

HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

August 1, 1997 to July 31, 1998

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I. EMPLOYMENT STANDARDS

A. Legislation of General Application

In Ontario, Bill 136, the *Public Sector Transition Stability Act, 1997*, which came into force on October 29, 1997, has brought, among other things, several changes to the *Employment Standards Act*. They include the following:

The provisions of the *Employment Standards Act* concerning continuity of employment following the sale of a business have been made applicable to the Crown. Also, if an employer who is selling 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 is treated as severance pay under the Act.

In addition, other amendments to the *Employment Standards Act* discontinued the Employee Wage Protection Program (EWPP), which compensated employees for unpaid wages and vacation pay up to a maximum of \$2,000 (Ontario was the only jurisdiction in Canada with a government-funded program of this kind).

Ontario also passed Bill 31, the *Economic Development and Workplace Democracy Act, 1998*. Among other things, it introduced several changes to the *Employment Standards Act* in order to achieve the transfer to the Ontario Labour Relations Board of the responsibility to hear reviews of decisions by Employment Standards Officers. This role was previously held by referees and adjudicators nominated under the *Employment Standards Act*. The Ontario Labour Relations Board also took over some of the administrative responsibilities of the Director of Employment Standards, for example the acceptance of requests for review. The Ontario Labour Relations Board may refer issues to labour relations officers to achieve settlements. A modification enables the Ontario Labour Relations Board and persons in power under the *Employment Standards Act* to exercise powers under the *Canada Labour Code* when regulations under the Code incorporate Ontario employment standards provisions and such provincial officials are empowered under the federal regulations. Under other changes, the Director, with the approval of the Minister of Labour, can determine the interest rate and the manner of calculating interest. Previously, interest was to be prescribed by regulation. The above provisions came into force on June 29, 1998.

In Manitoba, the *Employment Standards Code and Consequential Amendments* brings together under one legislation *The Employment Standards Act, The Vacations with Pay Act* and *The Payment of Wages Act*. It will come into force by proclamation. The new legislation includes the following new provisions:

- Vacation pay, for each week of annual vacation, will be calculated as 2% of wages earned in the year of employment. Employees entitled to two weeks of annual vacation will receive 4% of wages earned in the year of employment and those entitled to three weeks will receive 6%. The *Vacations with Pay Act*, which will be replaced, provides that employees receive regular pay during the vacation period.

- The new Code stipulates that an employer will not be able to require an employee to take less than a week of vacation at a time.
- Employees will be allowed to take paid time off instead of overtime wages. Time off will normally be taken during the employees' regular hours within three months after the end of the pay period in which the overtime occurs. As it stands, the legislation does not provide for compensatory time off in case of overtime.
- Employees called in to work on a regular day off will receive as call in wages at least three hours at the regular rate of pay when working less than three hours, instead of three hours at the minimum wage rate.
- In case of insufficient notice of termination of employment by an employee, the employer will be able to file a complaint with the Employment Standards Office and exercise subsequent recourse to the Manitoba Labour Board and to the Manitoba Court of Appeal. This change extends to the employer the same redress procedure that now applies to employees.
- Orders of payment of wages, following a complaint for unpaid wages, will include the payment of administrative costs (the higher of \$100 or 10% of the wages, to a maximum of \$1,000) and the payment of interests, as prescribed, on the amount payable.
- When an employer fails to pay wages to an employee, the Director of Employment Standards will be able to take civil action to recover amounts from a third party indebted to the employer.
- Persons guilty of an offence under the Code will be liable to much higher fines: up to \$25,000 in the case of an employer that is a corporation, \$5,000 in the case of a director of a corporation or an employer that is an individual, and \$2,500 in the case of an employee. Currently, fines are comparatively much smaller, i.e., up to \$1,000 for a corporation under the *Payment of Wages Act*, or \$100 for an employee under the *Employment Standards Act*.
- The Director of Employment Standards will be able to "settle or compromise a difference between an employer and an employee" under the Code.
- The Minister of Labour will provide opportunity for consultation with employer and employee representatives, and other persons as appropriate, in respect of each proposed regulation.

Alberta passed the *Employment Standards Amendment Regulation* under the *Employment Standards Code*. This amendment to the *Employment Standards Regulation* has deferred the expiration of the Regulation as a whole, which was to occur on December 31, 1997. The new expiration date is June 30, 1999. The purpose of the date of expiration is to ensure that the Regulation is reviewed for its relevancy, with the option that it may be re-passed with or without amendments.

On December 9, 1997, **Quebec** passed Bill 172, *An Act to again amend the Act respecting labour standards*. Among other things, these amendments to the *Act respecting labour standards* deal with night work for children. New provisions stipulate that when an employer will need work done by an employee under the age of 16, that work may not be carried out between the hours of 11 p.m. and 6 a.m. on the following day, except in the case of newspaper deliveries and in any other case determined by government regulation, and the work must be scheduled so that, having regard to the location of the employee's family residence, he/she may be at that residence during that period, subject to exceptions determined by government regulation. These provisions will come into force on a date to be set by the government.

In addition, in force since February 1, 1998, the Act provides that accommodation and meals provided to a domestic who is housed or takes meals in the employer's residence must be free of charge.

British Columbia adopted an amendment to the *Employment Standards Regulation* under the *Employment Standards Act*. This amendment to the *Employment Standards Regulation*, that took effect on January 9, 1998, stipulates that the *Employment Standards Act* does not apply to newspaper carriers enrolled in, or on vacation from, a primary or secondary school and employed in that capacity for 15 hours a week or less. The Regulation continues to specify that the provisions of the Act on hours-of-work notices, split shifts, minimum daily hours and hours free from work do not apply to other persons employed as newspaper carriers for 15 hours a week or less.

British Columbia made another change to the *Employment Standards Regulation* under the *Employment Standards Act*. In force since October 16, 1997, a new provision added to the *Employment Standards Regulation* provides that there is a penalty of \$5,000 for a breach of the conditions of employment of a child under 15 years of age set by the Director of Employment Standards, when the contravention relates to employment in the motion picture industry, the television industry, or the television or radio advertising industry.

In the **federal jurisdiction**, the *Ontario Hydro Nuclear Facilities Exclusion from Part III of the Canada Labour Code Regulations (Labour Standards)*, under the *Canada Labour Code*, was adopted. The Regulations, which came into force on April 1, 1998, have excluded the employment on or in connection with a Ontario Hydro nuclear facility from the application of the labour standards provisions of Part III of the *Canada Labour Code*.

The Regulations incorporate by reference the Ontario *Employment Standards Act* (R.S.O. 1990, c. E.14, except for Part X "Benefit Plans") and any regulations made under it, as amended from time to time (a modification to the Act and regulations is specified). They apply to nuclear facilities owned or operated by Ontario Hydro and subject to the *Atomic Energy Control Act* and regulations made under it.

B. Minimum Wages

In **British Columbia**, the *Employment Standards Regulation* under the *Employment Standards Act* was amended. By virtue of these amendments, the general minimum wage was increased from \$7.00 to \$7.15 per hour, effective April 1, 1998. In addition, other minimum wage rates were raised as follows: for live-in home support workers (from \$70.00 to \$71.50 per day or part of a day, the maximum room and board deduction remains at \$325.00 per month); for live-in camp leaders (from \$56.00 to \$57.20 per day or part of a day), for resident caretakers (for an apartment building containing 9 to 60 suites: \$429 per month plus \$17.20 for each suite, or \$1,461.00 per month for 61 suites or more), and a similar increase of approximately 2% for farm workers employed on a piece-work basis to hand harvest certain fruit, vegetable, berry and flower crops.

On December 23, 1997, the **Yukon** Justice Minister announced that the general minimum wage of \$6.86 per hour would be raised to \$7.06 per hour on April 1, 1998 and to \$7.20 per hour to be effective October 1, 1998.

