

HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

August 1, 1998 to July 31, 1999

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I. EMPLOYMENT STANDARDS

A. Proclamations

Manitoba's *Employment Standards Code and Consequential Amendments* (Bill 28), which was described in the *Highlights of Major Developments in Labour Legislation (1997-1998)*, was brought into force on May 1, 1999. It brought together under one law the *Employment Standards Act*, the *Vacations with Pay Act* and the *Payment of Wages Act*.

Several regulatory amendments became effective on the coming into force of the new Code, such as the new *Minimum Wages and Working Conditions Regulation* which consolidates many of the provisions found previously in four separate regulations. Although most changes are the result of a more streamlined and simplified presentation and the need to adjust the references to the new Code, there are new provisions.

It is now the responsibility of the Director of Employment Standards, rather than the Minister, to issue permits for the employment of individuals with disabilities at a wage below the minimum wage. In so doing, the Director must ensure that an evaluation is done of the employee's ability to perform the work.

The new provision on deductions for meals and lodging provides that an employer cannot reduce the amount of the wages of the employee below the minimum wage by more than \$1.00 per meal and \$7.00 for one week's lodging. The former provision did not refer to the minimum wage. Also, under the new Regulation, the length of the work break has been reduced from a minimum of one hour to a minimum of 30 minutes.

The new Regulation excludes some salespersons remunerated in whole or in part by commission from hours of work and overtime provisions. The sales persons that are affected are those who are engaged in soliciting orders, principally outside the employer's place of business, for goods or services to be later delivered or provided to the purchaser. This exclusion does not apply to a route salesperson which the regulation defines as an employee who is employed primarily as a delivery and stock person who delivers goods mainly to established customers of the employer and for whom any selling of products is incidental to those duties. The previous exclusion applied to traveling salespersons employed on an incentive basis or regularly traveling more than 10 miles in a day in the course of duties.

No later than January 1, 2005, the Minister must review the effectiveness of the operation of the Regulation and, if he or she considers it advisable, recommend that the Regulation be amended or repealed.

B. Legislation of General Application

British Columbia introduced regulatory amendments affecting four specific employment areas. The first amendment, and possibly the most significant, concerns changes to the *Employment Standards Regulation* to accommodate the special needs of high technology

companies and their employees. This amendment came into force on February 1, 1999.

A high technology company is defined as a company having more than 50 percent of employees who are either high technology professionals, managers of such high technology professionals or are employed in an executive capacity.

A high technology professional needs to meet the following three conditions: a) be employed in one of the many types of employment listed in the regulations (such as a computer systems analyst, an Internet development professional, a computer programmer, a software engineer, and other similarly skilled workers), b) have in his/her contract of employment a form of performance based pay in addition to a regular salary, and c) meet the prescribed education or work experience. A subsequent amendment has included stock options as part of a performance based compensation package described in b).

High technology professionals are exempted from Part 4 of the *Employment Standards Act* which deals with hours of work and overtime, with the exception of section 39 of the Act which still applies and stipulates that employers must not require or allow an employee to work excessive hours detrimental to the employee's health or safety. High technology professionals are also exempted from the application of Part 5 of the Act which deals with statutory holidays.

Special provisions apply to employees of high technology companies who are not high technology professionals. For instance, the obligation that an employer provide a weekly period of at least 32 consecutive hours free from work does not apply to them, nor does the obligation that an employer give a 24-hour notice of a shift change, or pay overtime wages for work beyond 8 hours per day, or 40 hours per week. However, employers must give these employees at least a 24-hour notice before requiring them to work beyond their regular shift. In regard to overtime, employers must pay at least the equivalent of 1½ times the regular wage for work over 12 hours in a day or 80 hours in 2 weeks. There are other special provisions applicable to these workers.

The second employment sector affected is farm labour for which a series of regulatory amendments have modified the duties of farm labour contractors, and the pay and benefits of farm workers. As a result of the changes, farm labour contractors are required to keep at the work site and make available for inspection by the Director of Employment Standards a daily log that includes the name of each worker, the name of the employer and work site to which workers are supplied, the names of the workers who work on that work site, the dates worked by each worker, the fruit, vegetable, berry or flower crop picked each day by each worker, and the volume or weight picked each day by each worker. Moreover, the amendment stipulates that those records must be in English, be kept at the employer's principal place of business in British Columbia and be retained by the employer for three years after employment terminates.

The minimum wage for farm workers employed on a piece work basis to hand harvest fruit, vegetable or berry crops has been increased by 3.6% to cover statutory holiday pay and by 4% to cover vacation pay. For example, under the amendment, farm workers on a piece rate basis hand harvesting raspberries receive a minimum wage of \$0.302 per pound instead of \$0.281 per pound. Part 5 of the Act dealing with statutory holidays and section 58 of the Act dealing with vacation pay do not apply to these workers, and their

employers, on condition that farm workers receive not less than the minimum wage.

Provisions of the Act dealing with the banking of overtime now apply to farm workers. So does section 39 of the Act which forbids an employer to require or allow an employee to work excessive hours or hours detrimental to the employee's health or safety. Under the amended regulation, farm workers not paid on a piece rate basis and who are required to work on a statutory holiday, are entitled, after 30 days of employment, to a day off in lieu of that day, within 6 months of the statutory holiday, or the regular rate of pay if the farm workers did not work on the statutory holiday. Alternatively, the employer may pay statutory holiday pay on each pay cheque at a rate of 3.6% of gross earnings

The third employment sector affected is that of taxi drivers. A regulatory amendment has extended to persons seeking employment as taxicab drivers the protection afforded under section 10 of the Act which forbids persons from charging a fee for employing someone. However, this protection does not apply to a taxi driver driving a leased taxi.

Also, if an employer leases a taxi to a taxi driver, the employer must pay any shortfall that arises if the taxi driver does not recover in fares an amount at least equal to the cost of the lease, plus the minimum wage for the hours worked. Where the taxi is not leased, the employer must pay any shortfall when the taxi driver does not recover in fares an amount equal to or greater than the minimum wages for the hours worked.

The amendment extends to taxi drivers and their employers the application of several provisions of the Act, such as section 27 (dealing with the obligation to provide an itemized written wage statement); section 31 (dealing with the obligation to post hours-of-work notices); section 32 (dealing with the provision of a meal break); or section 36 (dealing with weekly and daily work-free periods). On the other hand, some provisions of the *Act* do not apply to taxi drivers, such as section 35 (dealing with maximum hours of work); section 40 (dealing with overtime wages); or, section 42 (dealing with banking of overtime wages). Finally, the amendment provides for the payment of at least double the regular wage for hours worked in excess of 120 hours within 2 consecutive weeks. There are other special provisions applicable to taxi drivers.

This amendment came into force on July 31, 1998.

The fourth sector of employment affected concerns talent agencies. On June 29, 1999, British Columbia adopted Bill 65, the *Labour Statutes Amendment Act*, which amended the *Employment Standards Act* in introducing provisions which allow the recovery of unpaid wages from talent agents on behalf of an actor.

Under the amendment, a "talent agency" is defined as a "person that, for a fee, engages in the occupation of offering to procure, promising to procure or procuring employment for actors, performers, extras or technical creative film personnel". The amendment requires that talent agencies must be licensed under the Act in order to operate.

