



Labour

Archived - Highlights of Major Developments in Labour Legislation (2001-2002)

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September 1, 2001 to August 31, 2002

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INTRODUCTION

The period from September 1, 2001 to August 31, 2002 has been a busy year with respect to labour law developments. Major reforms and other significant amendments were adopted in the field of employment standards, and many jurisdictions also approved important changes in the areas of industrial relations and occupational health and safety.

Two provinces, Newfoundland and Labrador as well as British Columbia, enacted significant amendments to their employment standards legislation, dealing with such issues as vacations, statutory holidays, hours of work, payment of wages, leaves, termination of employment, and enforcement provisions. Furthermore, nine jurisdictions modified their minimum wage provisions, or announced upcoming changes to the minimum wage rate. Several other legislative and regulatory measures regarding employment standards are also worth noting: amendments to parental leave provisions in the *Canada Labour Code*; the designation of National Aboriginal Day as a new general holiday in the Northwest Territories; the inclusion of employees in commercial hog operations within the scope of Saskatchewan's *Labour Standards Act*; the broadening of bereavement and wedding leave provisions in Quebec to cover spouses bound by a civil union; and the addition of a new section in the *Exemptions, Special Rules and Establishment of Minimum Wage Regulation* in Ontario. With respect to human rights in the workplace, amendments to Saskatchewan's *Human Rights Code* were proclaimed in force. Moreover, Bills were introduced in the Northwest Territories to modernize its human rights legislation, and in British Columbia to abolish the provincial Human Rights Commission and alter the powers and responsibilities of the Human Rights Tribunal.

In the area of collective bargaining legislation of wide application, Quebec took measures to permit the upcoming establishment of its Labour Relations Commission under the *Labour Code*, and amendments were made to the British Columbia *Labour Relations Code* notably with respect to the administration of the Code and the right to communicate with employees. In the broader public sector, Ontario extended the period of application of its *Public Sector Labour Relations Transition Act, 1997*; British Columbia enacted two pieces of legislation having a bearing on labour relations in the public education and health and social services sectors; and the Government of Yukon adopted a new *Education Staff Relations Act* and proposed changes to its *Public Service Act* to protect whistleblowers. Moreover, during the period covered by this report, three emergency legislative measures were adopted to settle labour disputes in the education sector in British Columbia and Alberta and in certain municipal services in Ontario. With respect to the construction industry, Quebec excluded some work activities from the application of its construction industry labour relations statute, and changed the conditions under which competency certificates are issued to workers in that industry. This last measure followed the reactivating by Ontario of a 1999 statute on labour mobility in the construction industry, that was made applicable to Quebec workers. Lastly, New Brunswick abolished the Fishing Industry Relations Board and replaced it with a board having a much wider jurisdiction, the Labour and Employment Board.

In the field of occupational health and safety, the laws of general application were amended as follows: in Manitoba with respect to the duties of workplace stakeholders, exemption from regulations, penalties and other matters; in Ontario with respect to the issuing of warrants for investigations; and in New Brunswick with respect to the right to refuse dangerous work and other topics. In addition, Ontario increased safety training requirements for workers employed in logging operations; Nova Scotia and British Columbia modified their first aid regulations; and the latter as well as Newfoundland and Labrador amended their general occupational health and safety regulations. Other legislative measures include: new legislation or modified regulations in Saskatchewan, British Columbia and Nova Scotia to limit exposure to tobacco smoke; amendments to mines safety regulations in Alberta to extend their application and in Quebec to update technical requirements; regulatory requirements for the safe operation of railways under provincial authority in Nova Scotia and New Brunswick; and changes to legislation dealing with the safety of boilers, pressure vessels, elevating devices and/or cranes in Nova Scotia and Nunavut.

I. EMPLOYMENT STANDARDS

A. Proclamations

The **Saskatchewan Human Rights Code Amendment Act, 2000**, which was assented to on June 21, 2000, was proclaimed in force on November 15, 2001. Many of the changes brought by this Act pertain to rights in the workplace.

The definition of the term "employee" was modified to include persons "engaged pursuant to a limited term contract". Thus, the protection afforded by the Code in the context of employment was extended to those persons. The Act also added a new clause which stipulates that "no employee shall discriminate against another employee on the basis of a prohibited ground".