In **Alberta**, the government announced an increase in the general minimum wage rate from \$5.00 to \$5.90 an hour, to be introduced in three phases. The first increase will take place on October 1, 1998 when the general minimum wage will rise to \$5.40 an hour. It will be followed by another increase to \$5.65 an hour on April 1, 1999, with a final increase to \$5.90 an hour due on October 1, 1999. Also announced was the elimination of the differential of \$0.50 per hour between the general minimum wage rate and the minimum wage for students under 18 years of age. On October 1, 1998, all workers will be subject to the same minimum wage rate.

Quebec also announced an increase in the minimum wage. Effective October 1, 1998, the general minimum wage will increase from \$6.80 to \$6.90 per hour, and the hourly rate payable to employees who usually receive gratuities will increase from \$6.05 to \$6.15. Effective on the same date, the minimum wage payable to domestic workers who reside in their employer's home will increase from \$264 to \$271 for a standard workweek of 49 hours.

C. Pay Equity

In **Ontario**, Bill 136, the *Public Sector Transition Stability Act, 1997*, which came into force on October 29, 1997, has among other things amended the *Pay Equity Act*. The sale of business provisions were amended so that a purchaser who replaces the seller's pay equity plan is not bound by the adjustments set out in the seller's plan.

In addition, a provision was added making the sale of business provisions apply with respect to occurrences described in the *Public Sector Labour Relations Transition Act, 1997*.

D. Retail Establishments

In **Newfoundland**, *An Act to Amend the Shops' Closing Act No.2* (Bill 48) has amended the *Shops' Closing Act* to remove Sundays from the list of holidays on which shops must be closed. It came into force on January 1, 1998. Subsequently, another piece of legislation, *An Act to Amend the Shops' Closing Act* (Bill 4) has amended the *Shops' Closing Act* by adding Easter Sunday to the list of holidays on which shops must be closed. This amendment is considered to have come into force on January 1, 1998.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In the **federal jurisdiction**, *An Act to amend the Canada Labour Code (Part 1) and the Corporations and Labour Unions Returns Act and to make consequential amendments to other Acts* (Bill C-19) was assented to on June 18, 1998

This Act will come into force, in whole or in part, on a date or dates to be set by the government. It contains numerous amendments, the most important of which are described below.

Administration of the *Canada Labour Code*

The amendments, outlined below, are designed to ensure the efficient administration of the Code.

- A representational Canada Industrial Relations Board, composed of a neutral Chairperson and Vice-Chairpersons, and an equal number of members representing employers and employees, will replace the current non-representational Canada Labour Relations Board.
- The Board will be given greater flexibility to deal quickly with routine or urgent matters; for example, the Chairperson or a Vice-Chairperson will be able to determine alone some cases rather than the currently required three-member panel.
- The Board's powers will be clarified or extended to ensure that complex industrial relations issues, such as those arising from the review of bargaining units or sales of business, can be fully addressed, and to provide appropriate remedies in the case of unfair labour practices, such as failure to bargain in good faith.
- The Federal Mediation and Conciliation Service (FMCS) will continue to be part of the Labour Program of Human Resources Development Canada; its role will be defined by statute, and powers of appointment may be delegated by the Minister of Labour to the head of FMCS.
- Grievance arbitrators will be granted a number of procedural powers.

Representation and Successor Rights

A number of amendments are aimed at ensuring that the Board has appropriate remedial powers during the certification process, at ensuring certain employee rights, and at addressing the situation of off-site employees.

- The right of employers to express a personal point of view, so long as they do not use coercion, intimidation, threats, promises or undue influence will be explicitly recognized.
- The Board will be able to remedy a serious unfair labour practice committed by an employer by certifying an applicant trade union, despite lack of evidence of majority support from employees in a bargaining unit, if the Board is of the opinion that, in the absence of the unfair labour practice, the union could reasonably have been expected to have had such support.
- From the time certification is granted to the date on which a first collective agreement is entered into, the employer must not dismiss or discipline an employee in the affected bargaining unit without just cause. Where there is a disagreement between the parties relating to the dismissal or discipline of an employee during that period, the bargaining agent may submit the disagreement to an arbitrator for final settlement as if it were a difference under a collective agreement.
- Successor rights will apply where, as a result of a sale or a change of activity, an undertaking under provincial jurisdiction for labour relations purposes becomes subject to the Code.
- An employer succeeding another as the provider of pre-board security screening services to the air transport industry must pay to employees performing those services remuneration not less than that which the employees of the previous contractor were entitled to receive under the terms of a collective agreement. This requirement may be applied to other services by regulation.
- On application by a trade union, the Board may require an employer to give an authorized representative of the union, or the Board, or both, a list of the names and addresses of employees who normally work in locations other than the employer's, and authorize communications with those employees if the Board believes that such communications are required for purposes relating to soliciting trade union memberships or other specified labour relations purposes. The order must specify the method of communication, the times of day and periods during which it is authorized, and the conditions necessary to protect the privacy and safety of affected employees and to prevent the abusive use of information. In addition, the order may require the employer to transmit, in accordance with any prescribed terms and conditions, the information that the union wishes to communicate to the employees by means of any electronic communications system that the employer uses. If the Board is of the opinion that the privacy and safety of affected employees cannot otherwise be protected, it may provide each employee with the opportunity to refuse that his/her name and address be given to the authorized representative of the union (if the employee does not so refuse, the name and address may be given) or the Board may transmit the information that the union wishes to communicate to them in the manner it considers appropriate.

Voluntary Multi-employer Bargaining and Geographic Certification in the Longshoring Industry

Certain amendments are aimed at making existing bargaining structures more flexible and adaptable to the changing environment.

- Where a voluntary employers' organization has been designated by the Board, the organization will be able to request the inclusion in the designation of an employer who becomes a member of the organization.
- The right of one or more employers active in the longshoring industry, covered by a geographic certification, to apply to the Board to change an employer representative will be expressly recognized in the Code.
- A designated employer representative in the longshoring sector may require all employers active in the port to remit their share of the costs incurred by the employer representative in fulfilling duties and responsibilities under the Code and under the terms of the collective agreement.

Collective Bargaining Cycle

Changes to the bargaining cycle are designed to speed up the process, improve flexibility, and encourage earlier settlement of disputes.

- The period during which notice to bargain can be given will be extended to four months prior to the expiry of a collective agreement from the current three months (the agreement may provide for a longer period during which such notice can be given).
- The current two-stage conciliation process will be replaced by a single stage with a choice of procedures (i.e. the appointment of a conciliation officer or commissioner, or the establishment of a conciliation board, or a notification by the Minister of his/her intention not to take any of those actions). The conciliation process will not take more than 60 days, except with the consent of the parties. The parties may declare a strike or lockout 21 days after any conciliation procedure, as mentioned previously, has been completed, provided some other requirements specified in the Code have been met.
- A trade union may not declare a strike (or an employers' organization may not declare a lockout) unless it has, within the previous 60 days, or any longer period agreed to by the parties, held a secret ballot strike vote among the employees in the unit (or lockout vote among the employers who are members of the organization) and received the approval of the majority of those who voted. No vote will be required if the other party has already initiated a legal strike or lockout.
- The right to strike or to lock out will also be subject to the giving by the trade union or employer of a strike or lockout notice of at least 72 hours to the other party, with a copy being sent to the Minister. This requirement will not apply if the other party has already initiated a legal strike or lockout. When no strike or

lockout occurs on the date indicated in a notice and the trade union or employer wishes to take such action, a new notice of at least 72 hours will be required, unless the parties agree otherwise in writing.

- The right of the parties to agree to submit a collective bargaining dispute to a person or body for binding settlement, will be expressly recognized in the Code.
- Existing provisions dealing with first agreement arbitration will be maintained, but where the Board imposes an agreement, its term will be two years rather than one year.

Rights and Obligations During a Legal Work Stoppage

Amendments are designed to clarify the rights and obligations of the parties during legal strikes and lockouts.

