the *Decree respecting the woodworking industry* or the *Decree respecting the flat glass industry* has been set at \$8.90 per hour for the period starting on August 1, 1997 and ending on August 1, 1999.

D. Pay Equity

Quebec has adopted Bill 35, the *Pay Equity Act*. The purpose of this Act is to eliminate the salary gap due to the systemic gender discrimination suffered by persons occupying positions in predominantly female job classes.

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

An employer whose enterprise employs 10 or more employees but fewer than 50 has 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 is required to establish a pay equity plan.

An employer whose enterprise employs 100 or more employees is 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 is required to set up a pay equity committee including employee representatives. A pay equity committee is composed of at least three members of which two thirds represent the employees (at least half of the members have to be women) and the other third represents the employer. The representatives of the employees as a group and the representatives of the employer as a group have one vote, respectively, within the pay equity committee.

A pay equity plan is 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 will 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 is required to post the results in prominent places in such manners 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 is 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 is four years. Adjustments in compensation can be spread over a maximum period of four years; in such a case, each adjustment has to be of equal value. An employer cannot, in order to achieve pay equity, reduce the compensation payable to any employee.

The Act provides for the establishment of the Pay Equity Commission (Commission de l'équité salariale) which is composed of three members, including a president, appointed by the Government after consultations with bodies representative of employers, employees and women. The Commission is responsible, among other things, to oversee the establishment of pay equity plans, to see that pay equity is maintained, to give advice to the Minister on any matter related to pay equity, 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 on a pay equity committee cannot agree or, upon receipt of a complaint, the Commission will investigate and endeavour to effect a settlement between the parties. If no settlement is possible, the Commission will 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 can 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 will refer the matter to the Labour Court. A decision of the Labour Court is final and without appeal.

Although the Act does not apply to enterprises with fewer than 10 employees, pay equity issues will 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 will, with some conditions, allow such plans to be recognized as being consistent with the Act; the employer will need to show, among other things, that the plan is exempt from gender-based wage discrimination.

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

The provisions of Chapter 5 of the Act, dealing with the establishment of the Pay Equity Commission (Commission sur l'équité salariale) and its duties and powers, took effect on November 21, 1996. Other provisions of this Act will come into force on November 21, 1997 or on an earlier date set by the government.

In **Ontario**, Bill 136, the *Public Sector Transition Stability Act, 1997*, was introduced in the Ontario Legislature on June 3, 1997. If approved by the legislature, that Bill will enact the *Public Sector Dispute Resolution Act, 1997* and the *Public Sector Labour Relations Transition Act, 1997*, and will, among others, amend the *Pay Equity Act*, as outlined below.

Proposed amendments specify that individuals who provide private-home day care are not employees for the purposes of the *Pay Equity Act*. That change will be made retroactive to January 1, 1988.

The sale of business provisions will be amended so that a purchaser who replaces the seller's pay equity plan is not bound by adjustments set out in the seller's plan that are higher than those set out in the replacement plan.

The legislation will also change requirements for retroactive pay equity adjustments in the broader public sector. In these cases, pay equity adjustments will have to be made back to the time a complaint was filed in respect of the failure to post a pay equity plan, a bargaining agent, if any, first attempted to negotiate a pay equity plan, or a pay equity plan was posted by the employer. Under the current Act, obligations may go back to January 1, 1990. The effective date of this change will be June 3, 1997.

E. Employment Equity

At the **federal** level, the new *Employment Equity Regulations* under the *Employment Equity Act* came into force on October 23, 1996. They cover the following areas:

- collection of workforce information and workforce analysis
- employment systems review
- maintenance of employment equity records
- calculation of the number of employees
- private sector employers reporting requirements, and
- definitions.

A few technical amendments have been included to modernize the previous regulations. The occupational classification has been updated to allow employers to use Census of Canada information, which, starting in 1996, is based on the new National Occupational Classification. The salary ranges has also been updated to reflect the shift in salary distributions over the last ten years.

Also, October 24, 1996 was set as the date of the coming into force of the new *Employment Equity Act* described in the *Highlights of Major Developments in Labour Legislation (1995-1996)*. The Minister of Labour was designated as the Minister responsible for that Act.

F. Retail Establishments

Manitoba has amended the *Remembrance Day Act* (i.e. Bill 50) to provide, among other things, that an employee in a retail business establishment has the right to refuse to work on Remembrance Day if he/she gives notice to the employer at least 14 days in advance, in which case there is a prohibition against discharge for such refusal to work. Also, some provisions of the *Employment Standards Act*, with consequential modifications, dealing with payment of employees on general holidays apply to an employee who works on Remembrance Day. These amendments took effect on November 19, 1996.

On December 19, 1996, **Ontario** adopted Bill 95, the *Boxing Day Shopping Act, 1996*. The purpose of this Act is to permit shopping on Boxing Day. The Act has amended the *Retail Business Holidays Act* by deleting December 26 from the definition of holiday. It has also amended the *Employment Standards Act* so that workers retain the right to refuse to work on December 26.

In **New-Brunswick**, *An Act to Amend the Days of Rest Act* and *An Act to Amend the Employment Standards Act* (i.e. Bills 61 and 62) were promulgated. The amendments made to the *Days of Rest Act* ensure that even if a lease requires that a retail business establishment remain open on a weekly day of rest (e.g., Sunday and public holidays), it has no effect regarding the weekly day of rest. A companion amendment to the *Employment Standards Act* provides that, where a retail business establishment is exempted from the application of the *Days of Rest Act*, and opens on Sundays, the employees have the right to refuse to work on a Sunday upon at least 14 days notice to his/her employer. It also stipulates that an employer cannot dismiss, suspend, lay off or penalize an employee because he/she has, in accordance with the Act, refused or attempted to refuse to work on a Sunday. The amendment to both Acts took effect on May 15, 1997.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In **Manitoba**, significant amendments (i.e. Bill 26) were made to the *Labour Relations Act* effective February 1, 1997. The main ones deal with the following topics.

Certification

Upon an application for certification by a trade union, a representation vote is 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 dismisses the application.

The representation vote must be held within seven days (excluding days on which the offices of the Board are closed) after the application for certification is filed. However, the Board may 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 previously provided in the Act, are entitled to participate in the mandatory vote on the acceptance or rejection of a proposed collective agreement. However, this right does not extend to replacement workers due to the temporary nature of their employment.

Votes on last offer

Before the commencement of a strike or lockout, the employer may 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 of Labour may, on any terms and conditions he/she considers necessary, order that

such a vote be held immediately.