In addition, consequential amendments were made to equal pay provisions of the *Labour Standards Act*. Under the new legislation, cases of equal pay complaints that cannot be settled by a labour standards officer may be referred by the Director of Labour Standards Branch to the chairperson of the human rights tribunal panel for the appointment of a human rights tribunal to conduct an inquiry. Previously, such a request had to be made to the Saskatchewan Human Rights Commission for the commission to conduct a formal inquiry.

B. Legislation of General Application

Following review and consultation processes^[1], first Newfoundland and Labrador and then British Columbia brought extensive modifications to their respective employment standards legislation. The objectives pursued and the approach adopted by legislators, however, were fairly different in each case. The main focus in Newfoundland and Labrador was to improve work-life balance for employees, while providing them with additional protection and benefits, in line with legislation in the rest of Canada. In comparison, amendments in British Columbia, as stated by the provincial government in its Speech from the Throne, were primarily aimed at providing "greater flexibility, fairness and efficiency for employers and employees alike" in addition to reducing red tape and regulatory burden for businesses.

In **Newfoundland and Labrador**, the *Act to Amend the Labour Standards Act* (Bill 54), received Royal Assent on December 13, 2001, and came into effect on July 1, 2002. This Act brought a number of significant amendments to minimum labour standards in the province:

Vacations

- Section 8 of the Act (Annual vacation with pay) was clarified by stipulating that an employer must permit an employee entitled to two weeks of vacation to take his/her vacation in one unbroken period or in two unbroken periods of one week each. This is at the employee's choice, provided that written notice of his/her intention is given no later than the date of entitlement to the vacation. Nevertheless, an employer and an employee can agree on shorter vacation periods. (These provisions are equivalent to those that apply to employees entitled to three weeks of vacation).
- An employer is still normally required to provide an employee at least two weeks' written notice of the dates of the annual vacation. However, a new provision requires that an employer, where it cancels or changes the dates of an employee's previously approved annual vacation, reimburse reasonable vacation-related expenses incurred by the employee that are not otherwise recoverable.
- Pay records must now indicate the amount of vacation pay paid to an employee.

Public Holidays

- Remembrance Day was added to the five paid public holidays previously recognized in the *Labour Standards Act*. It should be noted that Remembrance Day was already recognized as a holiday in the province's *Shops' Closing Act*.

- A new provision indicates the manner in which public holiday pay is to be calculated. An eligible employee's public holiday pay is equivalent to his/her hourly rate of pay multiplied by the average number of hours worked in a day in the three weeks immediately preceding the holiday.
- The requirement that employees not be absent from work for more than 15 of the 30 days immediately preceding a public holiday, in order to qualify for holiday pay, was repealed.

Hours of Work

- Previously excluded management employees are now entitled to a weekly day of rest under the Act.
- Instead of receiving overtime pay, an employee can agree with his/her employer to take one and a half hours of paid time off for each hour of overtime worked. This paid time off must be taken within three months-or within 12 months with the employee's agreement-of the work week in which the overtime was earned. Should an employee's employment end before paid time off is taken, the employer must pay him/her the equivalent overtime pay.
- An employer, where he/she grants an employee's written request to a change in work schedule, is not required to pay overtime if this results in the employee working more than the standard working hours (currently 40 hours in a work week).