New provisions stipulate that a talent agency that has failed to pay wages received from an employer on behalf of an employee may be required, by determination, to pay those wages, with interest, to the employee, less allowable fees. Generally, this provision affects wages received by the talent agency up to 24 months before the date of a

complaint or, in any other cases, 24 months before the Director of Employment Standards first told the agency of the investigation that resulted in the determination. Unpaid wages constitute a lien, charge and secured debt in favour of the Director against all the real and personal property of the agency, including money due to the agency.

When a talent agency is a corporation, a person who was director or officer of the corporation at the time the wages were received is personally liable for the amount received by the corporation. That amount is considered to be unpaid wages which may be recovered under the Act from such persons that are liable.

In the **Yukon**, *An Act to Amend the Employment Standards Act* (Bill 53) was assented to December 7, 1998 and became effective on that date.

This Act has introduced a significant change to the definition of "employee" which has been expanded to include contract workers. This means that contract workers are considered employees under the employment standards legislation and are subject to its provisions. Not all contract workers are affected. The Act defines a "contract worker" as a worker who performs work or services for another person for compensation or reward on such terms and conditions that (a) the worker is in a position of economic dependence upon, and under an obligation to perform duties for, that person, and (b) the relationship between the worker and that person more closely resembles the relationship of employee to employer. The definition includes contract workers whether or not they are employed under a contract of employment, or whether or not they are furnishing tools, equipment or other things they own.

The Act has also introduced a measure that allows any person, including third parties, to make a complaint that an employer has violated the *Employment Standards Act*. Another measure provides the Director of Employment Standards, in regard to certain violations by an employer, with the option of levying an administrative penalty of \$500, as an alternative to prosecution. Also, in the case of unpaid wages, the director must include in a certificate issued for unpaid wages an administrative penalty of 10% of the unpaid wages or \$100, whichever is greater; likewise, when an employer is convicted of failure to pay wages, the presiding judge must impose a penalty equal to 10% of unpaid wages, to be paid by the employer.

Ontario introduced several changes to the working conditions of persons employed in the garment industry, namely the women's coat and suit industry (formerly the Ladies' Cloak and Suit Industry) and the women's dress and sportswear industry (formerly the Ladies' Dress and Sportswear Industry). The provisions applicable to each industry, which are found in schedules within two separate regulations, were amended and re-arranged to be identical.

Several changes bring the working conditions above minimum requirements found in the *Employment Standards Act*, namely in regard to overtime pay above 40 hours per week instead of above 44 hours per week under the *Employment Standards Act*.

An amendment stipulates that an employer may not require or allow an employee to perform work between midnight and 6:00 a.m. Work on Victoria Day and Canada Day is

only allowed if the employee or the employee's agent agrees. In addition, under the new Regulations, it is possible to substitute another day for the public holiday.

The new provisions stipulate that the regular work day may not exceed eight hours (not including eating periods), and the regular work week may not exceed 40 hours. Depending on the industry, the previous requirements were 7 and 7½ hours per day, and 35 or 37½ hours per week. The new provisions forbid an employer to require an employee to work overtime unless the employee or the employee's agent agrees.

New provisions establish rules for one-shift and two-shift work schedules. Wages for the later shift must be at least 5% more than what the employee would have received for the earlier shift.

The new Regulations acknowledge the entitlement of homeworkers to some advantages, such as the right to overtime pay (after 40 hours worked in a week) and paid public holidays.

An important change is the requirement to pay employees at least the minimum wage established under the *Employment Standards Act* instead of the minimum wages set for 10 or 17 employment classifications (depending on the industry) under the previous regulations. Also, a joint Advisory Committee, replacing the two previous committees, is established to administer both the women's coat and suit industry and the women's dress and sportswear industry regulations.

These amendments came into force on April 30, 1999.

Prince Edward Island made two regulatory changes regarding deductions from an employees' pay. An amendment to the *Minimum Wage Order* stipulates that employers may not make deductions from an employee's pay for footwear or uniform expenses when these articles are unique to the employer's business and identified with it, to the extent that the footwear or uniform would be of no practical use should the employment be terminated. However, an employer may require a deposit of up to 25% of the cost of the unique uniform or footwear.

The amendment also stipulates that employers may not deduct from an employee's pay to cover cash shortages where the employee does not have sole control of the cash and the employee is required to leave the cash unattended. In case of shortage, the employer must advise the employee at the end of the shift of the cash shortage and allow the employee the opportunity to explain or find the shortage. The employer may deduct the amount of the cash shortage from the employee's pay if the employer can verify to the satisfaction of an inspector, before the end of the employee's pay period during which the shortage occurred, that the employee is responsible for a cash shortage.

In addition, an amendment to the *Employment Standards Act Regulations* stipulates that employers may not make deductions from an employee's pay except when it is authorized or required by statute, where the employer and the employee mutually agree, where it is ordered by a court, when it results from an advance of wages or of vacation pay, or where it is authorized by the *Minimum Wage Order*. The new Regulation must be posted in a conspicuous place in the work establishment.

The amendments to the *Minimum Wage Order* and to the *Employment Standards Act Regulations* came into force on September 19, 1998.

Quebec introduced five Bills, two of which have been adopted.

The *Midwives Act* (Bill 28) provides for the constitution of a professional order conferring on its members an exclusive right to engage in the practice of midwifery. Midwives will be authorized to practice under a service contract with an institution that operates a local community service center. As a result of the *Midwives Act*, two consequential changes were made to Quebec's *Act respecting labour standards*.

One amendment confirms that an employee may be absent from work without pay for an examination related to her pregnancy carried out by a midwife. The previous version only referred to examinations carried out by a midwife pursuant to the *Act respecting the practice of midwifery within the framework of pilot projects*. This reference has been removed.

The second amendment provides that with the notice of maternity leave given by the employee to her employer, a written report signed by a midwife can be given to the employer, instead of a medical certificate.

These changes come into force on September 24, 1999.

Secondly, the *Act to amend various legislative provisions concerning de facto spouses* (Bill 32) has amended Acts and regulations that contain a definition of the concept of de facto spouse to allow de facto unions to be recognized without regard to the sex of the persons concerned.

As a result, the definition of "consort" under Quebec's *Act respecting labour standards* has been modified to mean either of two persons who: a) are married and cohabiting; b) are living together in a de facto union and are the father and mother of the same child; c) *are of the opposite sex or the same sex* and have been living together in a de facto union for one year or more.

The word "consort" is used in *An Act respecting labour standards* mostly under the provisions on leave for family events. The amendment came into force on June 16, 1999.

Thirdly, Bill 67, *An Act to amend the Act respecting labour standards as regards differences in treatment*, was tabled on June 4, 1999.

This Bill proposes to prohibit, in an agreement or decree, differences in treatment based solely on the date of hiring between employees performing the same tasks in the same establishment. The proposed amendments would apply to labour standards provisions such as those dealing with wages, hours of work, statutory holidays, annual leave, rest periods, leave for family events, and notices of termination.

The Bill proposes that a condition of employment based on seniority or years of service would not constitute a contravention, nor would a wage rate resulting from a change in the

range of the wage scale applicable to all the employees performing the same tasks in the same establishment. Other exceptions are provided.