At any time during a strike or lockout, where he/she is of the opinion that it is in the public interest, the Minister of Labour may order a vote of the employees in the affected bargaining unit on the employer's last offer on all matters remaining in dispute.

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

Reinstatement after strike or lockout

Subsection 12(2), which essentially prohibited an employer from refusing to reinstate an employee after a strike or lockout for any conduct that was related to the strike or lockout, including any act in support of the strike or in opposition to the lockout, has been repealed. It has been replaced by a provision allowing an employer to refuse to reinstate an employee following a strike or lockout provided that the employer satisfies the Board that the refusal to reinstate the employee is for just cause.

Strike-related misconduct

The application of the provision of the Act prohibiting strike-related misconduct has been expanded to specifically include unions and employees.

Use of union dues for political purposes

Every union must 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 may 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 must remit the dues to the registered charity on an annual basis.

It is 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 under the Act to mediate a collective bargaining impasse must be paid out of the Consolidated Fund and two thirds must be paid in equal shares by the parties. Previously, the government paid all the costs associated with the remuneration and expenses of a mediator appointed under the Act for such purpose.

Expedited grievance mediation/arbitration procedures

A bargaining agent may 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 or concerning any other matter that the Board considers to be of an exceptional nature.

Such a grievance may 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, a union must 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, must 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 is \$50,000 or more (i.e. the name of the individual, his/her position(s) and total compensation). The term "compensation" includes the total value of all cash and non-cash salary, payments, allowances, bonuses, commissions and perquisites.

The financial statement of a union must 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 is not required to disclose the amount of its strike fund, but must indicate the expenditures made out of its strike fund during a fiscal year.

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

The Board must permit an employee in a unit for which a 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 must 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 is entitled to receive a copy of the financial statement and compensation statement of the union, and may file a request for further information. Nothing in the legislation prevents an employee from requesting such statements or further information from the union concerned.

Where an employee files with the Board a request for further information, the latter may, 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 may 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, an employee concerned may ask the Board to issue an order confirming the non-filing. If the union fails to file such a statement or statements within 30 days after being served with such an order, the Board must 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. The Board may limit such an order so that it does not apply to any portion of union dues used to maintain the professional status of employees or in respect of pension, superannuation, sickness, insurance or other benefits. If at any time the union files the necessary statement(s), the Board must order the employer concerned to resume the check-off of union dues.

Other sanctions, including fines, 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.

The first disclosure of financial or compensation information by unions could be made at any time before February 15, 1997.

Teachers

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

In **New Brunswick**, amendments to the *Industrial Relations Act* (i.e. Bill 32) have been passed to provide for an expedited grievance arbitration process.

A party to a collective agreement may, in writing, request that the Minister of Labour refer to an arbitrator a difference between the parties or persons bound by the agreement concerning its interpretation, administration, or an alleged violation of its provisions. However, such a request may be made only if the grievance procedure under the collective agreement has been exhausted or 30 days have elapsed since the grievance

was first brought to the attention of the other party, whichever occurs first. Also, a request for expedited arbitration may not be made if the difference has been referred to arbitration under the collective agreement by the party who wishes to make the request or the time, if any, stipulated in the collective agreement for referring the difference to arbitration has expired.

When a request for expedited grievance arbitration is received by the Minister, he/she appoints an arbitrator. The arbitrator must commence a hearing into the matter within 28 days after the day on which the difference was referred to the Minister. The Minister may also, if one party so requests and the other one agrees, appoint a grievance mediator. If a grievance mediator is not appointed or if the parties are unable to settle the difference with the assistance of a grievance mediator, the arbitrator must hear and determine the matter and submit a decision within 21 days of the conclusion of the hearing. At the request of the parties to the difference, the arbitrator must, if possible, issue an oral decision within one day after the conclusion of the hearing and written reasons within 21 days.

When the Minister appoints an arbitrator under these new provisions, the parties to the difference must each pay one-half of his/her remuneration and expenses.

These amendments to the *Industrial Relations Act* will come into force by way of proclamation.

In **Saskatchewan**, the current *Trade Union Act* contains a provision stipulating that where the term of a collective bargaining agreement exceeds three years, its expiry date for the purpose of giving notice to the other party to negotiate a revision of that agreement is considered to be three years after its effective date. The *IPSCO Inc. and United Steelworkers of America, Local 5890, Collective Bargaining Agreement Act*, which came into force on April 8, 1997, has exempted from that provision a five-year collective bargaining agreement concluded between IPSCO Inc. and the United Steelworkers of America, Local 5890.

Bill 37, *An Act to amend the Trade Union Act* has been introduced to give the Lieutenant Governor in Council the power to exempt a collective bargaining agreement and the parties concerned from the provision of the *Trade Union Act* described in the previous paragraph. Such an exemption could be granted only if the parties make a joint request to the Minister of Labour, and this is not the first collective bargaining agreement negotiated between them.

For the purpose of the provision pertaining to the giving of notice to negotiate under the Act, where an exemption, as mentioned above, is granted, the expiry date of the collective bargaining agreement in question would be the one set out in the agreement.

In **Quebec**, *An Act to amend the Act respecting collective agreement decrees* (Bill 75) was assented to on December 23, 1996.

This Act aims at harmonizing the *Act respecting collective agreement decrees* with certain provisions of the *Labour Code* and the *Act respecting labour standards*, in particular as regards definitions and the measures established for the protection of employees.

In addition, the Act states that the juridical extension of a collective agreement under the *Act respecting collective agreement decrees* applies, at the discretion of government, to professional employers (i.e. those who have in their employ one or more employees to whom a decree applies). Certain amendments specify the process and criteria for the evaluation of applications relating to the juridical extension or amendment of collective agreement decrees, and provide for accelerated processing of the applications.

After the Minister has published in Quebec's official gazette a notice of receipt of an application for the juridical extension of a collective agreement with the text of the related draft decree, and that the time specified in the notice for filing objections has expired, he/she may recommend that the government issue a decree ordering the extension of the agreement, with such changes as are deemed expedient, if he/she considers that the field of activity applied for is proper and that the provisions of the agreement are as follows:

- they have acquired a preponderant significance and importance for the establishment of conditions of employment;
- they may be extended without any serious inconvenience for enterprises competing with businesses established outside Quebec;

- they do not significantly impair the preservation and development of employment in the defined field of activity;
- they do not result, where they provide for a classification of operations or for various classes of employees, in unduly burdening the management of the enterprise concerned.

In establishing whether a field of activity is proper, the Minister must have regard to the nature of the work, the products and services and the characteristics of the market applied for as well as the field of activity defined as the scope of other decrees. In all cases, the Minister must continue to give proper consideration, where applicable, to the particular conditions prevailing in the various regions of Quebec.