- Employers or persons acting on their behalf will be prohibited from using, for the demonstrated purpose of undermining a trade union's representational capacity rather than the pursuit of legitimate bargaining objectives, the services of persons who were not in the bargaining unit on the date on which notice to bargain was given and were hired or assigned after that date to perform all or part of the duties of an employee in the bargaining unit on strike or locked out. Where the Board determines that this type of unfair labour practice has occurred, it may order the employer to cease using replacement workers for the duration of the dispute.
- There will be a confirmation of the right of employees in a bargaining unit who were on strike or locked out to be reinstated following a legal work stoppage in preference to any persons who were not in the bargaining unit on the date on which notice to bargain was given and were hired or assigned after that date to perform all or part of their duties.
- Where there is a disagreement concerning the dismissal or discipline of an employee in a bargaining unit from the time the parties have acquired the right to strike or to declare a lockout to the date on which a new or revised collective agreement is entered into, the bargaining agent may submit the disagreement for final settlement in accordance with the provisions for the settlement of differences contained in the previous collective agreement.
- Applications for certification or decertification will not be permitted during a legal strike or lockout without the consent of the Board, and persons who were not in the bargaining unit on the date on which notice to bargain was given and were hired or assigned after that date to perform all or part of the duties of the employees on strike or locked out will not be entitled to participate in any representation vote.
- Employees will be entitled to maintain insurance plans and benefit coverage during legal work stoppages, so long as the bargaining agent tenders or attempts to tender to the employer payments or premiums sufficient to continue the plan.

Maintenance of Services

Changes are designed to ensure that work stoppages do not endanger public health or safety, and to maintain grain exports during work stoppages involving port operations.

- During a legal strike or lockout, the parties will be required to maintain certain activities (i.e. supplying services, operating facilities or producing goods) to the extent necessary to prevent an immediate and serious danger to public health or safety.
- Within 15 days after notice to bargain has been given, an employer or a trade union may give notice to the other party of the activities that, in its opinion, must be maintained in the event of a strike or lockout in order to comply with the above requirement and the approximate number of employees in the bargaining unit needed for that purpose. If the parties enter into an agreement on that subject, a copy may be filed with the Board, and it will then have the same effect as an order of the Board. If the employer and the trade union do not reach an agreement, the Board will, on application by either of them no later than 15 days after notice of dispute has been given, make the determinations necessary to ensure the application of the maintenance of activities provisions.
- At any time after notice of dispute has been given, the Minister may refer to the Board any question with respect to the application of the maintenance of activities provisions or with respect to whether an agreement entered into by the parties is sufficient to ensure that those provisions are complied with.
- On application by one of the parties or on referral by the Minister as mentioned above, the Board may issue orders to ensure compliance with the maintenance of activities provisions. On such application or referral during a legal strike or lockout, it may also review, confirm, amend or cancel an agreement between the parties or a determination or order made on the maintenance of activities, and issue any orders considered appropriate.
- Where the Board is satisfied that the level of activity to be continued to prevent an immediate and serious danger to public health or safety renders ineffective the exercise of the right to strike or to lock out, it may, on application by the employer or the trade union, order a binding method of resolving the issues in dispute between the parties.
- While grain handlers and their employers will retain the right to strike or to lock out, in the event of a work stoppage involving an employer in the longshoring or other port-related industry, that employer as well as its employees and their bargaining agent will be required to maintain normal services to grain vessels at licensed terminal and transfer elevators and to ensure their movement in and out of a port.

Amendments to the *Corporations and Labour Unions Returns Act* (CALURA)

Part II of the *Corporations and Labour Unions Returns Act*, relating to the collection and

reporting of statistical information on labour unions, will be repealed, and the title of the Act will be changed to *Corporations Returns Act*.

Also at the federal level, effective April 1, 1998, Regulations under the *Canada Labour Code* have excluded employment on or in connection with a Ontario Hydro nuclear facility from the application of the industrial relations provisions of Part I of the *Canada Labour Code*.

The Regulations incorporate by reference Ontario legislation on industrial relations (i.e. the *Labour Relations Act, 1995*, with some modifications, and pertinent regulations as well as rules of procedure made by the Ontario Labour Relations Board). They apply to nuclear facilities owned or operated by Ontario Hydro and subject to the *Atomic Energy Control Act* and regulations made under it.

In **Ontario**, the *Economic Development and Workplace Democracy Act, 1998* (Bill 31) was assented to on June 26, 1998. This Act has, among other things, amended the *Labour Relations Act, 1995*. It came into force on June 29, 1998, except for a few provisions taking effect on August 24, 1998, as indicated below.

A new section has been added to provide a process for employers who disagree with a trade union's estimate of the number of individuals in the proposed bargaining unit in an application for certification. If an employer objects, it may submit its estimate of the number of employees in the proposed bargaining unit, and the Ontario Labour Relations Board must then direct that the ballot boxes from the representation vote be sealed unless the employer and union agree otherwise. If the Board determines that the bargaining unit proposed by the union could be appropriate, it must first determine the number of individuals in that unit. If the Board determines that the bargaining unit proposed by the union could not be appropriate, it must first determine the appropriate bargaining unit and then determine the number of individuals in that unit. After those determinations, the Board must determine if the 40% minimum membership requirement for a representation vote has been met. If it has been, the ballots from the representation vote are counted. If it has not been, the ballots from the representation vote are destroyed and the application is dismissed. These provisions took effect on August 24, 1998.

Provisions of the *Labour Relations Act, 1995* previously allowed trade unions to be certified in certain circumstances, as a result of a contravention of the Act by the employer, despite the results of a representation vote. Also, other provisions allowed the Board to dismiss an application for certification in certain circumstances, as a result of a contravention of the Act by a trade union, despite the results of a representation vote. Instead of those remedies, new provisions allow the Board, upon application respectively by a trade union or an interested person, to order another representation vote.

Also, a new section provides that if a regulation under the *Canada Labour Code* incorporates by reference all or part of the *Labour Relations Act, 1995* or a regulation issued under it, the Ontario Labour Relations Board and any person having powers under that Act may exercise powers conferred under the regulation made under that Code.

Other amendments have been made to special sections of the *Labour Relations Act, 1995* applying to the construction industry (see page 18).

In **Newfoundland**, *An Act to Amend the Labour Relations Act No. 2* (Bill 52) was brought into force on December 19, 1997. This Act has modified the *Labour Relations Act* by adding a number of provisions applying to labour relations with respect to offshore petroleum production platforms. These provisions are as follows:

- they provide that the bargaining unit appropriate for collective bargaining must comprise all employees employed on a platform, except construction and start up employees who are covered by the existing provisions of the Act respecting the composition of a bargaining unit;
- they establish the criteria to be applied by the Labour Relations Board in assessing an application from a council of trade unions seeking certification as the bargaining agent of workers employed on an offshore petroleum production platform, other than those performing construction or start up work,
- they provide that where a trade union or a council of trade unions is certified to represent workers employed on an offshore petroleum production platform, the licensed operator of the platform must immediately form an organization of all the employers of those employees for collective bargaining purposes;
- they provide that where a trade union or a council of trade unions representing workers employed on an offshore petroleum production platform and an employers' organization have bargained collectively and have been unable to conclude a first collective agreement, either party may require the arbitration of matters in dispute (a first collective agreement settled through arbitration is effective for a period of three years or such longer period the parties may agree to); and
- they provide that the parties to a collective agreement covering workers employed on an offshore petroleum production platform (other than those performing construction or start up work) must conclude an ancillary agreement setting out workforce requirements and procedures necessary to ensure the orderly and safe shutdown and maintenance of the platform in the event of a strike or lockout of those employees. When the parties have not reached such an agreement 90 days before the expiry of a collective agreement between them, at the request of either party, the Board may settle the terms and conditions of the agreement.

In **Quebec**, effective June 12, 1998, amendments have been made to provisions of the *Labour Code* dealing with essential services.

The definition of "public service" has been broadened to cover activities related to the storage of gas, the collection, transportation and distribution of blood or blood products and human organs for transplantation as well as forest fire protection activities.