Payment of Wages

- The definition of "bank" was modified to allow an employer to pay wages by a cheque drawn on a credit union. Subject to the employee's consent, it is also possible for an employer to pay by direct deposit into an account of a bank of the employee's choice.
- The amount of an employee's claim priority over unpaid wages was increased from \$2,000 to \$7,500. In addition, an employer is considered to hold in trust wages owing to an employee, even if wages are not held separately from the other money of the employer.
- With some exceptions (e.g., in the case of philanthropic and charitable organizations), directors of a corporation are now jointly and individually liable for up to two months of unpaid wages should the employer become insolvent, or for an amount set out in an order of the Director of Labour Standards or of the Labour Relations Board. Wages for which directors are liable includes employees' vacation pay, holiday pay and overtime wages, but excludes termination pay as provided for under the Act. Nevertheless, a director can not be held liable for unpaid wages under the Act where he/she exercised due diligence. Although an employer is not permitted to relieve a director from his/her duties and liabilities under the Act, it can nevertheless indemnify a director or former director against all costs, charges and expenses reasonably incurred with respect to a civil or administrative action or proceeding related to his/her capacity as director, where he/she acted honestly and in good faith, and where he/she had reasonable grounds for believing his/her conduct was lawful.
- Language concerning the minimum frequency of wage payments was clarified. An employer must pay all wages earned by an employee in a pay period "at least half monthly and within seven days after the end of the pay period". This section is no longer subject to regulations.
- An amendment also clarifies the deductions an employer is permitted to make from an employee's wages.
- A new section forbids employers from requiring employees to pay for a uniform where it is unique to, and identified with, their business operation, to the extent that the uniform would be useless to the employees should their employment be terminated.
- Besides specifying that tips and gratuities belong to the employee for whom they are given, amendments allow employers to make statutory deductions from tips or gratuities where they are in the form of a surcharge or other charge, or where they are paid by credit card or debit card.

Bereavement, Family Responsibility and Sick Leave

- Bereavement leave provisions were amended to add "daughter-in-law" and "son-in-law" to the list of relatives in the event of whose death a leave can be taken. To qualify for one paid day and two unpaid days of bereavement leave, employees must have been employed with the same employer for a continuous period of 30 days. Employees who do not meet this requirement are nevertheless entitled to two days of

unpaid bereavement leave. Where a paid leave is provided, an employee's wages for the day are calculated by multiplying his/her hourly rate of pay by the average number of hours worked in a day in the three weeks immediately preceding the bereavement leave. An additional amendment allows an employee who takes a paid day of bereavement leave during an annual vacation to extend the latter by one day.

- Important changes were made to the Act's sick leave provisions. (Previously, employees covered by the Act who had completed six continuous months of service with the same employer were entitled to five days of sick leave in a year if they provided a medical certificate.) A new provision allows employees who have been employed under a contract of service with the same employer for a continuous period of 30 days to take a combined total of seven days of unpaid sick leave *or family responsibility leave* in a year. An employee is only required to provide a medical certificate when taking a period of three or more consecutive days of sick leave; a written statement explaining the nature of the family emergency can be required for a family responsibility leave of three consecutive days or more. The Act specifies that an unused portion of sick leave and family responsibility leave expires at the end of the year in which it was granted.

Individual Termination of Employment

- Employers and employees no longer have the option of waiving the requirement that a notice of termination or temporary layoff be given in writing.
- The period of notice that must normally be given—subject to some exceptions—when the employer or the employee terminates a contract of service was increased for employees with longer lengths of service. It now ranges from one week of notice—or a payment equivalent to the normal wages that would have been earned during the period of notice—where the employee has been continuously employed by the employer for a period of three months or more but less than two years, to 6 weeks for an employee with a period of service of 15 years or more. (Note that in contrast to other jurisdictions, an employee who fails to provide adequate notice before terminating a contract of employment may be required to make a payment to the employer.)
- Instead of providing a notice of intention to terminate when terminating the employment of 50 or more employees in a four week period, an employer is allowed to pay the affected employees an amount equivalent to the normal wages they would otherwise have earned during the notice period.

Administrative Changes

- Amendments to the Act eliminated the standing Labour Standards Board. In its stead, the Lieutenant-Governor in Council has the authority to periodically appoint a new Labour Standards Board to provide advice on matters coming within the scope of the *Labour Standards Act*. The previous system of adjudicators was also abolished. Most of the duties and powers which had earlier been conferred to the Labour Standards Board and to adjudicators were transferred to the Labour Relations Board, the Director of Labour Standards and the Minister of Labour.
- For example, the Minister of Labour, instead of the Labour Standards Board, is now responsible for reviewing, at least once every two years, the regulations respecting minimum wages.
- The authority to hear appeals, which formerly rested with adjudicators, was transferred to the Chairperson and the Vice-Chairperson of the Labour Relations Board.
- Clauses that permitted a person, where aggrieved by the breach of a provision of Parts I to XI of the Act by an employer or an employee, to make an application to the Minister of Labour for referral of the matter to an adjudicator, were repealed. Moreover, appeals of a determination of the Director of Labour Standards must now be made to the Labour Relations Board, instead of the Minister of Labour.
- The limitation period for making a complaint to the Director of Labour Standards was increased from six months to two years. However, it is not possible to make a complaint later than six months after the date of termination of an employee's contract.
- A determination of the Director of Labour Standards, where it is filed in the registry of the provincial Supreme Court, is enforceable as if it

were an order of the Trial Division.