A decree may include any provision determining the participation of the parity committee in the development of industrial strategies in the field of activity defined as the scope of the decree or relating to the participation of the committee in the development of manpower training in that same field of activity.

A decree may not impose, among others, a provision of the agreement concerned pertaining to the activities, administration or funding of an association of employees or an employers' association; a wage increase applicable to an effective wage rate that is higher than the wage rate established in the decree; or the application of a wage rate that is higher than the wage rate provided in the decree.

Where there is an overlapping of fields of activity defined in two or more decrees or there is double coverage, the Act provides that if the parity committees and the professional employer concerned cannot reach an agreement concerning this, one of them may refer the issue to an arbitrator. An agreement or arbitration award binds the parties concerned until the date of expiry of the applicable decree, unless the employees concerned are, in the intervening time, excluded from its scope.

The Act modifies the role and powers of parity committees and empowers the Minister to monitor the quality of their management. In certain circumstances, for example when necessary or appropriate corrective action has not been taken by a parity committee or a serious fault, such as embezzlement or breach of trust, has been committed by one or more of its members or officers, the Minister may, after being made aware of facts revealed upon ascertaining compliance with the Act and after giving the members of the committee an opportunity to present observations in writing concerning such facts, suspend for a period not exceeding 120 days the powers of the committee members and appoint provisional administrators to exercise their powers during the period of suspension. The Minister may make such a decision even before the conclusion of a verification or inquiry, and, after examining the report of the provisional administrators, he/she may exercise various powers, including the extension of the provisional administration or the removal from office and replacement of one or more members of the committee, to remedy such situations or prevent their re-occurrence.

A decree in force on December 23, 1996 expires on the date determined therein, if any, or on June 23, 1998 whichever occurs last. However, the government may extend the term of such a decree for a period not exceeding 18 months. The provisions mentioned previously concerning overlapping of fields of activity defined in two or more decrees or double coverage do not apply to a decree in force on December 23, 1996, whether that decree is extended or not.

In addition, the Minister of Labour must, by December 23, 1999, report to the government, on the application of the *Act respecting collective agreement decrees*. The report, as regards the manufacturing sector, must be made in collaboration with the Minister responsible for Industry and Trade, and must express an opinion as to the advisability of maintaining that sector within the scope of the Act.

Most of the provisions of the Act came into force on December 23, 1996, including those that are mentioned above.

B. Public and Parapublic Sectors

In **Manitoba**, the *Government Essential Services Act* (Bill 17) was assented to and came into force on November 19, 1996. That Act was later amended by Bill 15, effective June 27, 1997, and its title was changed to the *Essential Services Act*.

The *Essential Services Act* applies to the government of Manitoba and to other employers such as the owner or operator of a hospital or personal care home, a child and family services agency and a regional health authority as well as to their employees covered by a collective agreement and the unions representing them.

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.

If an employer and a union do not have an essential services agreement under the Act, they must, at least 90 days before the expiry of the collective agreement between them, begin negotiations with a view to concluding an essential services agreement.

An employer, other than the government of Manitoba, must at the beginning of the negotiations advise the union about which services are to be essential services for the purposes of the essential services agreement. In the case of the government of Manitoba, the essential services for the purposes of an essential services agreement are the services listed in a schedule of the Act or declared by regulation.

If, during the 30 days before a collective agreement expires, the parties have not concluded an essential services agreement, the information that the employer would be required to provide in a notice under the Act when no such agreement is in effect (see next paragraph) may be divulged on the employer's own initiative or be obtained upon request by the union for the purpose of facilitating the negotiation of an essential services agreement.

If no essential services agreement is in effect under the Act and a work stoppage has occurred or is impending, the employer must serve a notice on the union setting out the classification, number and names of employees required to work during the work stoppage to maintain essential services as well as, in the case of an employer other than the government of Manitoba, the essential services that must be maintained. The employer may serve a further notice on the union if more employees are required to maintain essential services. As a result of such a notice or notices, the employees concerned are required to work during the work stoppage.

If the union believes that the essential services can be maintained using fewer employees than those mentioned in the employer's notice or notices, it may 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 Board has the power to confirm or vary the number of essential services employees, and the parties are bound by an order it has made. However, on application by the employer or the union, the Board may vary, revoke or replace such an order.

Notice to terminate an essential services agreement may be given if a collective agreement is in effect and such notice is served by the employer or union on the other party at least 100 days prior to the expiry of the collective agreement. This does not affect the obligation of the parties to negotiate with a view to concluding a new essential services agreement.

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

Also in Manitoba, the *Public Schools Amendment Act (2)* (Bill 72) has modified the part of the *Public Schools 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 may 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 and at least 60 days have elapsed since the giving of notice to begin collective bargaining, either party

may request the Minister to appoint a mediator-arbitrator.

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

Conciliation and Arbitration

The Minister must appoint a conciliation officer if requested to do so jointly by the parties and if there has been no request for the appointment of a mediator-arbitrator.

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

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

Non-arbitrable matters and arbitration criteria

The following matters cannot be referred for arbitration and must 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 may be carried out in respect of the matters just mentioned.

Also, effective January 1, 1997, there is an obligation that a school board act reasonably, fairly and in good faith in administering its policies and practices related to matters not referable for arbitration. Any failure by a school board to comply with this obligation may be the subject of a grievance under the collective agreement.

With respect to matters that might reasonably be expected to have a financial effect on a school division or district, an arbitrator is required to take into account the following factors:

- 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 nature and type of services that the school division or district may have to reduce in light of the decision or award, if 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 has been 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 may require the mediator-arbitrator to settle a collective agreement by arbitration, or the mediator-arbitrator may decide to proceed if he/she believes an impasse has been reached in the mediation process.

The provisions described above under the heading "Non-arbitrable matters and arbitration criteria" apply to a mediator-arbitrator settling a collective agreement by arbitration.

Right to strike or to lock out

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

Remuneration of arbitrator or mediator-arbitrator

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

Coming into force

This Act applies 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, except as otherwise indicated, are deemed to have come into force on October 1, 1996.

In **Saskatchewan**, *The Health Labour Relations Reorganization (Commissioner) Regulations* under *The Health Labour Relations Reorganization Act* came into force on January 17, 1997. Among other things, they prescribe appropriate collective bargaining units for nurses, health support practitioners and health services providers.

Trade unions listed in a table contained in an appendix to the regulations are determined as the trade unions that represent health sector employees for the purposes of bargaining collectively with respect to appropriate units of nurses and health services providers.