The prohibition against differences in treatment based on the date of hiring would take effect from the third anniversary of assent of the Bill, thus providing a period of transition to enable policies and practices to adapt progressively. The proposed Act would cease to have effect on December 31, 2004, or on any other date determined by the government. The Bill stipulates that the Minister of Labour must report to the government on the application of the new provisions not later than the fifth anniversary of the assent of the Bill.

Bill 67 has not yet been adopted.

The fourth Bill, Bill 50, *An Act to amend the Act respecting labour standards and other legislative provisions concerning work performed by children*, was tabled on May 13, 1999

This Bill is a consolidation of provisions on work performed by children. It proposes to prohibit employers from having children perform work that is disproportionate to their capacity or that is likely to be detrimental to the child's education, health or physical or moral development.

The Bill also proposes to prohibit an employer who is pursuing activities for profit to have work performed by a child under 14 years of age without first obtaining the written consent of the holder of parental authority or of the tutor. According to an amendment proposed in parliamentary committee, but not yet approved, the reference to the pursuit of activities for profit by employers would be removed so as to extend the application of this provision to all employers.

In addition, the Bill proposes to prohibit employers from having work performed during school hours by a child who is subject to compulsory school attendance. Moreover, the Bill proposes that an employer who has work performed by a child subject to compulsory school attendance must ensure that the child's work is scheduled so that he/she is able to attend school during school hours. The prohibition to have work performed during school hours is currently found in section 16 of the *Education Act*.

Finally, the Bill proposes to prohibit employers from having work performed by a child between 11 p.m. on any given day and 6 a.m. on the following day, except in the case of a child no longer subject to compulsory school attendance, or in the case of newspaper deliveries, or in any other case determined by regulation. Moreover, an employer who has work performed by a child must schedule the work so that the child may be at the family residence between 11 p.m. on any given day and 6 a.m. on the following day, except in the case of a child no longer subject to compulsory school attendance or in cases to be determined by regulation. Similar provisions on the work of children in relation to the period between 11 p.m. and 6 a.m. are already included in the *Act respecting labour standards* but have not been proclaimed into force.

Bill 50 has not yet been adopted.

Finally, the fifth Bill, Bill 47, *An Act respecting the conditions of employment in certain sectors of the clothing industry and amending the Act respecting labour standards*, was tabled on May 13, 1999.

The Bill would extend the term of the four collective agreement decrees in force in the clothing industry to December 31, 1999. The four decrees affect the men's and boys shirt industry, the women's clothing industry, the men's clothing industry and the leather glove industry. After December 31, 1999, the government will be able under the proposed legislation to prescribe by regulation minimum conditions of employment, for a transition period not exceeding two years beginning on January 1, 2000.

After that period, under the proposed Bill, the government will then prescribe labour standards applicable to the four sectors of the clothing industry covered by the collective agreement decrees. Under the proposed legislation, as was the case for the two-year transition period, the standards may relate to the minimum wage, the standard workweek, statutory holidays, annual leave, meal periods and leave for family events. To establish the labour standards, it is proposed that the Minister consult with a body he/she considers to be representative. This body will be able, on its own initiative, to propose standards to the Minister.

In addition, the proposed legislation provides that the Labour Standards Commission (Commission des normes du travail) establish a specific program for the monitoring of the clothing industry and that the Commission consult a representative body in that respect. For the purposes of the program, the Bill proposes to make possible the imposition of an additional contribution on employers in the clothing industry.

The Bill includes provisions designed to finance the deficit of the vacation fund in the women's clothing industry. The Bill also provides a mechanism to resolve difficulties arising from the application of the minimum conditions of employment.

Bill 47 has not yet been adopted.

The new territory of **Nunavut** was the subject of regulatory amendments by Alberta, Manitoba, the Northwest Territories and the Yukon, each for the purpose of reciprocity in the enforcement of orders, awards, certificates or judgments for the payment of wages or earnings.

C. Fair Wages

In the **Yukon**, by virtue of an Order made pursuant to the *Employment Standards Act*, the new Fair Wage Schedule established by the Employment Standards Board, was approved. The Fair Wage Schedule is applicable to all public works in respect of which the government of Yukon calls for tender on or after April 1, 1999. A first increase occurred on April 1, 1999, to be followed by a second increase on April 1, 2000. Classes of employment under four Categories are affected. For instance, under the revised schedule, the wage rate of Category A classes of employment (such as boilermakers, bricklayers, carpenters, crane operators, and several others) increased from \$21.50 to \$22.50 per hour on April 1, 1999, and will increase again to \$23.50 per hour on April 1, 2000.

Also in the Yukon, a new provision introduced by *An Act to Amend the Employment Standards Act* (Bill 53) calls for the review at least once every three years of the Fair Wages Schedule.

In the **federal jurisdiction**, an important proposed amendment to the Regulations made under the *Fair Wages and Hours of Labour Act* would authorize the adoption of the current provincial wage rates as the federal fair wage rates. Under the proposed amendment, the fair wage schedules would be made available to the public.

With regard to hours of work, the proposed amendment stipulates that the hours of work, including the hours of work in excess of which overtime must be paid, must be the hours of work for the province where work is performed.

Other proposed changes include the addition of ethnic origin, sexual orientation, disability, conviction for which a pardon has been granted, and family status as prohibited grounds of discrimination in the mandatory non-discrimination clause on hiring and employment.

Also, under the proposed amendment, the requirement that only persons residing in Canada be employed under contracts subject to the fair wages and hours of work legislation would be removed.

D. Minimum Wages

Four jurisdictions introduced regulatory amendments to increase minimum wage rates.

In **Saskatchewan**, by way of the *Minimum Wage Board Amendment Order, 1998*, the general minimum wage rate was increased from \$5.60 to \$6 per hour. The new rate was effective January 1, 1999. In addition, under the amendment, also effective January 1, 1999, employees required to report for duty, other than for overtime, must be paid a minimum sum of \$18, whether or not they are required to be on duty for three hours.

In **Manitoba**, by way of an amendment to the *Minimum Wages and Working Conditions Regulation*, the general minimum wage rate was increased from \$5.40 to \$6 per hour for work done during standard hours, effective April 1, 1999.

Newfoundland's *Labour Standards Regulations* was amended to increase the general minimum wage from \$5.25 to \$5.50 per hour, effective October 1, 1999. The wage rate will apply to every employee, 16 years of age and over. A consequential amendment increases the minimum rate for overtime wages from \$7.89 to \$8.25 per hour, also effective October 1, 1999.

In **Nova Scotia**, a number of orders on minimum rates were adopted. As a result, there will be a three-step increase in the general minimum wage which will go from \$5.50 to \$5.60 per hour on October 1, 1999, followed by an increase to \$5.70 per hour on October 1, 2000, and an increase to \$5.80 per hour on October 1, 2001. Also, the minimum hourly rate for inexperienced workers is increased from \$5.05 to \$5.15 on October 1, 1999, followed by an increase to \$5.25 on October 1, 2000, and another increase to \$5.35 and October 1, 2001. A series of maximum rates for board, lodging and

meals that can be deducted from minimum wages were also adjusted, as well as the minimum wage rates for workers in road building and heavy construction industry, and in forest operations.