In addition, the Act has conferred on the president and the vice-president the power to act alone on behalf of the Essential Services Council, in particular to designate a mediator to help the parties conclude an agreement, to approve an agreement and to evaluate whether essential services provided for in an agreement or a list are sufficient.

Lastly, it has been specified that a fund established for the benefit of users of a service, that has been adversely affected, includes any interest accrued since its establishment.

In **Ontario**, Bill 22, the *Prevention of Unionization Act (Ontario Works), 1998* received second reading on June 9, 1998.

Bill 22 proposes to amend the *Ontario Works Act, 1997* to provide that the *Labour Relations Act, 1995* does not apply with respect to participation in a community participation activity under that Act. This would include participation by welfare recipients under the Ontario Works Program.

Another amendment would specify that, under the *Labour Relations Act, 1995*, participants in a community participation activity under the *Ontario Works Act, 1997* may not join a trade union, bargain collectively or strike.

The *Labour Relations Act, 1995* would not be enforceable with respect to community participation activities engaged in during the period beginning on May 1, 1998 (the *Ontario Works Act, 1997* proclamation date) and ending on the date before the Act receives Royal Assent.

B. Public and Parapublic Sectors

In **Ontario**, provisions on labour relations contained in the *Fire Protection and Prevention Act, 1997*, which were described in the *Highlights of Major Developments in Labour Legislation (1996-1997)*, were brought into force by proclamation on October 29, 1997.

Also in Ontario, effective October 29, 1997, the *Public Sector Transition Stability Act, 1997* (Bill 136) has enacted the *Public Sector Dispute Resolution Act, 1997* and the *Public Sector Labour Relations Transition Act, 1997*.

Public Sector Dispute Resolution Act, 1997

The *Public Sector Dispute Resolution Act, 1997* sets out purposes which must be taken into consideration in arbitrations involving certain employers and employees in the public sector (i.e., municipal fire and police services, provincial police services and the hospital sector). These purposes include ensuring the expeditious resolution of disputes during collective bargaining and encouraging the settlement of disputes through negotiation.

Amendments have been made to the *Fire Protection and Prevention Act, 1997* (for disputes involving firefighters), the *Hospital Labour Disputes Arbitration Act* (for disputes involving certain hospital employees) and the *Police Services Act* as well as Part VIII of the *Public Service Act* (for disputes involving police officers). Disputes between these employees and their employers continue to be resolved through interest arbitration rather than through strikes or lockouts.

Under each of those Acts, the employer and the bargaining agent have an opportunity, after conciliation, to jointly appoint a private arbitrator or arbitration board to resolve

their collective bargaining disputes. If a board of arbitration consisting of one person or the chair of a board of arbitration was appointed by the Minister responsible for the application of the Act (or, in the case of municipal police officers, by the chair of the Arbitration Commission or, in the case of provincial police officers, by the chair of the Ontario Police Arbitration Commission), the Minister (or chair of the arbitration commission) must select the method of arbitration. The method selected must be mediation-arbitration, unless the Minister (or chair of the arbitration commission) believes that another method is more appropriate, and the method selected may not be final offer selection without mediation. The choice of mediation-final offer selection is at the sole discretion of the Minister (or chair of the arbitration commission).

Criteria that the arbitrator (or arbitration board) must consider in settling disputes under each of these Acts remain the same, and include the employer's ability to pay in light of its fiscal situation.

Other changes made to the Acts include the addition of provisions relating to the speed at which arbitration proceedings progress.

Public Sector Labour Relations Transition Act, 1997

The *Public Sector Labour Relations Transition Act, 1997* provides for the resolution of labour relations issues resulting from municipal amalgamations (and similar changes at the municipal level), changes affecting school boards (i.e. non-teaching staff and occasional teachers), hospital restructuring and other types of occurrences. The Act applies to occurrences during a "transitional period" beginning on October 29, 1997 and ending on December 31, 2001 or a later date that may be prescribed.

As of the "changeover date" (which differs from case to case), the Act establishes like bargaining units for employees of a predecessor employer who become employees of the successor employer. It also provides that, in most cases, the bargaining agent for the new bargaining unit is the bargaining agent that represented the employees when they were employed by the predecessor employer. Collective agreements for those employees are, in most cases, continued and, if they have expired, reinstated.

The description of bargaining units may be confirmed or changed, either by agreement of the parties or by an order of the Ontario Labour Relations Board. If two or more bargaining agents represent employees in a bargaining unit, the bargaining agents may select one of them to represent the unit, or, at the request of the successor employer or a bargaining agent, the Board may by order appoint one of them. Before the Board makes such an order, it must hold a representation vote (except in specified circumstances). Special rules deal with collective agreement seniority and grievance provisions if the description of the bargaining unit is changed or if a new unit is established. Seniority recognition is to be given to employees for their prior employment with a predecessor employer, in the circumstances described in the Act. Rules can be prescribed by regulation for individuals who were employed by the Crown.

The parties are authorized to initiate collective bargaining, in specified circumstances, even though a collective agreement is in force. The first contract provisions of the *Labour Relations Act, 1995* apply with certain modifications with respect to parties

whose labour relations are governed by that Act but to whom the *Hospital Labour Disputes Arbitration Act* does not apply.

A regulation-making power is included to vary the application of the Act to construction workers represented by construction unions.

In addition, Ontario's *Education Quality Improvement Act, 1997* (Bill 160) has brought amendments to the *Education Act*. The amendments include a new Part X.1 (Teachers' Collective Bargaining), which contains provisions making the *Labour Relations Act, 1995*, as modified by the rules set out in that Part, applicable to elementary and secondary school teachers' collective bargaining. The *School Boards and Teachers Collective Negotiations Act* is repealed. The bargaining units and bargaining agents for teachers are fixed by the new legislation. Beginning on January 1, 1998, the right of "Part X.1 teachers" to strike and the right of a school board or school authority to lock them out is governed by the *Labour Relations Act, 1995*.

The terms "Part X.1 teacher" under the Act do not include a supervisory officer, a principal, a vice-principal or an instructor in a teacher-training institution. Also, a supervisory officer, a principal or a vice-principal are not covered by the *Labour Relations Act, 1995*.

When during a dispute both parties agree to refer unsettled matters to arbitration or the dispute is referred to arbitration under the first agreement provisions of the *Labour Relations Act, 1995*, an arbitrator or a board of arbitration is required to take into consideration the interest arbitration criteria set out in the *School Boards and Teachers Collective Negotiations Act* immediately before its repeal, including the employer's ability to pay in light of its fiscal situation.

Despite the repeal of the *School Boards and Teachers Collective Negotiations Act*, the Education Relations Commission is continued and its functions include the following:

- to advise the Lieutenant Governor in Council when, in its opinion, the continuation of a strike, lockout, or closing of one or more schools will place in jeopardy the successful completion of courses of study by the affected pupils; and
- to compile statistical information on the supply, distribution, professional activities and salaries of teachers (this function may be removed on a date set by proclamation of the Lieutenant Governor).

On a date set by proclamation, it will be possible to replace the provisions just described with new provisions giving the Lieutenant Governor in Council the power to appoint a person or organization to advise him/her when the continuation of a strike, lockout or closing of one or more schools will place in jeopardy the successful completion of courses of study by the affected pupils.

A number of sections govern the transition from the old system of education governance to the new system. Other sections govern bargaining for the first collective agreement after the transition.

In addition, provisions amending the *Education Act*, which came into force on August 31, 1998, set the maximum average size of elementary and secondary school

classes, which may only be exceeded if permission is granted by the Minister of Education and Training. The Lieutenant Governor in Council has the power to make regulations establishing the method to be used by a school board or authority to determine the average size of its classes, excluding special education classes from this determination, requiring school boards or authorities to prepare reports containing specified information concerning the average size of classes and making these available to the public. Every three years, the Minister will review the amount of the maximum average class sizes specified in the Act.