As soon as possible after the coming into force of the regulations, the Labour Relations Board must conduct representation votes, in accordance with *The Trade Union Act*, for any appropriate unit that does not have a trade union determined by the regulations as outlined above.

The Saskatchewan Health Care Association, commonly known as the Saskatchewan Association of Health Organizations, is designated as the representative employers' organization for all district health boards, all health sector employers listed in tables contained in an appendix to the regulations and all other employers whose employees are added to a multi-employer appropriate unit. Every such employer is a member of the representative employers' organization for the purposes of bargaining collectively.

In **New Brunswick**, *An Act to Amend the Public Service Labour Relations Act* (Bill 60) took effect on December 19, 1996. This Act contains some amendments of a housekeeping nature and provides that where collective bargaining has not commenced and the parties have agreed that the bargaining agent may bargain collectively on behalf of more than one bargaining unit with a view to the conclusion, renewal or revision of a single collective agreement applicable to all those bargaining units, the bargaining agent may, within prescribed time limits, apply in writing to the Labour and Employment Board, with notice to the employer, for an order that the bargaining units be considered to be one bargaining unit for the purposes of certain sections of the Act dealing with strike votes, the declaration that there is a deadlock in the negotiations, conditions that must be met before strike action can be taken, the right to lock out and the employer's option to request a vote on its most recent offer. Such an application could also be made within 20 days after December 19, 1996, where notice to bargain was given before that date.

The Board will make the order applied for if it is satisfied that the bargaining agent is currently certified for each of the bargaining units and the parties have agreed that a single collective agreement will apply to all those units.

In **Ontario**, the *Fire Protection and Prevention Act, 1997* (Bill 84) was assented to on May 27, 1997, and will come into force by proclamation. It will repeal a number of Acts relating to fire services, including the *Fire Departments Act*, and consolidate them into one statute.

Among other things, the Act sets out certain statutory working conditions for firefighters on such topics as hours of work and hours off duty, and it provides that:

- the fire chief may recall the necessary off-duty firefighters in order to provide an adequate response during major emergencies;
- the employment of a firefighter may be terminated upon seven days' notice, with written reasons for the termination;
- a firefighter who has received a notice of termination of employment is entitled to an independent review of the termination, unless a collective agreement provides for another review mechanism;
- the employment of a firefighter may be terminated without cause and without a review at any time during the first 12 months, unless a collective agreement provides otherwise.

With respect to the labour relations framework for firefighters, the Act contains the following measures:

- it specifies that firefighters are not permitted to strike and that their employers may not lock them out;
- it stipulates that firefighters employed in a fire department (except those performing managerial functions or acting in a confidential capacity in matters relating to labour relations) constitute a bargaining unit, and that the majority of firefighters in a unit may request an association of firefighters to represent them and act as their bargaining agent for collective bargaining purposes;
- it requires that disputes relating to the bargaining of a collective agreement be referred to a conciliation officer before one of the parties may request the arbitration of unsettled matters (arbitration criteria, such as the employer's ability to pay in light of its fiscal situation, will continue to apply); and
- it provides that employers are authorized to designate firefighters (a maximum number is specified according to the size of the fire department) who for the purposes of the Act are conclusively deemed to be performing managerial functions or acting in a confidential capacity in matters relating to labour relations. However, an employer may only designate a firefighter if he/she consents to the designation.

In the **Yukon Territory**, the *Public Sector Compensation Restraint Act, 1994* was repealed on December 18, 1996. The repealing legislation indicated the dates on which the period of restraint ended for several categories of employees as well as the dates of expiry of collective agreements.

In **Quebec**, *An Act respecting the reduction of labour costs in the public sector and implementing the agreements reached for that purpose* (Bill 104) has implemented agreements reached with several public sector employee's associations to reduce labour costs having regard to the conditions of employment agreed on between the parties.

With that objective in view, it temporarily has broadened eligibility for retirement and has modified the conditions of employment of various groups of persons in whose respect labour costs could not be reduced in any other way.

In addition, the Act has set out ways of implementing labour costs reduction measures (e.g. a reduction of 6% effective July 1, 1997) for public sector employers and associations of employees that have not concluded an agreement on that subject (e.g. educational institutions at the university level, subsidized private educational institutions, the Quebec Liquor Board and the Quebec Lottery Board).

Most provisions of the Act came into force on March 22, 1997. The other provisions were scheduled to come into effect on July 1, 1997, unless appropriate alternative measures applying to all persons concerned were determined by agreement with the government before that date.

In **Ontario**, Bill 136, the *Public Sector Transition Stability Act, 1997*, was introduced in the Ontario Legislature on June 3, 1997.

If approved by the legislature, that Bill will enact the *Public Sector Dispute Resolution Act, 1997* and the *Public Sector Labour Relations Transition Act, 1997*. It will also amend the *Employment Standards Act* and the *Pay Equity Act* (for these amendments, see Section I: Employment Standards).

Public Sector Dispute Resolution Act, 1997

The *Public Sector Dispute Resolution Act, 1997* will bring changes to the system for resolving disputes in the fire services, police and hospital sectors, where strikes and lockouts are not permitted.

One of the stated purposes of the Act will be to encourage the settlement of disputes through negotiation.

A Dispute Resolution Commission (DRC) will be established. The DRC will be composed of persons appointed by the Lieutenant Governor in Council, and will include temporary commissioners who will be part of the Commission only for the purposes of the disputes for which they are appointed. A chief and a deputy chief commissioner may be designated.

After conciliation, the employer or bargaining agent may refer a dispute to the DRC. If it is not settled following meetings, if any, ordered by the chief commissioner, he/she will have a number of powers, such as the power to choose the person or panel who will resolve the dispute and the most appropriate method to do so, including mediation-arbitration or mediation-final offer selection. The dispute must be resolved within 60 days after the chief commissioner chooses the method of resolution (whether or not that method has been changed with his/her consent). However, the chief commissioner may extend that deadline.

Either party may refer a dispute to the DRC for resolution, as mentioned above, or, after conciliation, the parties to collective bargaining may agree to refer the dispute to a private arbitrator or arbitration board. Factors that the DRC or arbitrator (or arbitration board) must consider in settling the dispute will be set out in each of the Acts covering the fire services, police and hospital sectors. They are similar to current interest arbitration criteria, and include the employer's ability to pay in light of its fiscal situation.

Public Sector Labour Relations Transition Act, 1997

The *Public Sector Labour Relations Transition Act, 1997* will provide for the resolution of labour relations issues that will arise as municipalities, school boards and hospitals restructure. With respect to school boards, the Act will apply to non-teaching staff and occasional teachers.