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), which was described in the *Highlights of Major Developments in Labour Legislation (1997-1998)*, was brought into force on January 1, 1999.

In **New Brunswick**, amendments to the *Industrial Relations Act*, passed on February 28, 1997, were proclaimed into force on November 12, 1998. They permit, in certain circumstances, requests for grievance mediation, when both parties agree, and expedited grievance arbitration if there is no mediation or it is unsuccessful. An amendment authorizing the Minister of Labour to appoint a committee to advise him/her with respect to persons qualified to act as arbitrators and other matters relating to the arbitration process remains unproclaimed. These amendments were described in the *Highlights of Major Developments in Labour Legislation (1996-1997)*.

In **Ontario**, the *Prevention of Unionization Act (Ontario Works), 1998* (Bill 22) was assented to and came into force on December 18, 1998.

This Act has amended 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 includes participation by welfare recipients under the Ontario Works Program.

Another amendment specifies 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* is not 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 December 17, 1998.

B. Public and Parapublic Sectors

In the **federal** jurisdiction, Part 3 of the *Budget Implementation Act, 1999*, which was assented to on June 17, 1999, has extended until June 20, 2001 the suspension of binding arbitration as a dispute resolution process during collective bargaining between the Treasury Board and the bargaining agents representing Public Service employees. This suspension also applies to separate employers as defined in the *Public Service Staff Relations Act* (e.g. the Canadian Food Inspection Agency and the Canadian Security Intelligence Service), if they are designated by order of the Governor in Council.

In **Manitoba**, *The Essential Services Amendment Act* (Bill 27) was assented to on June 1,

1999. Effective on a date fixed by proclamation, this Act amends *The Essential Services Act* to extend its application to the City of Winnipeg, as it pertains to ambulance services.

In **Quebec**, *An Act to ensure that essential services are provided to the Office municipal d'habitation de Montréal* (Bill 70) came into force on June 16, 1999. Its purpose is to ensure that essential services are established and maintained at the Office municipal d'habitation de Montréal (Montreal Municipal Housing Agency) in the event of a strike. To that end, this agency is deemed to be a public service within the meaning of the *Labour Code* until a date to be determined by the government.

C. **Emergency Legislation**

In **Ontario**, the *Back to School Act, 1998* (Bill 62) was assented to on September 28, 1998.

This Act was passed to resolve labour disputes involving strikes and lockouts at the schools of a number of school boards. It applies to boards and bargaining units listed in a schedule, when they or their representatives had not concluded a collective agreement during the period starting on January 1, 1998 and ending on September 27, 1998.

The striking teachers were required to terminate any strike and resume their duties on September 29, 1998 (exceptions were provided for those not returning to work for health reasons or by mutual consent of the teachers and the school board). The boards, for their part, were to terminate any lockout and resume the normal operation of the schools.

Fines were provided for a contravention of these provisions by an individual (maximum: \$2,000) and by a school board or trade union (maximum: \$25,000). These fines were applicable to each day on which the contravention occurred or continued.

The Act provided for the terms and conditions of employment of the members of a scheduled bargaining unit until a new collective agreement was made with respect to it. Either party could, by notice in writing to the other party and the Minister of Labour, require that the matter in dispute between them relating to a scheduled bargaining unit be decided by mediation-arbitration. The parties could jointly appoint a mediator-arbitrator or request the Minister to appoint one. Each party had to pay one-half of the fees and expenses of the mediator-arbitrator.

If no new collective agreement was concluded by the parties, the mediator-arbitrator was to make an award consistent with the *Education Act* and the regulations made under it, and permitting the scheduled board to comply with that legislation. He/she could not make an award that would interfere with certain matters relating to the instruction of pupils. In addition, the mediator-arbitrator was to make an award that he/she considered, having regard to relevant education funding regulations and Ministry of Education and Training policies, could be implemented in a reasonable manner without causing the scheduled school boards to incur a deficit.

Every new collective agreement implementing an award made under the Act is effective for the period beginning September 1, 1998 and ending on August 31, 2000.

The Act also contains provisions dealing with the issue of lost instructional time. It came into force on September 29, 1998.

In **Saskatchewan**, *The Maintenance of Saskatchewan Power Corporation's Operations Act, 1998* (Bill 65) was passed on October 19, 1998 to bring an end to a labour dispute between Saskatchewan Power Corporation and the International Brotherhood of Electrical Workers, Local Union 2067, that had resulted in a work stoppage.

On October 20, 1998, the members of the union were required to continue or resume the duties of their employment, and the corporation and its representatives were required to permit them to do so. They had to comply with this requirement, unless they had a valid excuse for not doing so.

The last collective bargaining agreement between the parties was extended from January 1, 1998 to December 31, 2000. Wages were to be calculated as if the wage schedules of that agreement were increased by 2% effective January 1, 1998, by an additional 2% effective January 1, 1999, and by another 2% effective January 1, 2000. If the union and the corporation agreed to amend the last collective bargaining agreement for that purpose, the corporation could increase monetary and other benefits, other than wages, to be allowed to employees during the period of extension by a maximum of 1% of wages payable as at December 31, 1997. However, the compounded total amount of moneys paid with respect to those benefits during the period of extension was not to exceed 2% of wages payable as at December 31, 1997. Work stoppages are prohibited during that period of extension of the last collective bargaining agreement.

Nothing in the Act prevents the corporation and the union from agreeing to modify or revise the last collective bargaining agreement.

Fines are provided for a contravention of the Act by the corporation, the union or a representative of either of them (a maximum of \$10,000, and \$2 000 for each day or part of a day during which the offence continues) or by any other person (a maximum of \$2,000, and \$400 for each day or part of a day during which the offence continues).

This Act came into force on assent and remains in force until December 31, 2000.

Also in Saskatchewan, *The Resumption of Services (Nurses - SUN) Act* (Bill 23) was assented to on April 8, 1999.

This Act was passed to bring an end to a labour dispute between a representative employers' organization (representing, among others, District Health Boards, hospitals and nursing homes) and the Saskatchewan Union of Nurses, that had resulted in a strike.

On April 8, 1999, the members of the union were required to continue or resume the duties of their employment, and the employers were required to permit them to do so. They had to comply with this requirement, unless they had a lawful excuse for not doing so.

No person could in any manner impede or prevent, or attempt to impede or prevent, any employee from complying with the Act or counsel any employee not to comply with it.

The last collective bargaining agreements governing employees' employment were extended until a new collective bargaining agreement was concluded between the representative employers' organization and the union. Wages were to be calculated as if the applicable rates of pay were increased by 2% effective April 1, 1999, by an additional 2% effective April 1, 2000, and by another 2% effective April 1, 2001. If the representative employers' organization and the union concluded a new collective bargaining agreement, they were required to include provisions to increase the rates of pay in the manner just described, and could include provisions to increase monetary and other benefits (other than rates of pay), by a maximum of 1% of wages payable in the period starting on April 1, 1998 and ending on March 31, 1999 (hereinafter called the reference period). However, the compounded total amount of moneys paid with respect to those benefits during the period of the new collective bargaining agreement could not exceed 2% of wages payable during the reference period. The parties could also include provisions to address disparities between employees that resulted from the implementation of *The Health Labour Relations Reorganization (Commissioner) Regulations*, subject to the restriction that the amount of money paid did not exceed 1.2% of wages payable in the reference period.