Other amendments to the *Education Act* that came into effect on August 31, 1998 set a minimum average time during which classroom teachers provide instruction to pupils in elementary and secondary schools.

Except as otherwise mentioned, the provisions described above came into force on January 1, 1998.

In **Quebec**, *An Act respecting the negotiation of agreements concerning the reduction of labour costs in the municipal sector* (Bill 414) took effect on March 12, 1998. This Act does not apply in respect of employees covered by a new collective agreement entered into by the parties after March 25, 1997. However, the Act applies in respect of employees covered by such a collective agreement if an agreement in principle was reached on its stipulations before that date, if the parties have agreed in writing on subsequent negotiations on a reduction of labour costs or if such a collective agreement expired before January 1, 1998. Furthermore, it does not apply in respect of employees covered by an agreement on the reduction of labour costs entered into since that date between the association of employees representing them and the municipal body.

The Act has established mechanisms for the settlement of disagreements between municipal bodies and associations representing their employees concerning the cutback measures that must be taken to reduce the labour costs of the municipal bodies by not more than 6% from the fiscal year 1998. The provisions of the Act are applicable to municipal bodies that adopt a resolution to avail themselves of those provisions within the prescribed time. The Act also provides for the reduction of the remuneration of elected officers of these municipal bodies and for a reduction in labour costs related to management personnel and other employees of the municipal bodies.

Where a resolution is adopted, any disagreement between the municipal body and an association certified to represent its employees is to be referred to a mediator-arbitrator appointed by the Minister of Labour. Under the Act, the parties are required to make a final proposal concerning cutback measures. The measures proposed may relate to changes to the conditions of employment provided for in a collective agreement, but may not alter wage rates or salary scales. As regards pension plans, a proposal may concern the allocation of surplus assets to the payment of contributions or changes to the provisions relating to contributions.

If the parties fail to reach an agreement within the allotted time, the mediator-arbitrator proceeds with arbitration, and chooses, without amending it, the proposal that is in conformity with the law and appears to him/her to be the more likely to ensure that the reduction objective fixed is achieved, giving proper consideration to equity.

The Act contains specific provisions and amending provisions that reflect the agreements entered into on the reduction of labour costs as regards the use of the actuarial gains of the pension plans of the city of Montréal and the pension plan of the city of Québec.

In **Nova Scotia**, the *Highway Workers Collective Bargaining Act* took effect on December 12, 1997. That Act sets a legislative framework for collective bargaining between the government of Nova Scotia, through the agency of the Department of Transportation and Public Works, and its employees paid on an hourly basis and engaged in the construction and maintenance of highways, who are below the rank of operating supervisor or the equivalent.

The Nova Scotia Highway Workers Union, CUPE Local 1867, is given exclusive bargaining rights with respect to the employees. However, the Act contains a procedure permitting the Labour Relations Board of Nova Scotia to conduct a representation vote in specified circumstances upon application by an employee, and to replace that union with another one when the latter receives more than 50% of the votes.

A Highway Workers Employee Relations Board (the Board) is created following consultation with the union. It has various powers such as making determinations under the Act, issuing orders, appointing conciliation officers, and establishing interest arbitration boards when required.

After notice to commence collective bargaining has been given, the Board may appoint a conciliation officer when bargaining has not commenced within the prescribed time or has commenced and either party requests conciliation, or when it considers advisable to do so. Where the parties have bargained collectively and have failed to conclude a collective agreement, the employer, the union or both must refer to binding arbitration the terms and conditions of employment that are in dispute and are arbitral matters, as specified in a schedule contained in the Act. If the Board believes that they have failed to make reasonable efforts to conclude a collective agreement, it may order the employer and union to continue collective bargaining. Strikes or lockouts are not permitted.

Despite the fact that an arbitration board has rendered an arbitral award, that award is of no force and effect if the employer and the union enter into a collective agreement concerning the subject-matter of the arbitral award within seven days from the time it was rendered.

No collective agreement or arbitral award may contain any provision that would require directly or indirectly for its implementation the enactment or amendment of legislation.

Every collective agreement must contain a provision for final settlement without stoppage of work, by adjudication or otherwise, of all differences between the parties to or persons bound by the collective agreement concerning its meaning or violation.

The Act specifies prohibited unfair labour practices by the employer, the union or their representatives.

C. Emergency Legislation

At the **federal level**, the *Postal Services Continuation Act, 1997* was assented to on December 3, 1997

This Act provides a mechanism for the settlement of a labour dispute between the Canada Post Corporation and the Canadian Union of Postal Workers (CUPW).

The Act required the resumption of postal operations 12 hours after it received Royal Assent, and extended the term of the collective agreement, that had expired on July 31, 1997, until the coming into effect of a new agreement, except for the period beginning on November 18, 1997 and ending on the coming into force of the legislation.

Under the Act, the Minister of Labour must appoint a mediator-arbitrator and refer to him/her all matters that, at the time of the appointment, remained in dispute between the parties in relation to the conclusion of a new collective agreement. The mediator-arbitrator has 90 days to perform his/her duties. However, that time may be extended by the Minister or by mutual consent of the parties. The mediator-arbitrator must be guided by the need for terms and conditions of employment that are consistent with the *Canada Post Corporation Act* and the viability and financial stability of the Canada Post Corporation, taking into account that the corporation must, without recourse to undue increases in postal rates, operate efficiently, improve productivity, and meet acceptable standards of service. The importance of good labour-management relations between the Canada Post Corporation and the union must also be taken into account.

As of the date on which the mediator-arbitrator reports to the Minister, the collective agreement is considered to be amended by any agreement resolving matters in dispute between the parties and any decision of the mediator-arbitrator. It is also considered to be amended by increasing the rates of pay in effect as of February 1, 1997 by 1.5% effective February 1, 1998, by another 1.75% effective February 1, 1999 and by another 1.9% effective February 1, 2000. The collective agreement so amended constitutes a new collective agreement coming into effect on the date on which the mediator-arbitrator reports to the Minister and ending on July 31, 2000.

All costs paid by the Government of Canada relating to the appointment of the mediator-arbitrator and the exercise of that person's duties under the Act may be recovered from the parties on an equal basis in any court of competent jurisdiction.

Nothing prevents the parties from agreeing to amend any provision of the collective agreement, or of the new collective agreement constituted under the Act, other than a provision relating to its term or the rates of pay mentioned above.

Fines are provided for a contravention of the Act by an individual (maximum: \$1000), by an officer or representative of one of the parties (maximum: \$50,000) or by the employer or union (maximum: \$100,000). These fines are applicable to each day or

part of a day during which the offence continues. Imprisonment may not be imposed in default of payment of a fine.

When a person is convicted of an offence and the fine that is imposed is not paid when required, the prosecutor may, by filing the conviction, enter as a judgment the amount of the fine and costs, if any, in a superior court of the province in which the trial was held, and the judgment is enforceable against the person in the same manner as if it were a civil judgment.

In **British Columbia**, the *Public Education Collective Agreement Act* was enacted on July 30, 1998 to prevent an impasse in negotiations in the public education sector and the risk that teachers would be locked out or on strike in the fall of 1998.

By virtue of this Act, the "Agreement in Committee" is deemed to be a collective agreement between the British Columbia Teachers' Federation and the British Columbia Public School Employers' Association. The "Agreement in Committee" is composed of agreements signed on behalf of the government and the teachers' federation, and of other documents signed on behalf of the government, the teachers' federation and the employers' association.

The "Agreement in Committee" may be varied by agreement between the parties (i.e. the British Columbia Teachers' Federation and the British Columbia Public School Employers' Association). However, no provision that creates obligations for the government may be modified without the approval of the Minister of Education.

The Act is considered to have come into force on July 1, 1998 and is retroactive to the extent necessary to give it effect from that date.

D. Construction Industry

In **Newfoundland**, the Terra Nova Project at Great Mosquito Cove, Bull Arm Area of Trinity Bay has been declared a special project under the *Labour Relations Act*.