One of the purposes of the Act will be to facilitate collective bargaining between employers and trade unions following restructuring and in other specified circumstances. However, if they are unable to develop solutions to their labour relations issues through collective bargaining, the Act will provide a process to resolve outstanding issues.

The Act will establish the Labour Relations Transition Commission (LRTC), a body created for a four-year period (i.e. until December 31, 2001 or a later date that may be prescribed). The LRTC will be composed of persons appointed by the Lieutenant Governor in Council and will have special powers to deal with labour relations issues in an expedited manner while taking into consideration the circumstances surrounding each particular restructuring. These issues may include, for example, the composition of new bargaining units, which union will represent the employees in a unit, and the negotiation of a new collective agreement following the restructuring. The determination of which union will represent the employees would be based on a vote, except where a single union already has a large majority of members in the new bargaining unit. If 40% or more of the employees in the bargaining unit were not represented by a bargaining agent, the ballot will enable the employees to vote in favour of having no bargaining agent.

Similarly, where employees from separate bargaining units are intermingled and the parties cannot agree on the resolution of seniority issues, the LRTC will dovetail the seniority lists, unless there are compelling reasons to do otherwise. For seniority purposes, equal recognition will be given to the service of union and non-union workers in all cases.

Following the determination of bargaining units and bargaining agents by agreement of the parties involved or an order of the LRTC, the collective agreement applying to a member of the bargaining unit before the agreement or order will continue to apply to him/her. If several collective agreements apply in the bargaining unit as a result of intermingling, the provisions of each collective agreement will be deemed to form one part of a single collective agreement, called a composite agreement. The parties may choose to replace the composite agreement with one of the collective agreements that existed prior to the restructuring or may jointly ask the LRTC to choose one of the agreements included in the composite agreement. Alternatively, either party may give notice to bargain a new collective agreement at any time after the determination of bargaining units and bargaining agents. After notice to bargain is given, the collective agreement will be deemed to cease to operate 90 days after that notice. If neither party gives early notice to bargain, a collective agreement or a composite agreement will cease to operate one year after the agreement of the parties or the order of the LRTC concerning the bargaining unit comes into effect, or on such other date as the parties may agree upon.

As mentioned previously, the resolution of disputes in the fire services, police and hospital sectors, where strikes and lockouts are not permitted, will be governed by the *Public Sector Dispute Resolution Act, 1997*. In the case of the municipal sector (except fire services and police) as well as non-teaching staff and occasional teachers in school boards, within 30 days after notice to bargain has been given or such longer period as the parties may agree upon, either party will be able to notify the other party that, if they do not conclude a new collective agreement, the party intends to refer the matters in dispute to the Dispute Resolution Commission. A dispute could be referred to the Commission after the conciliation process. It would then have the power to resolve a first collective agreement following an amalgamation or merger, and the parties would not have the right to strike or to lock out for this first round of bargaining. When resolving the dispute, the Commission would have to take into consideration the same factors applying to other sectors covered by the *Public Sector Dispute Resolution Act, 1997*.

C. Emergency Legislation

In **Ontario**, Bill 113, the *Lennox and Addington County Board of Education and Teachers Dispute Settlement Act, 1997* was passed to settle a dispute between the Lennox and Addington County Board of Education and its secondary school teachers who had been on strike since December 9, 1996.

The striking teachers were required to resume their duties on January 31, 1997 (exceptions were provided for those not returning to work for health reasons or by mutual consent of the teachers and the board of education). The board, for its part, was to resume the employment of the teachers and normal operation of the schools.

The collective agreement between the parties that expired on August 31, 1996 was considered to continue in force until replaced by a new agreement of a duration of two years reached by the parties or resulting from the decision of an arbitrator appointed under the Act.

If the parties could not conclude a collective agreement by February 7, 1997, they were considered to have referred all matters in dispute to an arbitrator under the *School Boards and Teachers Collective Negotiations Act*. They could, however, withdraw from the arbitration if, before a decision was rendered, there was a negotiated settlement and the new collective agreement was ratified.

The Act provided that each party had to assume its own costs of the arbitration proceedings and had to pay one-half of the fees and expenses of the arbitrator.

Fines were provided for a contravention of the Act by an individual or party (maximum: \$1,000) and by the board of education, an organization of teachers or a union federation representing them (maximum: \$25,000). These fines were applicable to each day on which the contravention occurred or continued.

The Act came into force on January 30, 1997 and will be repealed on September 1, 1998 or on an earlier date announced by proclamation.

D. Construction Industry

In **Quebec**, *An Act to amend various legislative provisions relating to the construction industry* (Bill 78) was assented to on December 23, 1996.

This Act has amended various laws governing the construction industry mainly to remove some of the constraints affecting individuals and enterprises in that industry.

In particular, the Act has brought a number of changes to the *Act respecting labour relations, vocational training and manpower management in the construction industry*.

It provides, among others, that the Quebec Construction Commission may, at any time, issue a card under section 36 of the Act (i.e. the card that individuals covered by the Act must hold if they wish to work as employees in the construction industry) to a person who wishes to begin working in that industry. That person must make known to the Commission, according to the procedure it establishes, his/her election respecting one of the associations of employees in the industry. In such a case, the document issued to the person by the Commission indicating his/her election has effect from the date of issue, and the Commission must inform the representative association concerned accordingly.

The Act also provides that, in order to give effect to an intergovernmental agreement in respect of manpower mobility or the mutual recognition of qualifications, skills or work experience in trades and occupations in the construction industry, the government has the power to make regulations exempting certain persons, on the conditions it determines, from the requirement of holding a competency certificate or an exemption issued by the commission. Such regulations may, in particular, provide for adjustments to the provisions of the Act and the regulations as well as special management rules.

The changes mentioned above came into force on December 23, 1996

A Regulation respecting certain exemptions from the requirement of holding a competency certificate or an exemption issued by the Commission de la construction du Québec under the *Act respecting labour relations, vocational training and manpower management in the construction industry* came into force on January 15, 1997.

This regulation provides that a person domiciled in Ontario is, on the following conditions, exempted from the requirement of holding a competency certificate or an exemption issued by the Quebec Construction Commission:

- the person holds a valid, recognized attestation authorizing him/her to carry on, in Ontario, a trade which, under or pursuant to the Ontario-Quebec Agreement on Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry dated December 6, 1996, is paired with one of the trades listed in the regulations, or with a specialty under one of those trades, or which, under or pursuant to that agreement, is recognized as being equivalent to an occupation existing in Quebec;
- in accordance with the provisions of the agreement, the person meets the applicable requirements in respect of occupational health and safety training.