Any new collective bargaining agreement concluded between the representative employers' organization and the union had to comply with the restrictions mentioned above and must expire on or after March 31, 2002. Work stoppages are prohibited during the period of extension of the last collective bargaining agreements.

Nothing in the Act prevents the representative employers' organization and the union from agreeing to modify or revise a new collective bargaining agreement concluded by them.

Fines are provided for a contravention of the Act by the representative employers' organization, or by an employer, the union or a representative of either of them (a maximum of \$50,000, and \$10,000 for each day or part of a day during which the offence continues) or by any other person (a maximum of \$2,000, and \$400 for each day or part of a day during which the offence continues).

In the **federal** jurisdiction, the *Government Services Act, 1999* (Bill C-76) was assented to on March 25, 1999.

This Act contains two parts, Part I - Operational Groups, applying to blue-collar workers, and Part 2- Correctional Groups.

Part I provided a mechanism for the settlement of a labour dispute between the Treasury Board and the Public Service Alliance of Canada representing blue-collar workers.

That legislation required the resumption or continuation of government services and of the employees' duties 12 hours after it was assented to, and extended the term of the master agreement and each group specific agreement until the parties were bound by a single collective agreement concluded by them or whose terms and conditions were prescribed by the Governor in Council, on the recommendation of the Treasury Board, taking into account collective agreements entered into by the employer in respect of other bargaining units in the Public Service since the *Public Sector Compensation Act* ceased to apply to

compensation plans applicable to them. No strike is permitted while such a collective agreement is in effect.

Nothing prevents the parties from agreeing to amend any provision of a collective agreement whose terms and conditions have been prescribed by the Governor in Council.

Fines are provided for a contravention of the Act by an individual (maximum: \$1000), by an officer or representative of the employer or of the bargaining agent (maximum: \$50,000) or by the bargaining agent (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.

A fine imposed under this Part of the Act may be recovered in any court of competent jurisdiction or by any manner provided for in any Act of Parliament. In the case of a bargaining agent or one of its officers or representatives, such a fine may be recovered by deducting the amount, in whole or in part, from the amount of the membership dues that the employer is or may be required, under any collective agreement between the parties, to deduct from the pay of concerned employees and to remit to the bargaining agent.

Part 2 of the Act provided a mechanism for the settlement of a labour dispute between the Treasury Board and the Public Service Alliance of Canada representing correctional officers.

That legislation required the resumption or continuation of government services and of the correctional officers' duties after 14:00 hours, local time, on March 30, 1999, and extended the term of the master agreement and each group specific agreement until the parties were bound by a collective agreement concluded by them or whose terms and conditions were prescribed by the Governor in Council, on the recommendation of the Treasury Board, taking into account collective agreements entered into by the employer in respect of other bargaining units in the Public Service since the *Public Sector Compensation Act* ceased to apply to compensation plans applicable to them. No strike is permitted while such a collective agreement is in effect.

Nothing prevents the parties from agreeing to amend any provision of a collective agreement whose terms and conditions have been prescribed by the Governor in Council.

The amounts of fines applicable in the case of failure to comply with this Part are the same as those mentioned in Part I, and may be recovered in the same manner.

In **Newfoundland**, the *Health and Community Services Resumption and Continuation Act* (Bill 3) was passed on April 1, 1999 to provide for the return to work of striking nurses represented by the Newfoundland and Labrador Nurses Union.

Immediately after the coming into force of this Act on April 1, 1999, every employee was required to cease strike actions and to continue or resume the duties of his/her employment. The union was prohibited from directing, encouraging or assisting an employee to engage in an action contrary to the Act.

The terms and conditions of employment approved by the Lieutenant-Governor in Council

were considered to be the terms and conditions of employment of the employees and were made binding on the union, each employee and the employer (the government of the province or a corporation, body or authority managing the delivery of the health and community services concerned). These terms and conditions of employment came into force on April 1, 1999, except where a different date is specified, and will expire on June 30, 2001.

Fines are provided for failure to comply with the Act by an employee (\$1000), by an official or representative of the union (\$10,000) or by the union (\$100,000). These fines are applicable to each day or part of a day during which the offence continues.

In the case of default of payment of a fine following conviction, a procedure permits that the fine be enforceable as if it was a judgment of the Supreme Court. If the union is convicted of an offence, an amount of wages deducted as union dues must be paid by the employer into the Consolidated Revenue Fund until a fine which the union is liable to pay has been paid in full.

In **Quebec**, *An Act respecting the provision of nursing services and pharmaceutical services* (Bill 72) was assented to and came into force on July 2, 1999.

The Act was adopted to ensure resumption of nursing services by ordering nurses, who have ceased to discharge their duties by reason of a strike, to return to work according to their work schedule as of 4:00 p.m. on July 3, 1999.

Not later than 2:00 p.m. on July 3, 1999, the Quebec Nurses Federation (Fédération des infirmières et infirmiers du Québec) was required to recommend to the associations of employees to put an end to the strike in progress and was to make that recommendation public, and every association of employees was required to advise the employees it represents of its intention to put an end to the strike in progress. If it did not comply with this requirement, the nurses federation or an association of employees was liable to certain penalties provided for in the *Act to ensure that essential services are maintained in the health and social services sector* (i.e. fines from \$24,300 to \$121,400).

Where a health institution ascertains that a certified association of employees representing nurses in its employ has declared or carried on an illegal strike, the institution must cease to pay any salary to any nurse for the time he/she has been released to carry on union activities for the association or the federation, after so advising the association of employees. This applies for twelve weeks for each day or part of day during which there is an illegal strike or the essential services provided in accordance with the relevant provisions of the *Labour Code* are insufficient. However, this cessation of payment does not apply with respect to the release of an employee when he/she participates to the work of a joint committee on the remuneration of nurses established by the Act.

The application of this sanction may not be deferred, cancelled or reduced by agreement. The same applies to certain other sanctions imposed under the *Act to ensure that essential services are maintained in the health and social services sector* which provide for the stopping of the check-off of union dues from salaries for a duration of twelve weeks for each day or part of a day during which there is an illegal strike or the essential services provided in accordance with the relevant provisions of the *Labour Code* are insufficient,

and the reduction of the salary of an employee which is in contravention of this Act (i.e. no salary for the period of contravention, and, after that, a reduction of an amount equal to the sum that would have been paid in the absence of the contravention).

The conditions of employment of nurses are modified to make the conditions of employment agreed between the parties at the negotiating session of June 22, 1999 and set out in a schedule of the Act applicable until the renewal of stipulations negotiated and agreed at the provincial level.

A joint committee on the remuneration of nurses is established. This committee is composed of representatives of the nurses federation, and of representatives of Quebec's Treasury Board and the management negotiating committee established under the *Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors*.

The mandate of the committee is to examine the following matters:

- the recognition of separate positions for nurses and nurses with a bachelor's degree;
- the qualifications applicable to those separate positions;
- the consideration for salary purposes of post-college training;
- the evaluation of positions held by nurses with a bachelor's degree and their ranking in the government system of pay relativity, as well as the review of the evaluation and ranking of positions held by nurses.