- A new general offence for failure to comply with the Act was created. Fines range from \$200 to \$2,000. Default of payment can lead to imprisonment of up to three months.

Reciprocal Enforcement of Orders

- A new section provides for the reciprocal enforcement of wage payment orders with provinces and territories recognized by the Lieutenant-Governor in Council as reciprocating jurisdictions.

Miscellaneous Changes

- An employer must display, in a prominent and visible place in the workplace, a copy of the *Labour Standards Act* and the regulations made under it.
- An employer must provide a written statement of the terms and conditions of employment to every employee. The employer is also required to keep a copy of the statement and make it accessible to the employee.
- A number of consequential and transitory amendments were made to many sections of the *Labour Standards Act*, as well as to the *Labour Relations Act*.

In addition, as indicated in the section "Minimum Wages" below, changes were made to the overtime pay provisions of the province's *Labour Standards Regulations*.

British Columbia's legislature passed the *Employment Standards Amendment Act* (Bill 48) on May 30, 2002. This Act amended large portions of the *Employment Standards Act* (ESA). However, it should be noted that not all of these provisions were yet in force at the time this report was written; many-those described below using the future tense-will come into effect by regulation. Following is an overview of the main changes that were (or will be) brought to the ESA.

Application of the ESA to Employees Covered by a Collective Agreement

- Employees covered by a collective agreement are now excluded from most provisions of the ESA. Where a collective agreement contains any provision concerning hours of work or overtime, employees covered by the agreement are excluded from all of the ESA's hours of work and overtime provisions. The same applies to provisions regarding statutory holidays, annual vacations and individual termination of employment, as well as to more specific provisions pertaining to wages, special clothing and records. Should a collective agreement contain no provision on one of the matters mentioned above, the relevant part or section(s) of the ESA is (are) deemed to be incorporated in the agreement as part of its terms (except provisions regarding averaging agreements). Parts of the ESA regarding complaints, determinations, enforcement and appeals (Parts 10, 11 and 13 of the ESA) do not apply to employees covered by a collective agreement in relation to the enforcement of certain provisions: those dealing with the employment of children, the prohibition to charge for hiring or providing information to prospective employees, the payment of the minimum wage, deductions, leaves and jury duty, group terminations, and rules about notice of termination and payments on termination. Instead, disputes arising with respect to the application of any of the provisions mentioned above (including provisions of the ESA deemed to be part of a collective agreement) must be resolved using the collective agreement's grievance procedure. Nevertheless, an arbitration board may refer a decision to the Director of Employment Standards for the purpose of collecting unpaid wages.
- In addition, changes made to section 4 of the ESA allow parties to a collective agreement to waive the minimum requirements of the ESA in matters related to hours of work and overtime, statutory holidays, annual vacations, individual termination of employment and most provisions regarding wages, special clothing and records. In other words, certain provisions in a collective agreement can provide inferior benefits and/or protection to employees than what would otherwise be required by the ESA. (Previously, the requirements of some parts of the ESA-i.e., hours of work and overtime, statutory holidays, annual vacations and individual termination of employment-could be replaced

by similar provisions in a collective agreement if, when considered together, these provisions met or exceeded the legislated requirements.)