The parties to a collective agreement entered into on April 3, 1997 in relation to work at the site of the special project, being PCL Industrial Constructors Inc., the employer, and the Newfoundland and Labrador International Building Trades Petroleum Development Association, which is considered to be the trade union representing persons employed at the site by the employer, are authorized to be involved in collective bargaining on the special project.

All the employees on the site of the special project to whom the above-mentioned agreement applies are considered to be members of a single bargaining unit. A procedure permits non-unionized employees at the site of the special project to be represented by the trade union and be included in the bargaining unit when they have the status of employees under the Labour Relations Act and a majority of them so wish.

In **Ontario**, the *Economic Development and Workplace Democracy Act, 1998* (Bill 31), has brought amendments to special provisions of the *Labour Relations Act, 1995* applying to the construction industry.

Some of these amendments apply to non-construction employers. Under the new legislation, a "non-construction employer" is a person who is not engaged in a business in the construction industry or whose only engagement in such a business is incidental to his/her primary business. A non-construction employer is no longer an employer for the purposes of the sections of the Act that provide special labour relations rules for the construction industry. However, those sections continue to apply to non-construction employers if, on August 24, 1998, a construction trade union already represented employees of those employers who were or could be employed in the construction industry. Nevertheless, on the application of a non-construction employer, the Board must declare that a trade union no longer represents the employees of that employer in the construction industry if, on the day the application is made, the non-construction employer does not employ any such employees represented by the union. These provisions became effective August 24, 1998.

A new section relating to project agreements has also been added to the Act. A project agreement is an agreement relating to a project that modifies applicable provincial agreements. A process is set out by which a proponent of a construction project who believes that the project is economically significant can initiate negotiations with bargaining agents who the proponent lists as potential parties. For the project agreement to be approved, it is necessary to have the support of at least 60% of the bargaining agents who indicate their approval or disapproval within the time period allowed for doing so. If a project agreement is in effect, the applicable provincial agreement, as modified by the project agreement, applies to all work within the jurisdiction of the bargaining agents that were listed as potential parties. No strike by or lockout of employees who perform work covered by the project agreement is allowed.

In addition, a number of amendments have been made concerning the procedures of the Board (e.g. the procedure for grievances referred to the Ontario Labour Relations Board).

Except as otherwise indicated, these provisions came into force on June 29, 1998.

In **Quebec**, *An Act to amend various legislative provisions relating to building and the construction industry* was assented to on June 20, 1998.

This Act has amended various Acts concerning building contractors and the construction industry in order to facilitate their administration.

As regards the *Act respecting labour relations, vocational training and manpower management in the construction industry*, a new authority -- the construction industry commissioner -- is created to replace the office of building commissioner. Among other things, any difficulty in the interpretation or application of provisions relating to the scope of the Act must be referred to the construction industry commissioner. He/she must also, on the application of any interested party, hear and settle jurisdictional conflicts relating to the practice of a trade or occupation. In addition, if the parties to a contestation relating to one of the matters mentioned above consent thereto, the construction industry commissioner may designate a conciliator to meet with them and attempt to bring about an agreement. These provisions will come into force on a date set by the government.

In addition, the Act has amended the dispute arbitration procedure in the construction industry to enable the parties, by means of a written agreement between them, to appear before a single arbitrator or before a council of arbitration composed of three members.

The Act has also conferred additional powers on the Quebec Construction Commission to facilitate the application of collective agreements, in particular, by making it easier for the Commission to use collective agreements as evidence and, in certain cases, to bring proceedings against the directors of a legal person (e.g. a company).

Except as mentioned otherwise, the provisions mentioned above came into force on June 20, 1998.

Also in Quebec, a regulation under the *Act respecting labour relations, vocational training and manpower management in the construction industry* provides that a person domiciled in Newfoundland or in the area of Labrador that is a part of Newfoundland 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 Newfoundland or in the area of Labrador that is a part of Newfoundland, a trade which, under or pursuant to the Newfoundland and Labrador-Quebec Agreement on Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry dated April 24, 1998, is paired with one of the trades listed in 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 or in Newfoundland or in the Newfoundland part of Labrador only where that person meets the conditions indicated above or where he/she holds a competency certificate or an exemption issued by the Commission.

This Regulation came into force on June 17, 1998.

In **British Columbia**, the *Labour Relations Code Amendment Act, 1998* (Bill 26), which will come into force on a date to be set by the British Columbia Government, will bring changes to the rules governing labour relations in the construction industry.

One of the changes will allow single-person craft units where the Labour Relations Board determines that such a unit is an appropriate bargaining unit.

Other amendments will add to the *Labour Relations Code* a new Part 4.1 dealing with construction Industry labour relations. Part 4.1 of the Code includes two divisions:

Division 1 which contains general provisions relating to the construction industry, and Division 2 which provides for the establishment of multi-trade and multi-employer bargaining for the industrial, commercial and institutional (ICI) components of the construction industry.

The changes applying generally to the construction industry include the following:

- The "raiding" period during which employees can switch unions in the construction industry will be July and August.
- To prevent jurisdictional disputes, a plan for resolving work assignment and other jurisdictional issues will be considered to be part of every collective agreement negotiated for a craft bargaining unit in the construction industry.
- A construction industry collective agreement will be for a term of not more than three years (this will apply generally, but not to a project collective agreement, which may be for a term that ends when the project is completed).
- A collective agreement entered into by a trade union and a construction employer as a result of the employer having recognized the union as the bargaining agent for a unit of employees will have no effect until ratified by a majority of employees exercising their right to vote and until a copy is filed with the Labour Relations Board.
- One or more persons wishing to engage in a major project in the construction industry may apply to the Minister of Labour for the right to bargain collectively and enter into a project collective agreement for the duration of the project. If the Minister allows the establishment of a project collective agreement, the collective agreement negotiated by the parties for that project will take precedence over any other collective agreements.
- If a trade union agrees to modify the terms and conditions of a collective agreement for the purpose of enabling employers' successful bidding of a contract, it will be required to treat all employers bidding on the project in the same way.

The changes applying to the industrial, commercial and institutional (ICI) components of the construction industry include the following:

- A trade union representing employees in craft bargaining units in ICI construction will be required to bargain collectively with the Construction Labour Relations Association of B.C. (CLRA) with respect to unionized construction employees that the trade union represents in those units.
- Trade unions representing employees in craft bargaining units in ICI construction will be required to establish a bargaining council for the purpose of negotiating collective agreements, including project collective agreements. Similarly, the CLRA will be authorized to bargain on behalf of all unionized construction employers who have a bargaining relationship with a trade union representing employees in craft bargaining units within ICI construction.

- All of the collective bargaining rights, duties and obligations of building trades employers with respect to ICI construction will be delegated to the CLRA.
- The parties to a collective agreement will have an obligation to make special collective agreement arrangements that they consider reasonable for newly unionized employers for the purpose of accommodating existing projects of those employers. If an employer disagrees with such arrangements, he/she may apply to the Labour Relations Board for a determination.
- Unless a legal lockout has continued for a period of 72 hours, the bargaining council may not declare or authorize a strike without the support of the majority of affected employees and trade unions. Similarly, unless a legal strike has continued for longer than 72 hours, the CLRA may not declare or authorize a lockout without the support of the majority of affected employers.
- A collective agreement negotiated between the bargaining council and the CLRA will be for a three year term calculated from May 1 of the first year in which the collective agreement is concluded. However, a project collective agreement may be for a term that ends when the project is completed.

E. Fishing Industry

In **Newfoundland**, several amendments have been made to the *Fishing Industry Collective Bargaining Act*.

One of these amendments allows an operators' organization (i.e. persons who purchase fish to be processed in a plant from fishers or their representatives) to apply to be accredited as the only collective bargaining agent for all operators in an area. The Labour Relations Board determines the appropriate geographic area and the operators to be included in a unit for the purpose of an application for accreditation. When an operators' organization is accredited, the parties involved in bargaining are prohibited from making agreements for the sale of fish during a legal strike or lockout. The Act permits the revocation of the accreditation of an operators' organization in specified circumstances.