The exemption mentioned above applies only on the condition that the person in question also holds a card issued by the Commission under section 36 of the Act (i.e. the card that individuals covered by the Act must hold when they work as employees in the construction industry). Such a card is issued, on request, to a person domiciled in Ontario only where that person meets the conditions mentioned above or where he/she holds a competency certificate or an exemption issued by the Commission.

With respect to the criteria for job priority, a person who is exempted, as mentioned above, is considered to be domiciled in the region in which the work relating to the employment offered is being carried out. Where the person is hired to carry out such work, he/she is considered to be domiciled in that region for the duration of the employment.

Also in Quebec, the *Decree respecting the flat glass industry* and the *Decree respecting the woodworking industry* adopted under the *Act respecting collective agreement decrees* were abolished effective August 1, 1997.

Effective July 9, 1997, *An Act respecting certain flat glass setting or installation work* (Bill 147) provides that, for a period of six months beginning on August 1, 1997, the wage rates determined in a collective agreement entered into under the *Act respecting labour relations, vocational training and manpower management in the construction industry* do not apply to employees carrying out flat glass setting or installation work if the work is subject to that Act by reason of the repeal of the Decree respecting the flat glass industry and the work is carried out under a contract entered into before August 1, 1997, a copy of which, dated and signed, is received at the Quebec Construction Commission (Commission de la construction du Québec) within the prescribed time limits.

During the period and in respect of this work, the wage rate applicable to an employee will be the wage rate to which the employee would have been entitled had the decree not been repealed.

In **Newfoundland**, the *Labour Relations Act* was amended, effective May 20, 1997, to give the Lieutenant-Governor in Council the power to declare an undertaking for the construction or fabrication of works at the Bull Arm site that is planned to require three years or less to be a "special project" for the purposes of the Act. Prior to the amendment, the Act limited the declaration of special projects to undertakings involving construction that were planned to require a period exceeding three years.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Legislation of General Application

In **Ontario**, a *Joint Health and Safety Committees - Exemption from Requirements - Regulation* under the *Occupational Health and Safety Act* became effective September 1, 1996, and replaced another regulation on the same subject.

This regulation provides that a workplace at which fewer than 20 ordinary workers (i.e. those who are not participating in community participation activities under a workfare program) are regularly employed is exempted from the requirement to establish a joint health and safety committee. A similar exemption applies to a workplace covered by a regulation concerning designated substances when that workplace is a construction project at which fewer than 20 ordinary workers are regularly employed. In addition, a workplace at which fewer than 20 ordinary workers (who are not volunteers) are regularly employed is exempted from the requirement of the Act regarding the certification of at least one member of the joint health and safety committee representing the employer or constructor and of at least one member representing workers. The same applies to a construction project at which fewer than 50 ordinary workers (who are not volunteers) are regularly employed.

In **Saskatchewan**, the *Occupational Health and Safety Regulations, 1996* under the *Occupational Health and Safety Act, 1993* have replaced the *Occupational Health and Safety Regulations* adopted in 1981 and amended in subsequent years.

These comprehensive regulations deal with a variety of subjects, including the following: notice and investigation of certain accidents and dangerous occurrences at a place of employment; general duties of employers and workers; the employment of young persons; the content of an occupational health and safety program; inspection of a place of employment; working alone or at an isolated place; the content and implementation of a harassment policy; the content of a policy statement on violence at prescribed places of employment; occupational health committees and occupational health and safety representatives and their training; first aid; general health requirements; personal protective equipment; noise control and hearing conservation; safety of machines and powered mobile equipment; safety in construction and demolition work; hoists, cranes and lifting devices; robotics; work in confined spaces; work in compressed air; diving operations; chemical and biological substances; controlled products - the Workplace Hazardous Materials Information System; asbestos; silica processes and abrasive blasting; fire and explosion hazards; safety in forestry and mill operations; safety in oil and gas operations; and additional protection for electrical workers, health care workers and fire fighters.

These regulations came into force on December 4, 1996, except for Part XXXII dealing with additional protection for fire fighters, which will take effect on December 4, 1997.

In **Nova Scotia**, the *Occupational Health and Safety First Aid Regulations* under the *Occupational Health and Safety Act* took effect on January 1, 1997 replacing other first aid regulations adopted in past years. They cover all workplaces to which the *Occupational Health and Safety Act* applies. They deal with such topics as the general responsibilities of employers and the duties of persons at a worksite, the circumstances in which an employee must hold a first aid certificate and the type of certificate, the creation and maintenance of records relating to the administration of first aid, the duties of first aid attendants, the accessibility of first aid services and supplies, the contents of first aid kits, requirements for first aid rooms and the circumstances when they must be provided, and first aid remote location plans. Under the regulations, the Executive Director of Occupational Health and Safety has the following powers in respect of a particular workplace or worksite: to require provision of additional first aid supplies or services; to approve variations from the requirements contained in the regulations; to grant exemptions from these requirements where compliance is not practicable; or to prescribe such first aid services, requirements and supplies as he/she considers necessary or advisable.

Also in Nova Scotia, *Occupational Health and Safety Appeal Panel Regulations* under the *Occupational Health and Safety Act* set out a selection process for appeal panels. An appeal panel hears an appeal of an order or decision of the Executive Director of Occupational Health and Safety or any person acting on his/her behalf. It is composed of a chair and of two members, one representing employers and of one representing employees. When the parties agree in writing, a single person may be designated as the appeal panel. All these persons are selected from a list of names established by the Governor in Council.

These regulations also provide for appeal procedures. They took effect on February 25, 1997. *Regulations respecting adjudication committees* made in 1986 will be repealed on December 31, 1997.

In the **federal** jurisdiction, effective December 5, 1996, amendments have been made to the *Canada Occupational Safety and Health Regulations* under the *Canada Labour Code* to improve the minimum occupational safety and health standards established by these regulations and to contribute to the removal of any barriers to the employment of disabled persons implicit in the regulations.

The amendments oblige employers, where necessary, to provide information, instruction, training and warnings specified in the regulations in alternate media. "Alternate media" is defined as any method of communication that permits an employee with a special need to receive any information, instruction or training required by the regulations to be provided, including braille, large print, audio tape, computer disc, sign language and verbal communications.

The amendments also specify the following: that all barricades and guardrails required by the regulations be made highly visible; that signs and warnings be located at a height or volume that is visible or audible to a person with a disability; that high capacity, portable, open-flame heating devices be well marked; that double action swinging doors allow for persons using such a door to be aware of persons on the other side; and that the employer consult with employees having special needs in developing emergency procedures. In connection with emergency procedures, a provision has been introduced to require the development of a written evacuation procedure for fire emergency situations, and the employer is required to appoint monitors, when needed, for persons who require special assistance in evacuating the building.