Hours of Work and Overtime

- Minimum daily pay was reduced from four hours to two hours at the employee's regular wage, except where an employee was scheduled to work more than eight hours on that day. Separate provisions that previously applied to school students were eliminated.
- The overtime rate will be lowered, from two times to 1.5 times regular wages, in certain circumstances. Employees will only be entitled to the double wage rate for work in excess of 12 hours in a day, compared to the current 11-hour threshold. The double time rate for overtime in excess of 48 hours in a week will be eliminated. Moreover, an employee who works during a weekly period that should be free from work under the ESA (employees are normally entitled to 32 consecutive hours free from work each week) will be entitled to 1.5 times regular wages, instead of the double time rate that currently applies.
- Individual employees and their employer will be allowed to sign a written averaging agreement whereby hours of work may be averaged over a period of one to four weeks (this will replace current "flexible work schedule" provisions). Such an agreement will have to specify the work schedule for each day it covers as well as the start date and expiry date for the period over which it applies. Overtime will be payable for time worked in excess of the hours scheduled for a day (or over eight hours, if fewer than eight hours were scheduled on that day) or beyond a 40-hour weekly average. It will be possible to schedule the required 32-hour weekly period free from work at any time in the period covered by an averaging agreement. For example, these periods could be postponed and taken consecutively in the last week of an averaging agreement.
- Employers and employees are now allowed to apply for a variance from the ESA regarding split shift provisions. Once the relevant sections of the new Act are in force, it will also be possible to request a variance to extend the number of weeks covered by an averaging agreement.
- Previous hours-of-work notice provisions were repealed. Employers are no longer required to display hours-of-work notices in each workplace, nor to give employees 24 hours' notice of shift changes.
- Amendments clarified that an employer who requires an employee to work during a meal break must count the meal break as time worked.

Statutory Holidays

- New eligibility requirements for entitlement to a statutory holiday with pay will be added. In addition to the other applicable requirements, an employee will have to work or earn wages for at least 15 of the 30 calendar days preceding the statutory holiday to qualify, unless he/she worked under an averaging agreement at any time during that period.
- A new formula for calculating statutory holiday pay will be established. Statutory holiday pay will be equal to the amount paid or payable to the employee (wages and vacation pay, but not overtime pay) in the 30 calendar day period preceding the statutory holiday, divided by the number of days on which the employee earned wages (i.e., days worked or days of vacation) in that period.
- The requirement to schedule another day off with pay for employees who work on a statutory holiday will be removed. Instead, an employer will have to pay 1.5 times the employee's regular wages for all time worked up to 12 hours in the day, two times regular wages for all time worked thereafter (compared to the current 11-hour threshold), plus statutory holiday pay.

Wage Recovery

- The period for which the Director of Employment Standards may hold an employer liable for wages under a determination was reduced from 24 months to six months.
- Personal liability for a director or officer of a bankrupt or insolvent corporation with respect to employees' wages was removed.
- Farm producers are no longer liable for the wages of employees of a licensed farm labour contractor, if they paid the labour contractor for wages earned by each worker who performed work for them.

Employment of Children

- Current provisions regarding the employment of children will be repealed (these require that a permit be obtained from the Director of Employment Standards to employ a child younger than 15). A new provision will state that a person may not employ a child under 15 years of age unless conditions established by regulation are met. The government will have the authority to make regulations delegating authority to the Director to impose conditions of employment, on the basis of prescribed criteria, for children under 15 years of age, and prohibiting the employment of children under 12 years of age, except in prescribed industries.

Maternity and Parental Leave

- Amendments clarified that employees' entitlement to maternity and parental leave is in *consecutive* weeks and that leave for adoptive parents is unpaid, and specified that a birth father who intends to take parental leave must give at least four weeks' notice to his employer.

Termination of Employment

- Notice of termination is of no effect if it coincides with a period during which the employee is on temporary layoff. Previously, this provision only applied if an employee was on leave or unavailable for work due to a strike, lockout or medical reasons.
- The ESA now specifies that, in the case of a person whose employment is terminated following a temporary layoff, the six-month time limit to file a complaint is counted from the last day of the temporary layoff.