Another amendment provides for the establishment of a resolution method where negotiations under a collective agreement, including negotiations on fish price, break down and where, in the absence of a collective agreement, there is failure to negotiate a price for fish. Within time limits specified in the Act, the parties must each submit a final position on prices for a fish species and on other matters to an arbitrator appointed with respect of those negotiations. The arbitrator then selects one of these final positions, unless the parties have agreed to another form of arbitration.

Where, under a collective agreement, a certified bargaining agent intends to negotiate a price for a fish species, that agent must notify operators in the province which process that species of the intended negotiations. Where the bargaining agent enters into a collective agreement with respect to the price of a fish species or where that price is decided by an arbitrator and the collective agreement or decision is binding upon the operators who processed more than one-half of the total weight of that fish species in

the previous year, the terms of the collective agreement entered into or the arbitrator's decision with respect to that fish species is binding upon all operators in the province who process that fish species. However, an operator who is not bound by a collective agreement or subject to an arbitrator's decision with respect to the price of a fish species may negotiate with a certified bargaining agent to establish a different price for a fish species.

The provisions outlined in the previous two paragraphs have precedence over a term of a collective agreement or another provision of the Act which conflicts with one or more of them. A stoppage of business dealings between fishers and operators and a lockout by operators are prohibited while these provisions are in force (i.e. from January 1, 1998 to January 1, 2000).

This new legislation, which took effect on June 5, 1998, also provides for the suspension of the application of the provisions relating to stoppages of business dealings and lockouts of the *Fishing Industry Collective Bargaining Act* from January 1, 1998 to December 31, 1999).

III. OCCUPATIONAL SAFETY AND HEALTH

A. Proclamation

In **Ontario**, the *Fire Protection and Prevention Act, 1997*, which was described in the *Highlights of Major Developments in Labour Legislation (1996-1997)*, was brought into force by proclamation on October 29, 1997, except for sections repealing the *Hotel Fire Safety Act* and the *Lightning Rods Act*.

B. Legislation of General Application

In **British Columbia**, the following regulations have been revised and consolidated into a new comprehensive *Occupational Health and Safety Regulation* adopted under the *Workers Compensation Act* and the *Workplace Act*:

- the Industrial Health and Safety Regulations (a number of sections remain in effect for the farming industry)
- the Occupational Environment Regulations (a number of provisions are being retained pending an upcoming review)
- the Occupational First Aid Regulations
- the Workplace Hazardous Materials Information System Regulation, and
- the Fishing Operations Regulations.

The new Regulation took effect on April 15, 1998, except as otherwise specified. It contains 33 parts included in the following groupings:

Core Requirements

These parts generally apply to all workplaces, and cover many topics such as definitions, application of the Regulation, occupational health and safety programs, occupational health and safety committees, refusal of unsafe work, and general conditions, including, for example, the safety of buildings, structures and equipment, indoor air quality, environmental tobacco smoke, ergonomics requirements, and other requirements to maintain a safe workplace.

General Hazard Requirements

These parts apply to general hazards found in a number of industries, usually higher hazard operations, and cover topics such as confined space entry procedures, chemical and biological substances, substance specific requirements (e.g. asbestos, lead, pesticides and rock dust), noise, ionizing and non-ionizing radiation, personal protective clothing and equipment, energy sources that could cause injury, fall protection, guarding of machinery, ladders, scaffolds and temporary work platforms, cranes and hoists, the use of mobile equipment, transportation of workers, traffic control for work on roadways, and electrical safety.

Industry/Activity Specific Requirements

These parts apply to specific industries and activities such as construction, excavation and demolition, blasting operations, underground workings, oil and gas, diving, fishing and other marine operations, forestry operations, wood products manufacturing, aircraft operations, laboratories, firefighting, as well as evacuation and rescue. This grouping also includes revised occupational first aid requirements.

In response to the recommendations of the Royal Commission on Workers Compensation in British Columbia, the province also adopted the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998* (Bill 14). Among other things, that Act establishes a new legislative framework for the regulation of occupational health and safety. It will come into force on a date to be set by the government.

That Act will add a new "Part 3 - Occupational Health and Safety" - to the Workers Compensation Act. That Part will apply to the provincial government and its agencies, and to every employer and worker whose health and safety are under provincial jurisdiction. However, Part 3 and the regulations will not apply in respect of mines to which the *Mines Act* applies, railways to which the *Railway Act* applies, or to the operation of industrial camps to the extent that they are covered by regulations under the *Health Act*. With respect to industrial camps, the Lieutenant Governor in Council may, by regulation, provide for the application of Part 3 and the regulations, which will prevail over the regulations under the *Health Act* in case of conflict.

The highlights of the Act are as follows:

- Responsibility for occupational health and safety will remain with the Workers' Compensation Board of British Columbia. However, both the Board and the Lieutenant-Governor-in-Council will have regulation-making powers.
- The purposes of the legislation, the mandate of the Board with respect to occupational health and safety, and the general duties of employers, workers, suppliers and other workplace parties are set out in the Act.
- Joint employer/employee health and safety committees will be required in all workplaces with 20 or more employees (at present, this requirement applies only to workplaces classified as high-risk) and in those workplaces for which a joint committee is required by order. In addition, workplaces with ten to 19 employees and those ordered to do so by the Board will be required to have a worker health and safety representative selected from workers at the workplace who do not exercise managerial functions.
- Each member of a joint health and safety committee will be entitled to an annual paid educational leave totalling eight hours, or such longer period prescribed by regulation, for the purposes of attending occupational health and safety training courses conducted by or with the approval of the Board.

- The provisions dealing with the right to refuse unsafe work will be modified to provide that a worker may refuse to carry out work if he/she has reasonable grounds for believing that the work activities, the conditions of the work, or the conditions that would result if the work was done are such that there is or would be a significant risk that the worker or another person might be killed, or suffer serious injury or illness. The right to refuse will not apply if the refusal would directly endanger the health or safety of another person.
- An employer or union, or a person acting on behalf of either of them, will be prohibited from taking or threatening “discriminatory action”, which is broadly defined, against a worker for exercising any right or carrying out any duty in accordance with Part 3, the regulations or an applicable order, for testifying in the circumstances specified in the legislation, or for the reason that the worker has given any information relating to occupational health and safety to an employer or his/her representative, another worker, a union representing a worker, or an officer or any other person concerned with the application of Part 3.
- A worker who considers that discriminatory action was taken or threatened against him/her or that an employer has failed to pay wages to him/her, as required by Part 3 or the regulations, may have the matter dealt with through the grievance procedure under a collective agreement, if any, or by complaint to the Board. In either case, the burden of proving that there has been no contravention of the legislation will be on the employer or the union, as applicable.
- The provisions dealing with persons who contravene Part 3, the regulations or an order will put in place a more direct and immediate penalty mechanism.
- The legislation will specify that a person is not guilty of an offence if it is proven that he/she exercised due diligence to prevent the commission of the offence.
- The legislation will give the Minister the power to appoint a committee to review all or part of Part 3 and the regulations and to report to him/her concerning its recommendations. Such a review will include a process of consultations with representatives of employers, workers and other affected persons.
- The Board will be required to undertake a process of ongoing review of and consultation on its regulations to ensure that they are consistent with current workplace practices, technological advances and other changes.

The *Workplace Act* will be repealed.

In **Ontario**, a number of changes have been made to the *Industrial Establishments Regulation* made under the *Occupational Health and Safety Act* with respect to the design drawing, layout and specifications for certain types of equipment, machines or devices used in factories. Some operations are excluded from the application of the new provisions, such as logging.

In addition, some changes have been made to provisions of the *Firefighters-Protective Equipment Regulation* dealing with fire trucks specifications and equipment and the requirements that must be met when these trucks transport firefighters.

These changes took effect on December 5, 1997.