In **New Brunswick**, two separate bills (Bill 38 and Bill 92) have brought some amendments to the *Workplace Health, Safety and Compensation Commission Act*.

The amendments include changes dealing with reconsideration of matters previously decided by the Workplace Health, Safety and Compensation Commission.

Under the new provisions, where it is made to appear to the Commission that, if a matter previously decided by it is reconsidered, new evidence presented will substantially affect the matter, nothing prevents the Commission from reconsidering it. In such a situation, the Commission has authority to rescind or modify any decision, order or ruling previously made.

Any decision made as the result of the reconsideration of any decision, order or ruling of the Appeals Tribunal, established under the Act, is final, subject only to a review by the Court of Appeal on a question of jurisdiction or law.

Another amendment permits the appointment of three or more representatives of workers and an equal number of representatives of employers as members of the Commission's board of directors. Previously, the number of representatives for each group was limited to three.

These amendments took effect on February 28, 1997.

In **Quebec**, *An Act to amend the Act respecting industrial accidents and occupational diseases and the Act respecting occupational health and safety* (Bill 74) was assented to on December 23, 1996.

In addition to bringing various amendments to the *Act respecting industrial accidents and occupational diseases*, this Act has abrogated a provision of the *Act respecting occupational health and safety* stipulating that the sums required for its application and that of the regulations relative to inspection are taken out of the moneys granted for that purpose by the Quebec Legislature. Effective March 31, 1997, the Occupational Health and Safety Commission (Commission de la santé et de la sécurité au travail) pays for those costs.

Also in Quebec, *An Act to establish the Commission des lésions professionnelles and amending various legislative provisions* (Bill 79) was assented to on June 12, 1997.

The purpose of that Act is to reform the entire process for contesting decisions made under the *Act respecting industrial accidents and occupational diseases* and the *Act respecting occupational health and safety*. It will come into force on a date or dates to be set by the government of Quebec.

The Act amends the *Act respecting industrial accidents and occupational diseases* to establish an employment injuries board to be known as the "Commission des lésions professionnelles" charged with hearing and deciding contestations of decisions made by the Occupational Health and Safety Commission (Commission de la santé et de la sécurité du travail) after an administrative review. The employment injuries board will consist of two divisions, the financial matters division and the employment injuries prevention and compensation division.

With respect particularly to the *Act respecting occupational health and safety*, the review boards it establishes will be abolished and replaced with an administrative review process carried out on the basis of the record by a civil servant of the Commission. Any person who believes he/she has been wronged by a decision made by the Commission on certain questions, such as an inspector's order, may contest it before the employment injuries board within the prescribed time limits.

In addition, a *Regulation to amend various regulatory provisions respecting occupational health and safety* was adopted under Quebec's *Act respecting occupational health and safety*.

The purpose of this regulation was to lighten existing regulations by revoking certain regulations which, in fact, were no longer enforced because of their obsolescence or by transferring into general regulations the essential elements of other regulations. Thus the *Regulation respecting shipyards* and the *Regulation respecting ice cutting* were revoked, and the *Regulation respecting industrial and commercial establishments* was amended. In the later case, provisions added to the regulation provide for the following: Division IX of the *Safety Code for the construction industry* applies to any work carried out in compressed air, Division VII of that Code applies to any work carried out with an explosive actuated tool; and Division V of that same Code applies to any work carried out near an aerial electrical line.

Similarly, provisions added to the *Regulation respecting industrial and commercial establishments* apply to any blasting work or work requiring the use of explosives. However, they do not apply to such work where it is carried out on a construction site (the work is then governed by the *Safety Code for the construction industry*) or in a mine (the work is then governed by the *Regulation respecting occupational health and safety in mines*).

The regulation also revoked the following regulations: the *Regulation respecting the shoring of concrete formwork*, the *Regulation respecting the*

handling and use of explosives, the Regulation respecting mine rescue stations, the Regulation respecting the protection of compressed air workers, the Regulation respecting reviews related to inspections, the Regulation respecting work carried out in the vicinity of electric power lines, and the Regulation respecting the use of explosive actuated tools.

Provisions have been added to the *Regulation respecting occupational health and safety in mines* concerning rescue stations for underground mines.

The regulation came into force on April 24, 1997.

In **Manitoba**, effective June 27, 1997, *The Workplace Safety and Health Amendment Act (2)* (Bill 32) has increased the fines applicable to persons guilty of an offence under section 54 of the *Workplace Safety and Health Act*. For most types of offences enumerated in that section, the maximum fine for a first offence has been increased from \$15,000 to \$150,000 and, in the case of a continuing offence, the maximum additional fine is \$25,000 (previously \$2,500) for each day during which the offence continues. For a second or subsequent offence, the maximum fine has been increased from \$30,000 to \$300,000 and, in the case of a continuing offence, the additional maximum fine is \$50,000 (previously \$5,000) for each day during which the offence continues.

When a person is guilty of an offence for contravening any provision of the Act not specified in section 54 or for failing to comply with an order or direction made under the Act or the regulations, the maximum fine is increased from \$2,500 to \$25,000.

In **Alberta**, the *Occupational Health and Safety Grants Regulation*, dealing with grants authorized by the Minister of Labour under the *Occupational Health and Safety Act*, was repealed on June 18, 1997.

In **Ontario**, Bill 99, *An Act to secure the financial stability of the compensation system for injured workers, to promote the prevention of injury and disease in Ontario workplaces and to revise the Workers' Compensation Act and make related amendments to other Acts*, was tabled on November 26, 1996.

Bill 99 proposes to repeal the *Workers' Compensation Act* and to replace it with the *Workplace Safety and Insurance Act, 1996*, set out in a schedule contained in the Bill. The *Blind Workers' Compensation Act* and the *Workers' Compensation Insurance Act* would also be repealed. The Workers' Compensation Board would be continued as the Workplace Safety and Insurance Board.

With respect to occupational health and safety, the Workplace Health and Safety Agency established under the *Occupational Health and Safety Act* would be terminated, and its functions would be transferred to the Workplace Safety and Insurance Board. The Board would be given additional powers and duties relating to the designation of safe workplace associations, medical clinics and training centres that specialize in occupational health and safety matters. Once designated, these would be eligible for financial assistance from the Board and would be required to operate in accordance with the relevant legislation and the standards established by the Board.