Complaints and Enforcement of the ESA

- The Director of Employment Standards is now authorized to refuse to deal with a complaint if the employee concerned has not taken the requisite steps to facilitate resolution or investigation of the complaint (based on a new "self-help" kit) or if the dispute that caused the complaint may be dealt with under a collective agreement's grievance procedure.
- The procedure that applies where a person fails to comply with the terms of a settlement related to a complaint was modified. Previously, a failure to comply voided the settlement, after which the Director of Employment Standards could make a determination and require payment of the required amount. Under the new provisions, a "settlement agreement" remains in effect in such a circumstance. Instead of making a new determination, the Director of Employment Standards can file the settlement agreement in the Supreme Court registry to make it enforceable.
- The Director of Employment Standards now has more remedies at his/her disposal when making a determination. Besides other measures that were previously available, the Director can require a person who has committed an infraction to post notices respecting a determination or information about the ESA and its regulations; to employ, at his/her expense, a payroll service for the payment of wages to an employee; and to pay any costs incurred with respect to inspections related to the investigation of a contravention. The Director is also authorized to make any imposed requirement subject to any terms and conditions he/she considers appropriate.
- The Director of Employment Standards is no longer required to give written reasons for a determination, unless the person named in the determination makes a written request to obtain them, within a specified time period.
- Amendments provide for the imposition of mandatory monetary penalties, as prescribed by regulation, and specify that the amount of a penalty is in addition to any requirement imposed in a determination. This has removed the Director of Employment Standards' discretionary power to determine whether or not to impose a penalty. Penalties have been increased to \$500 for a first offence, \$2,500 for a second offence, and \$10,000 for a third offence (previously, penalties ranged from \$0 to \$500).
- The powers of the Employment Standards Tribunal were modified to remove its authority to make recommendations to the government about the exclusion of classes of persons from all or part of the ESA or regulations made under the Act.
- Provisions regarding appeals of determinations to the Employment Standards Tribunal will be modified. Grounds for appeals will be restricted to cases where the Director of Employment Standards erred in law or failed to observe the principles of natural justice in making

the determination, or where new evidence has become available. A person who wishes to appeal a determination will have to deliver a written request to the tribunal, with a copy to the Director of Employment Standards, specifying the grounds on which the appeal is based. Payment of an appeal fee, prescribed by regulation, will also be required. The period in which an appeal may be requested will be extended from 15 days to 30 days after the date of service of the determination, if the person was served by registered mail, and from 8 days to 21 days if the person was personally served or he/she requested to receive the determination by fax or electronically. The tribunal will have the power to dismiss an appeal without a hearing where one of the above requirements is not met. In addition, a new provision will expressly require that the Director of Employment Standards provide the tribunal with the record that was before him/her at the time of the determination, including any witness statement or document that he/she considered.

Miscellaneous (records and statements)

- The general requirement that employers display in each workplace a statement of employees' rights under the ESA was eliminated.
- The period during which employers are required to keep records was reduced from 5 years to 2 years.
- Employers are now allowed to provide wage statements electronically if employees are provided, through the workplace, confidential access to the electronic wage statement and a means of making a paper copy.

In addition to passing the *Employment Standards Amendment Act*, the Government of British Columbia adopted certain regulations (one of which will be dealt with in the section "Minimum Wages"). These regulations added new provisions to the *Employment Standards Regulation*.

British Columbia Regulation 70/2002 added a new section to specify that employees "employed at construction sites by an employer whose principal business is construction" are not covered by the *Employment Standards Act's* minimum notice of termination provisions (i.e., sections 63 and 64 of the Act, regarding individual and group termination of employment). This Regulation followed a series of decisions of the Employment Standards Tribunal, confirmed by the Supreme Court of British Columbia (BCEST #D153/00; BCEST #D442/00; *Daryl-Evans v. Employment Standards*, 2002 BCSC 48), which found that an employee, who had been employed for five years by a construction company to work on a number of construction sites, was entitled to length of service compensation after being discharged. In making such a decision, the Tribunal gave a narrow interpretation to section 65(1)(e) of the *Employment Standards Act*. (This section provides that an employee "employed at a construction site by an employer whose principal business is construction" [emphasis added] is not entitled to notice of termination or pay in lieu.) In reaction, British Columbia's government broadened the exemption to cover virtually all construction workers, regardless of their length of service, their status of employment and the number of construction sites on which they have worked. The Regulation will nevertheless be repealed on December 31, 2002, by which time new Regulations, in line with the revised *Employment Standards Act*, should be adopted.

British Columbia Regulation 108/2002 also added a new section to the *Employment Standards Regulation*. This section provides that, notwithstanding the *Employment Standards Act's* prohibition against requiring employees to pay any of their employer's business costs, a municipal constable may be charged tuition for enrolment in the peace officers basic training program.