Also in Ontario, the *Economic Development and Workplace Democracy Act, 1998* (Bill 31) brought some changes to the *Occupational Health and Safety Act*, effective June 29, 1998.

As a result of these changes, adjudicators are no longer appointed under the *Occupational Health and Safety Act*. Their duties and powers are now carried out and exercised by the Ontario Labour Relations Board.

An amendment also provides that when there is an appeal from an order of an inspector, the Board may authorize a labour relations officer to inquire into the appeal, and he/she then attempts to effect a settlement of the matters that have been raised.

Another amendment to the *Occupational Health and Safety Act* has given the Ontario Labour Relations Board and persons with powers under that Act or the *Smoking in the Workplace Act* the capacity to accept certain delegations under federal legislation.

In **Alberta**, amendments have been made to the Parts of the *Chemical Hazards Regulation* under the *Occupational Health and Safety Act*, which deals specifically with asbestos, coal dust and silica.

The amendments have removed from these three Parts the obligation for an employer to send to a Director of Medical Services, before February 1 of each year, a written notice, in the prescribed form, containing information about each exposed worker who worked for the employer during the previous year. A new provision requires the physician, who provides a written interpretation to the worker of the results of his/her health assessment, to ensure that the records of the health assessment are maintained for a minimum period of 30 years.

These amendments took effect on August 27, 1997.

A number of amendments have also been made to the *Noise Regulation* under Alberta's *Occupational Health and Safety Act*. They provide, among others things, that an employer must ensure that the records of all baseline audiograms taken within six months after an employee becomes a "noise exposed worker" are retained by a designated audiometric technician for a minimum period of 10 years. The requirement that an employer send to the Director of Medical Services at certain intervals a form concerning noise exposed workers was abolished.

An audiometric technician who conducts audiometric tests must forward to a physician or audiologist designated by the employer any audiograms categorized by him/her as abnormal or abnormal shift, together with the corresponding baseline audiograms taken within six months after the employees became noise exposed workers. If the physician or audiologist confirms the audiogram to be abnormal or abnormal shift, he/she must so inform the worker within 30 days. The physician or audiologist reviewing abnormal or abnormal shift audiograms for an employer must advise the employer as to the effectiveness of the hearing conservation program without divulging individual test results.

The physician or audiologist to whom an audiogram, categorized by an audiometric technician as abnormal or abnormal shift, is forwarded must retain records of the audiometric tests for a minimum period of 10 years.

These amendments took effect on August 27, 1997.

In **New Brunswick**, various amendments, many of which of a housekeeping nature, were made to the *General Regulation* under the *Occupational Health and Safety Act* on January 1, 1998. These amendments notably include a new Part on equipment for firefighters. However, this Part does not apply to an underground mine.

In the **federal jurisdiction**, effective April 1, 1998, Regulations under the *Canada Labour Code* have excluded employment on or in connection with a Ontario Hydro nuclear facility from the application of the occupational health and safety provisions of Part II of the *Canada Labour Code*.

The Regulations incorporate by reference the Ontario *Occupational Health and Safety Act* (R.S.O. 1990, c. O.1, with some non applicable provisions) and any regulations made under it, as amended from time to time, with a few modifications being made to the Act and regulations. They apply to nuclear facilities owned or operated by Ontario Hydro and subject to the *Atomic Energy Control Act* and regulations made under it.

Also effective April 1, 1998, federal Regulations under the *Non-smokers Health Act* have excluded employment on or in connection with a Ontario Hydro nuclear facility from the application of the provisions dealing with protection against tobacco smoke contained in the *Non-smokers' Health Act*.

The Regulations incorporate by reference the Ontario *Smoking in the Workplace Act*, as amended from time to time, with a modification being made. They apply to nuclear facilities owned or operated by Ontario Hydro and subject to the *Atomic Energy Control Act* and regulations made under it.

C. Radiation Protection

In **Alberta**, an amendment was made to the *Radiation Protection Regulation* under the *Radiation Protection Act*.

This amendment requires, among other things, compliance with new safety codes dealing with radiation protection in dentistry and veterinary medicine, and provides safety requirements for analytical X-ray equipment and baggage X-ray inspection systems.

In addition, the annual maximum exposure limits for ionizing radiation applying to body organs or tissues of radiation workers and members of the public have been revised. In many instances, they have been reduced, such as the exposure limit of a pregnant worker's abdomen.

This amendment took effect on August 27, 1997.

At the **federal level**, effective April 1, 1998, amendments to the *Radiation Emitting Devices Regulations* under the *Radiation Emitting Devices Act* have broadened the regulatory requirements for X-ray diffraction equipment to include other radiation-emitting devices which also pose X-ray radiation hazards. Equipment such as X-ray spectrometers and other analytical X-ray equipment are covered by the amendments. The amendments incorporate reduced radiation emission limits, new definitions, simpler safety requirements, and slightly modified labelling information.

D. Protection Against Tobacco Smoke in the Workplace

In **Newfoundland**, new *Smoke-free Environment Regulations* under the *Smoke-free Environment Act* provide that an employer must, by posting clearly visible signs, inform all employees in a workplace under his/her control that smoking is prohibited in all work spaces, except in designated smoking areas whose location is indicated. If the members of the public are admitted in the workplace, the employer must, by means of a clearly visible sign posted at each entrance they use, inform them that smoking is prohibited in the workplace or that it is permitted only in designated smoking rooms. An employer or owner of a public place must ensure that signs, air cleaning systems or independent mechanical ventilation systems required by the Regulations are posted or installed. Smoking is permitted in designated smoking rooms or smoking areas only if the required ventilation equipment is installed and in operation.

In **Quebec**, the *Tobacco Act* was assented to on June 17, 1998.

Among other things, this Act prohibits smoking in certain enclosed spaces, such as premises used by health institutions, educational institutions and child care services, in means of public transportation and in workplaces, except those situated in a dwelling. Closed smoking rooms may be set aside in most of these places, including workplaces. These smoking rooms may be used only for smoking and must be equipped with a system which allows smoke to be evacuated directly to the outside of the building. In addition, in certain places, such as bus or railway passenger stations, and commercial establishments where food is consumed on the premises, an area where smoking is permitted may be set aside. In such circumstances, the protection provided to non-smokers must be maximized, having regard to the total floor space, use and ventilation of the place. In workplaces and other places mentioned above, an easily seen notices must be posted to indicate the areas where smoking is prohibited.

The government may make regulations determining the cases, conditions and circumstances in which and places where smoking is permitted even if it is prohibited, save some exceptions. It may also determine standards concerning the construction or the layout of smoking rooms and areas where smoking is permitted, the ventilation systems of these smoking rooms and areas, and the notices required by the Act.

For the purposes of enforcing the Act in workplaces, the Minister of Health and Social Services may appoint any person or designate any class of persons to perform inspection duties. Fines are applicable in cases involving a violation of the Act.

The provisions mentioned above will come into force on December 17, 1999 or on any earlier date or dates set by the government. Despite the provisions prohibiting smoking

in workplaces, smoking will be permitted in a non-ventilated smoking room until 18 months after the date of coming into force of these provisions, or 48 months in a workplace with fewer than 50 employees.

The *Act respecting the protection of non-smokers in certain public places* will be repealed on December 17, 1999 or on any earlier date or dates set by the government.

E. Mining Safety

In **Manitoba**, effective October 27, 1997, some amendments were made to the *Operation of Mines Regulation* under the *Workplace Safety and Health Act*, notably with respect to the operation of mechanical or mobile equipment near certain openings at a mining plant or underground mine.

F. Boilers and Pressure Vessels

In **New Brunswick**, *An Act to Amend the Boiler and Pressure Vessel Act* came into force on February 26, 1998. It provides, among other things, that the Gas Board, instead of the Lieutenant-Governor in Council, may designate examiners for the purpose of examining candidates for compressed gas licences. The examination given a candidate for any class of compressed gas licence and the degree of competency he/she must display to successfully pass the examination must be acceptable to the Gas Board.