The committee must submit to the parties, not later than September 30, 1999, a progress report setting forth matters that have been documented sufficiently to enable an agreement to be concluded during 1999, and matters that will necessitate the work being continued. The final report of the committee must be submitted to the parties not later than September 30, 2000.

Lastly, the Act authorizes the Essential Services Council (Conseil des services essentiels) to intervene in respect of any concerted action, apprehended or in progress, involving a body representing the pharmacists working for health institutions and relating to negotiations to renew an agreement on the working conditions of those pharmacists.

D. Construction Industry

In **British Columbia**, the *Labour Relations Code Amendment Act, 1998* (Bill 26), which brought important changes to the rules governing labour relations in the construction industry (see *Highlights of Major Developments in Labour Legislation (1997-1998)*) was brought into force on August 1, 1998.

In **Quebec**, certain provisions of *An Act to amend various legislative provisions relating to building and the construction industry* relating to the creation of a new authority – the construction industry commissioner – replacing the office of building commissioner came into force on September 8, 1998.

Also in Quebec, *An Act to amend various legislative provisions relating to building and the construction industry* (Bill 25) was assented to on June 16, 1999.

That Act has, among other things, amended the *Act respecting labour relations, vocational training and manpower management in the construction industry* in order to enable the construction industry commissioner to resolve any difficulty in the interpretation or application of the existing definitions of the four sectors of that industry. This amendment took effect on June 16, 1999.

In addition, amendments are made to recognize the recently established Conseil conjoint de la Fédération des travailleurs du Québec (FTQ - Construction) et du Conseil provincial du Québec des métiers de la construction (International) as belonging to the associations that can request the Quebec Construction Commission to ascertain their representativeness. The provisions dealing with this matter will come into force by government decree.

In **Prince Edward Island**, *An Act to Amend the Labour Act* (Bill 60) was assented to and came into force on June 8, 1999. This amendment specifies that the terms “construction industry” do not include the manufacture, installation or sale of any prefabricated house, modular home or mobile home for the purposes of Part II of the *Labour Act*, which deals specifically with construction industry labour relations.

In **Ontario**, the *Fairness is a Two-Way Street Act (Construction Labour Mobility)*, 1999 (Bill 17) was assented to on May 4, 1999.

The Lieutenant Governor in Council is authorized under that Act to issue regulations prescribing areas of Ontario to which the Act or certain of its provisions apply and designating other provinces or territories as jurisdictions to which this new legislation applies in whole or in part. The designation of a province or territory may only take place if the Lieutenant Governor in Council is of the opinion that it has engaged in unfair, discriminatory or restrictive practices with respect to the construction industry.

The Act contains five Parts dealing with construction contractors, construction workers, the transportation of aggregates (e.g. sand, gravel, earth, stone, asphalt, etc.), retail sales tax enforcement, and a number of general matters, including the establishment of a Jobs Protection Office, enforcement of the Act and the power of the Minister of Labour to make regulations.

With respect to construction workers, every person residing in a designated jurisdiction and who is or will be doing construction work in a designated area must register with the Jobs Protection Office.

The Director of the Office must register an individual, if he/she:

- provides satisfactory evidence of work experience in a prescribed trade, occupation or construction activity;
- pays a registration fee; and

- satisfies any other requirements prescribed by regulations.

In addition, if the person seeking registration is or will be working in a prescribed trade, occupation or construction activity for which a certificate, registration or any kind of authorization is required in the designated jurisdiction, he/she must provide evidence satisfactory to the Director of the Jobs Protection Office of that certificate, registration or authorization. If that person is or will be working in a prescribed trade, occupation or construction activity for which a certificate, registration or any kind of authorization is required in Ontario, he/she must also provide evidence satisfactory to the Director of that certificate, registration or authorization.

A registration is effective for one year.

On the request of a person residing in Ontario, the Director of the Jobs Protection Office may exempt a specified individual from complying with the above requirements concerning certificates, registration and authorizations with respect to a particular project if that individual is working for the Ontario resident, and, in the opinion of the Director, his/her skills are necessary for that project and, due to a shortage of those skills, no resident of Ontario is available to carry out the work.

A Jobs Protection Office is established to:

- register construction contractors and workers from designated jurisdictions in accordance with the Act;
- co-ordinate the enforcement of the new Act and legislation prescribed by regulations;
- co-ordinate information sharing among ministries and other bodies enforcing the new Act and prescribed legislation;
- provide information and assistance to Ontario construction workers and contractors seeking opportunities in a designated jurisdiction; and
- monitoring access by persons from Ontario to construction job and business opportunities in a designated jurisdiction and reporting to the Minister concerning that access.

The Minister has the power to designate as inspectors employees of the government of Ontario, of a municipality or of any other body administering or enforcing legislation or by-laws referred to in the Act or regulations. Their powers are laid down in the Act. Fines are provided for a contravention of the Act by an individual or a corporation.

The Act will come into force on May 22, 1999.

A Regulation adopted under the *Fairness is a Two-Way Street Act (Construction Labour Mobility)*, 1999 provides that, effective May 22, 1999, Quebec is a designated jurisdiction for the purposes of the Act.

Another Regulation provides that an individual residing in a designated jurisdiction is exempt from the Act if he/she is regularly employed by the government of Ontario or a municipality, a school board, public hospital, university or college of applied arts and technology or an industrial establishment. In addition, it contains a schedule listing prescribed trades, occupations and construction activities for the purposes of Part II of the Act dealing with construction workers, and states that apprentices registered in Ontario with a valid contract of apprenticeship, who are residents of a designated jurisdiction, are exempt from that Part of the Act. Also, construction workers residing in a designated jurisdiction who are qualified under the Interprovincial Red Seal Program are exempted from providing evidence of a certificate or other authorization for prescribed trades, occupations and construction activities. This Regulation came into force on May 22, 1999.

E. Taxi Leasing

In Quebec, Bill 68, *An Act respecting the certification of a taxi lease drivers' association*, was tabled by the Minister of Labour on June 10, 1999.

The purpose of that Bill is to provide for the certification of a taxi lease drivers' association devoted to defending and promoting the interests of the drivers.

The Bill specifies, among others, the requirements that a taxi lease drivers' association must satisfy to be entitled to certification, provides that certification may be granted by the labour commissioner general to only one taxi lease drivers' association for the whole of Quebec, establishes the certification procedure, including the manner in which an applicant association's representativeness is to be determined or a certified association's representativeness is to be verified, and determines the effects of certification. The effects of a revocation of certification are also determined.

Certification confers on the association the rights and powers to:

- defend and promote the economic, social and professional interests of taxi lease drivers, in particular by promoting transportation by taxi and by establishing a pension, insurance or employment benefits plan;
- intervene at any time before a body, court or tribunal to defend the interests of taxi lease drivers; and
- represent taxi lease drivers whenever it is in their interest to do so.

To finance its activities, a certified association may, by by-law approved by a majority vote of the members at a special meeting held for that purpose, fix dues payable by all taxi lease drivers for every permit they hold. A holder of two or more taxi driver's permits has only one vote at such a meeting. Every taxi lease driver, even if he/she is not a member of the association, is required to pay the dues.