In addition, the Board would pay persons who are regularly employed in the construction industry for the time they spend fulfilling the requirements to become certified for the purposes of the *Occupational Health and Safety Act*. However, the Board would not pay persons who may represent management as members of a joint health and safety committee.

The Board could also establish a workplace health and safety advisory council to advise it on issues the Board considers appropriate.

B. Radiation Protection

In **Saskatchewan**, the *Radiation Health and Safety Amendment Act, 1996*, which was described in the *Highlights of Major Developments in Labour Legislation (1995-1996)*, was proclaimed in force on November 1, 1996.

C. Fire Prevention

In **Ontario**, the *Fire Protection and Prevention Act, 1997* (Bill 84) was assented to on May 27, 1997, and will come into force by proclamation. It will repeal a number of Acts relating to fire services and consolidate them into one statute. These include, for example, the *Egress from Public Buildings Act*, the *Fire Departments Act* and the *Fire Marshals Act*.

The Act delineates the responsibilities for the provision of fire protection services in the province. It provides that municipalities are responsible for the provision of fire protection services within the municipality. They must, at a minimum, establish a program including public education with respect to fire safety and certain components of fire prevention. They may offer such other fire protection services as considered necessary. The Fire Marshal may monitor and review the fire protection services provided by municipalities and make recommendations for improving those services. The Fire Marshal, a services board or a prescribed person or organization may enter into agreements to provide fire protection services in territory without municipal organization.

The Act also establishes the Fire Marshal's Public Fire Safety Council. The objects of the Council include advising the Fire Marshal on matters of fire safety, promoting fire safety in the province, and producing and distributing materials for public education on fire safety. Five years after the coming into force of the provisions creating the Council, the Minister will submit a report to the Lieutenant Governor in Council regarding its continuation, modification or dissolution.

D. Mining Safety

In **New Brunswick**, a new *Underground Mine Regulation* was adopted under the *Occupational Health and Safety Act*. Effective January 1, 1997, this comprehensive regulation applies to a place of employment that is an underground mine and to the buildings and plant on the surface used in connection with the extraction of any metallic or non-metallic mineral or mineral-bearing substance from the mine, but does not include the buildings and plant on the surface used for the processing of the mineral or substance.

The regulation is divided into ten Parts and provides for numerous health and safety requirements. These deal, for example, with the following topics: notice of opening or reopening an underground mine, certificates of fitness, medical examination of employees, employee training, fall protection, regular mine inspections, rockbursts and seismic events, voice communication system, dust control, water control, escapeways, air quality, emergency preparedness and fire protection, track haulage and mobile equipment, explosives, climbing conveyances, air compressors, and mine hoisting plants.

In **Quebec**, a *Regulation to amend the Regulation respecting occupational health and safety in mines and amending various regulatory provisions* was adopted under the *Act respecting occupational health and safety*.

Various amendments of a technical nature have been made to the *Regulation respecting occupational health and safety in mines and amending various regulatory provisions*. They contain changes to the provisions dealing, among others, with the following topics: the passages through which the workers may evacuate work stations in cases of emergency; air quality (including the addition of a schedule to the regulation on a sampling and analysis protocol for respirable combustible dust); miner lamps used underground; the use of a stationary natural gas or propane heating system in a building covering an opening to the surface of an underground mine; and non-railbound motorized vehicles. The amendments took effect on July 10, 1997.

In **Ontario**, a regulation has amended the regulation on mines and mining plants made under the *Occupational Health and Safety Act*.

The amendments are of a technical nature and deal with many subjects, including the following: workers who are not supervisors and who work alone in an underground mine; motor vehicles, not operating on rails and having a certain type of braking system, put into service on or after August 16, 1997; explosives kept or stored on the surface; magazines, storage containers and explosive storage areas in an underground mine;

electrical blasting operations; equipment that can be operated or moved by remote control using a system, device or controller that produces radio frequencies or radiates electromagnetic energy; elevators, mine hoisting plants and shaft conveyances; and the precautions to be taken before material containing cyanide is used for back fill in an underground mine.

All the amendments came into force on August 16, 1997, except for one dealing with certain electrical mobile equipment, which will take effect on August 16, 1998.

E. Offshore Petroleum Operations

In **Newfoundland**, several regulations have been amended or made under the *Canada-Newfoundland Atlantic Accord Implementation Newfoundland Act*.

Modifications to the *Offshore Area Petroleum Diving Regulations* include changing the title of the regulations to *Offshore Area Petroleum Diving Newfoundland Regulations* and a number of amendments dealing, among others, with the granting of an authorization in respect of a proposed diving program and the issuance of diving certificates as well as other types of certificates attesting qualification.

Four new regulations were also adopted under the same Act.

The *Offshore Area Petroleum Geophysical Operations Newfoundland Regulations* deal, among other things, with radio communications, safe working practices, crew safety requirements, evacuation routes, no smoking areas, hours of work, and training of geophysical crew.

The *Offshore Area Petroleum Production and Conservation Newfoundland Regulations* contain provisions on the safety and training of personnel, involved in production operations, who require special skills.

The *Offshore Certificate of Fitness Newfoundland Regulations* deal with the issuance of certificates of fitness for offshore diving, drilling, production or accommodation installations.

The *Offshore Petroleum Installations Newfoundland Regulations* establish minimum safety requirements for offshore diving, drilling, production or accommodation installations and equipment on those installations.

In addition, a number of consequential amendments were made to the *Offshore Petroleum Drilling Newfoundland Regulations*.

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

In **Newfoundland**, the *Public Safety Act*, which replaced several Acts, including the *Elevators Act*, the *Boiler, Pressure Vessel and Compressed Gas Act* and the part of the *Occupational Health and Safety Act* dealing with electrical inspections, was proclaimed into force on January 1, 1997.

Amusement Rides and Elevating Devices Regulations, *Boiler, Pressure Vessel and Compressed Gas Regulations*, and *Electrical Regulations* have been adopted under the new Act. They replace regulations dealing with the same subjects, which were adopted in previous years.

In **Ontario**, a regulation has amended another regulation under the *Safety and Consumer Statutes Administration Act, 1996* concerning the administration of a number of Acts. It provides that the Technical Standards and Safety Authority, with which the Minister of Consumer and Commercial Relations has entered into an administrative agreement dated January 13, 1997, is designated as the sole administrative authority for the purpose of administering various Acts, including the *Boilers and Pressure Vessels Act*, the *Elevating Devices Act*, the *Gasoline Handling Act*, the *Operating Engineers Act* and the regulations issued under those Acts. However, the power to make regulations remains with the Lieutenant Governor in Council.

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