In addition, there have been a number of developments in the employment standards legislation of other jurisdictions. Although certainly not as sweeping as recent reforms in Newfoundland and Labrador, and British Columbia, changes in the federal jurisdiction, the Northwest Territories, Saskatchewan, Ontario and Quebec are worth mentioning.

In the **federal** jurisdiction, the *Budget Implementation Act, 2001* (Bill C-49) received Royal Assent on March 27, 2002. Among various other measures (e.g., amendments to the *Income Tax Act*), Bill C-49 amended sections of the *Employment Insurance Act*, the *Employment Insurance (Fishing) Regulation* and the *Canada Labour Code* related to maternity and parental leaves. These provisions came into force on April 17, 2002.

With respect to Employment Insurance benefits, an amendment allows a claimant whose new-born or newly adopted child is hospitalized to extend the benefit period (i.e., the period during which parental benefits may be paid) by a number of weeks equivalent to the duration of the hospitalization. The benefit period, however, cannot be extended to more than 104 weeks. It should be noted that this provision does not increase the actual duration of parental benefits, currently set at 35 weeks. Rather, it allows claimants to postpone taking parental benefits

without incurring the risk of losing them due to the expiration of the benefit period.

The *Budget Implementation Act* also eliminated the cap on the duration of combined maternity, parental and sickness benefits (also known as the "anti-stacking rule"), which was previously set at 50 weeks. An eligible claimant can now take the maximum amount of maternity (15 weeks), parental (35 weeks) and sickness benefits (15 weeks), for a total of 65 weeks of benefits. (However, this only applies if regular EI benefits are not paid to the claimant during the benefit period). This amendment is in response to a decision of the Canadian Human Rights Tribunal (*McAllister-Windsor v. Human Resources Development Canada*) which found that the cap on benefits amounted to *prima facie* discrimination on the basis of sex and disability for which there was no *bona fide* justification.

Finally, Bill C-49 amended Part 3 of the *Canada Labour Code* to specify that, in the case of a new-born child, parental leave can begin, *at the option of the employee*, on the day the child is born or the day the child comes into his/her actual care.

In November 2001, the legislature of the **Northwest Territories** passed the *National Aboriginal Day Act* (Bill 6). As its title suggests, this Act designated a new holiday, *National Aboriginal Day*, to be observed June 21 of each year in recognition of the cultures and contributions of Aboriginal persons. Consequently, the *Interpretation Act*, the *Public Service Act* and the *Labour Standards Act* were amended, effective January 1, 2002, to add National Aboriginal Day to the definition of (general) holiday.

Employees in the Northwest Territories who meet eligibility requirements are therefore entitled to ten general holidays with holiday pay per year, which exceeds what is provided for in the employment standards laws of the other jurisdictions in Canada.

Coverage under **Saskatchewan's** *Labour Standards Act* was extended to workers employed in commercial hog operations by means of the *Labour Standards Amendment Act, 2002* (Bill 70), which came into force on September 1, 2002. Previously, these employees were excluded from the Act's minimum labour standards, as are most employees working primarily in farming, ranching or market gardening (except those employed in egg hatcheries, greenhouses and nurseries, and bush clearing operations).

Amendments to the Act were accompanied by the adoption of the *Labour Standards Amendment Regulations, 2002*. It added a new section to the *Labour Standards Regulations*, defining a "commercial hog operation" as an undertaking engaged in the breeding, farrowing, weaning or finishing of porcine animals in which six or more full-time equivalent employees are employed.

Furthermore, the *Labour Standards Regulations* now contain distinct hours of work and public holiday provisions for employees of commercial hog operations. These employees are entitled to overtime wages after 10 hours of work in a day or 80 hours over a two-week period. For the purpose of calculating overtime, each public holiday occurring during a two week period is counted as eight hours of work, whether or not the employee works on that date and, if applicable, regardless of the number of hours worked. As regards public holiday pay, employees of commercial hog operations may avail themselves of the *Labour Standards Act's* provisions. However, those who work on a public holiday that falls on a regular day of work also have the option, if they personally request in writing, to be paid regular wages and receive another day off with pay. Employers are required to grant this alternate day off within one year of the public holiday.