In addition, the Bill grants the labour commissioner general the powers necessary to decide any application for certification filed by a taxi lease drivers' association.

The Minister of Labour is also authorized under the Bill to order an inquiry into any matter relating to the administration and functioning of a certified association or the conduct of its members. Moreover, the Minister is granted the power to order the certified association to take corrective action.

Lastly, the Bill empowers the government to make regulations to provide for the manner in which certification is to be granted.

III. OCCUPATIONAL SAFETY AND HEALTH

A. Legislation of General Application

In **British Columbia**, most provisions of the *Workers Compensation (Occupational Health and Safety) Amendment Act, 1998* (Bill 14), which was described in the *Highlights of Major Developments in Labour Legislation (1997-1998)*, will come into force on October 1, 1999, except for provisions dealing with the right to refuse unsafe work. Some provisions were brought into force on September 1, 1998; they relate to the Workers Compensation Board's power to make regulations it considers necessary or advisable in relation to occupational health and safety and occupational environment, and to its power to review and modify existing regulations.

In **Nova Scotia**, comprehensive *Occupational Safety General Regulations* containing revised and updated safety requirements have been adopted under the *Occupational Health and Safety Act*. Two sections of the *Occupational Safety General Regulations* relating to demolition work took effect on April 28, 1999. The rest of the Regulations will come into force on October 1, 1999.

The new *Occupational Safety General Regulations* apply to all workplaces to which the *Occupational Health and Safety Act* applies, unless otherwise specified. They deal with numerous topics including the following: personal protective equipment; ventilation, lighting, sanitation and accommodation; handling and storage of material; lock-out of certain machines, equipment, tools or electrical installations; hoists and mobile equipment; mechanical safety; tools; welding and cutting; electrical safety; confined space entry; premises and building safety; construction and demolition; excavations and trenches; surface mine workings; and equipment for firefighters.

The *Occupational Safety General Regulations* require compliance with a number of standards. In a number of cases, a piece of equipment (e.g. protective footwear) must meet a specified standard. In other cases, the Regulations require equipment to be inspected/operated, or a particular activity to be carried out, in compliance with a referenced standard. Most of the standards address hoists and mobile equipment, personal protective equipment for firefighters, and electrical safety.

In the absence of manufacturing specifications or applicable standards, the *Occupational Safety General Regulations* require certifications establishing that certain equipment is in safe operating condition. These certifications, in most cases, must be carried out by an engineer. Certifications are also required, in some cases, where equipment is altered. In addition, in some instances, the Regulations allow employers to obtain engineering certification for a particular design or activity in place of a specified requirement of the Regulations. The employer is responsible for payment of any relevant engineering fees.

The *Occupational Safety General Regulations* also require periodic, and in some cases daily, inspections of specific categories of high risk equipment. This requirement builds on a requirement of the *Occupational Health and Safety Act* according to which an employer

with twenty or more regularly employed workers must include provision for regular inspections of its workplace under the occupational health and safety program.

In addition, an employer developing or reviewing a written policy or procedure for the purpose of the Regulations is required to consult with the occupational health and safety committee or representative, if any.

The *Occupational Safety General Regulations* replace the *Industrial Safety Regulations* and the *Construction Safety Regulations*.

In **Newfoundland**, *An Act to Amend the Workers' Compensation Act* (Bill 42) was assented to on December 15, 1998.

This Act has amended the *Workers' Compensation Act*, among other things, to change its title to *Workplace Health, Safety and Compensation Act*, to provide that the Worker's Compensation Commission is continued as the Workplace Health, Safety and Compensation Commission, and to add a new Part I.1 "Workplace Health and Safety" applying to workplaces, workers and employers covered by the *Occupational Health and Safety Act*.

This new Part of the Act gives various duties to the Workplace Health, Safety and Compensation Commission with respect to the promotion of occupational health and safety and the prevention of workplace injuries and diseases. These notably include the following:

- to educate employers, workers and other persons about workplace health and safety and foster their commitment to this question;
- to provide services to occupational health and safety committees and worker health and safety representatives established or appointed under the *Occupational Health and Safety Act*;
- to promote, and provide funding for, workplace health and safety research;
- to develop standards for the certification of persons required to be certified under the *Occupational Health and Safety Act*, approve training programs for certification, and certify persons who meet the standards; and
- to make recommendations to the Department of Environment and Labour respecting workplace health and safety.

The Act requires cooperation between the Commission and the Occupational Health and Safety Division of the Department of Environment and Labour. This includes providing information where necessary to give effect to Part I.1 of the *Workplace Health, Safety and Compensation Act* and the *Occupational Health and Safety Act*.

The Commission must pay the cost of the Occupational Health and Safety Division of the Department of Environment and Labour (a similar requirement was previously contained in the *Occupational Health and Safety Act*) and the cost of annual grants made by the

Minister to associations promoting occupational health and safety in the province to a maximum of 5% of its total assessment and investment income in each calendar year.

In addition, the Commission must allocate a maximum of 2% of its total assessment and investment income in each calendar year to establish and maintain a special fund for the purpose of workplace health and safety research.

The changes described above came into force on January 1, 1999.

Also in Newfoundland, amendments were made to the *Occupational Health and Safety Regulations* under the *Occupational Health and Safety Act*.

Effective December 4, 1998, amendments provide, among other things, for a definition of "director" to be added to the Regulations. "Director" means the director of the Occupational Health and Safety Inspection Division of the Department of Environment and Labour.

Some provisions dealing with chemical substances have been rewritten. They now provide that an employer may, in writing, apply to the director or other person authorized by the Minister requesting to be exempted from the requirement to use a substitute (i.e. a safe or less hazardous substance). The director may then take any of the following actions: (1) if he/she is of the opinion that the use of the substitute is not reasonably practicable, permit the use of the requested chemical substance instead of its substitute; (2) permit the use of a requested chemical substance, subject to terms and conditions that he/she may establish; or (3) prohibit the use of a chemical substance and require the use of a substitute substance.

Some changes have also been made to provisions dealing with electrical blasting and personal protective equipment for workers involved in logging operations.

Effective April 26, 1999, other amendments to the Regulations contain revised and new requirements regarding work in confined spaces, fall protection and powered mobile equipment.

In the **federal jurisdiction**, on September 15, 1998, a new Part XVIII dealing with diving operations was added to the *Canada Occupational Safety and Health Regulations* under the *Canada Labour Code*. This new Part applies to all diving operations taking place under federal jurisdiction, except those subject to the following Regulations: the *Canada Oil and Gas Diving Regulations*, the *Nova Scotia Offshore Area Petroleum Diving Regulations* and the *Newfoundland Offshore Area Petroleum Diving Regulations*. Application of the new Regulations include diving operations conducted for the purposes of scientific research, criminal investigation, and underwater construction and inspection.

The new diving Regulations include requirements relating to the training and medical certification of divers as well as procedures to be followed by employers and divers to meet recognized standards of operational and equipment safety in all aspects of diving operations.

Effective December 3, 1998, amendments to the *Canada Occupational Safety and Health*

Regulations have lifted the exemption for employees operating large trucks from the lower noise exposure limits, equivalent to an 8-hour exposure to 87 dBA in a 24-hour period, that are applicable to all other industries covered by the Regulations.

In addition, effective March 25, 1999, amendments to Part XII, Safety Materials, Equipment, Devices and Clothing, of the *Canada Occupational Safety and Health Regulations* have updated the Regulations to reflect the current accepted standard for respiratory protective equipment.

In **Manitoba**, effective December 12, 1998, the *First Aid Regulation* under the *Workplace Safety and Health Act* has replaced another regulation on the same subject adopted in 1988. Among other things, under the new Regulation, the number of employees per shift, the distance or isolation of their workplace and the level of hazards the workers face determine the minimum number of required first aiders.

Also in Manitoba, effective January 15, 1999, an amendment has added provisions to the *Workplace Safety Regulation* concerning powered lift trucks. They stipulate, among other things, that no employer may allow a worker to operate a powered lift truck unless he/she has issued a certificate to the worker after ensuring that certain conditions relating to instruction, training and competency are met.

In **Quebec**, the *Regulation respecting industrial establishments* under the *Act respecting occupational health and safety* was repealed on September 3, 1998. That Regulation was no longer enforced because of its obsolescence.

In **Ontario**, an amendment to the *Regulation on industrial establishments* under the *Occupational Health and Safety Act* provides that where a worker is exposed to the hazard of falling into liquid that is of sufficient depth for a life jacket to be effective as protection from the risk of drowning, the employer must, among other requirements, develop written measures and procedures to prevent the worker from drowning and must implement them. This amendment took effect on April 30, 1999.

In the **Northwest Territories**, an amendment to the *General Safety Regulations* under the *Safety Act* has updated various standards of the Canadian Standards Association to which reference is made in the Regulations (e.g. hearing protectors and protective footwear standards) and has adopted some additional standards dealing with fall protection.

B. Construction Safety

In **Quebec**, three regulations have amended the *Safety Code for the construction industry* under the *Act respecting occupational health and safety*.

Effective October 21, 1998, a Regulation provides that shot-firers' certificates are issued by the Occupational Health and Safety Commission or by an agency recognized by it.

It also states that workers holding a Newfoundland blaster safety certificate level II and III are exempted from passing the written examination set by the Commission for those wanting to obtain a shot-firer's certificate, subject to the Newfoundland and Labrador-

Quebec Agreement on Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry.

Effective November 26, 1998, another Regulation has amended the *Safety Code for the construction industry* with respect to various subjects, including the following: the extensible parts of a scaffold shoring; log books for mobile cranes and tower cranes; digger derricks; workers freezing water pipes; the use of loaders to handle materials, other than earthwork materials; the use of earth moving machinery for lifting purposes or for installing posts; vehicle-mounted aerial devices; piping through which compressed air or gas circulates; oxygen, compressed gas or propane gas cylinders; and certain welding or cutting operations.

Effective May 20, 1999, a third Regulation has brought amendments to provisions dealing with asbestos contained in the *Safety Code for the construction industry*. Among other things, they specify that materials liable to generate asbestos dust must be removed before demolition work is undertaken, and they prohibit the installation of friable insulating materials containing asbestos. The amendments also modify provisions or introduce new ones dealing with respirators, protective clothing, changing rooms, ventilation systems and the handling or removal of friable materials containing asbestos in specified circumstances.

Also, as a result of amendments to the *Safety Code for the construction industry* and the *Regulation respecting the quality of the work environment*, the use of crocidolite or amosite, or of a product containing either of those materials, is prohibited, except where their replacement is not reasonable or feasible in practice. Previously, the Occupational Health and Safety Commission (Commission de la santé et de la sécurité du travail) had the power to issue orders regarding the restricted use of those materials.

C. Mining Safety

In **Quebec**, as a result of amendments to the *Regulation respecting occupational health and safety in mines and amending various regulatory provisions under the Act respecting occupational health and safety*, the title of the Regulation has been changed to *Regulation respecting occupational health and safety in mines*.

Other changes include: enhanced training requirements for persons working underground; increased safety measures and requirements with respect to some equipment, such as motorized vehicles, self-contained breathing apparatus, electrical apparatus, hoisting ropes and conveyors; and a modification of certain provisions respecting air quality when diesel-powered equipment is used underground.

The amendment also specifies the measures to be taken before starting excavation in a mine located in a permafrost zone, before drilling, and when storing and loading explosives.

This Regulation came into force on October 22, 1998.

In the **Northwest Territories**, an amendment to the *Mine Health and Safety Regulations* under the *Mine Health and Safety Act* has brought numerous changes to the Regulations.

Among these changes are revised provisions stipulating that where an occupational health and safety committee cannot reach an agreement on a health and safety issue, it must submit a written report to the manager of the mine. Within 15 days of receiving the report, the manager must reply, in writing, to the committee. Where any member of the committee considers the manager's response to be unacceptable, the committee must request the chief inspector to investigate the matter and to reply to the manager within 15 days of receiving the request. Also, the manager must, at least three times a year (twice previously), provide training to members that is relevant to the work of the committee.

In addition, new provisions require the manager to develop, in consultation with the committee, a health and safety procedure or program in a number of areas, such as the safety and rescue of persons from water when there is a risk of drowning, the monitoring of respirable combustible dust, and, in specified circumstances, the protection of persons working alone in a mine and the use of remotely controlled drilling. However, these procedures must be acceptable to the chief inspector.

Other changes have introduced revised requirements regarding various subjects such as supervisor's and hoist operator's certificates, refuge stations, underground lighting, and magazines used for storing explosives and detonators.

In Ontario, effective April 23, 1999, a number of amendments have been made to the *Regulation on mines and mining plants* under the *Occupational Health and Safety Act*. The most important of these amendments include new safety requirements for situations where a flow of flammable gas is encountered in a mine or in an enclosed building housing a diamond drill on the surface. In addition, new provisions require an employer to give notice to the joint health and safety committee or to the health and safety representative, if any, before the initial use of a work platform or of a multi-deck stage.

D. Boilers and Pressure Vessels

In the Northwest Territories, the *Regulatory Reform Measures Act* (Bill 5) was assented to on September 25, 1998.

Among other things, this Act has brought changes to the *Boilers and Pressure Vessels Act*.

The purpose of the most notable changes is to:

- allow the chief inspector to vary the terms of a certificate of inspection or a certificate of approval where he/she is satisfied that the procedures required to reduce the generating capacity of the boiler, pressure vessel or plant have been completed in accordance with the regulations;
- eliminate mandatory fees for inspections;
- enable a person to appeal an inspection or an action taken by the chief inspector to the Minister instead of to the Commissioner; and

- enable a person to appeal the suspension or cancellation of his/her certificate of qualification to the Supreme Court instead of to the Commissioner.

These changes came into force on December 19, 1998.

In **British Columbia**, a new *Power Engineers, Boiler, Pressure Vessel and Refrigeration Regulation* under the *Power Engineers and Boiler and Pressure Vessel Safety Act* came into force on May 1, 1999. It has replaced regulations issued in previous years, namely the *Regulation Respecting Certificates of Competency, Licences and Registrations*, the *Boiler and Pressure Vessel Code* and the *Mechanical Refrigeration Plant Regulation*.