In **Ontario**, *Regulation 361/01* amended the *Exemptions, Special Rules and Establishment of Minimum Wage Regulation*. As a result, the maximum daily hours of work provision in the *Employment Standards Act, 2000* does not apply to employees who had an arrangement with their employer to work, on request, more than their regular hours-up to ten hours-in a work day. Such an arrangement must have been made between an employee, at or before the time he/she was hired and before September 4, 2001,^[2] and an employer to which a permit^[2] allowing the adoption of an extended regular working day was issued under the previous *Employment Standards Act*. To remain valid, for the purpose of this provision, the arrangement must not have been revoked by mutual consent since then.

Passage in **Quebec** of the *Act instituting civil unions and establishing new rules of filiation* (Bill 84) resulted in amendments to the *Civil Code* of Quebec and numerous other laws, including the *Act respecting labour standards*. In the latter Act, the term "consort" was replaced by "spouse" and its definition broadened to include people bound by a civil union, as well as the same-sex legal parents of a child. This amendment expanded the scope of provisions regarding absences from work in relation to the death or wedding of a close relative.

As is the case for a wedding, an employee can take a day off from work without reduction in wages on the day of his/her civil union or a day off, without pay, on the day of the civil union of a child, parent, sibling, or child of his/her spouse. To be entitled to such an absence, an employee must advise his/her employer at least one week in advance. The provisions above came into effect on June 24, 2002.

Lastly, the Government of Quebec has adopted an amendment to section 22 of the *Regulation respecting labour standards*, which will come into effect on October 1, 2002. This amendment will allow an employee to take a full maternity leave should she give birth to a stillborn child after the start of the 20th week preceding the expected date of delivery. Currently, maternity leave must normally end five weeks after a stillbirth.

C. Garment Industry

In **Quebec**, the *Act to amend various legislative provisions respecting certain sectors of the clothing industry* (Bill 46) came into effect on December 18, 2001, the day it received Royal Assent. This Act amended the *Act respecting labour standards* to extend by 24 months the transition period during which the *Regulation respecting minimum labour standards in certain sectors of the garment industry* will apply. The latter, in force since July 1, 2000, sets minimum labour standards for employees working in sectors that were previously covered by the collective agreement decrees regarding the men's and boys' shirt, women's clothing, men's clothing and leather glove industries.

Moreover, Bill 46 modified certain provisions regarding the consultations that must precede the enactment, by the government, of labour standards applicable to certain sectors of the clothing industry. Instead of consulting a "body considered to be representative" that could, on its own initiative, propose labour standards and intervention priorities with respect to the monitoring of compliance, the Minister of Labour must consult "the most representative employees' and employers' associations in the clothing industry", whose role is more restricted. In addition, an amendment specifies that labour standards that will be established by the government may include provisions similar to those contained in the *Act respecting labour standards* with respect to wages, hours of work, statutory general holidays, annual leave with pay, rest periods and leave for family events.

Bill 46 also amended the *Act respecting the conditions of employment in certain sectors of the clothing industry and amending the Act respecting labour standards*. This amendment defers, from June 30, 2004 to June 30, 2006, the date on which the report on the application of labour standards in the clothing industry must be tabled in the National Assembly by the Minister of Labour.

Some months after passage of this Act, the Government of Quebec adopted the *Regulation to amend the Regulation respecting a registration system or the keeping of a register and report transmittal*, under the *Act respecting labour standards*. This Regulation amended section 3 of the *Regulation respecting a registration system or the keeping of a register and report transmittal*, in order to extend until December 31, 2003 the obligations regarding the filing of a monthly report with the Labour Standards Board (Commission des normes du travail). This obligation applies to employers in the clothing industry who, had they not expired, would be covered by the *Decree respecting the men's and boy's shirt industry*, the *Decree respecting the women's clothing industry*, the *Decree respecting the men's clothing industry* or the *Decree respecting the leather glove industry*. The monthly report must contain the following information, for each employee: surname, given name, address and social insurance number; classification or qualification; number of regular working hours, overtime and total number of hours for each week; total weekly and monthly gains; hourly rate; indemnities paid for holidays, as severance pay, for annual vacation and any other indemnity or benefit with a financial value. This Regulation came into force on July 1, 2002.

(For more information about previous legislation regarding Quebec's garment industry, see "*Highlights of Major Developments in Labour Legislation 1999-2000*", pp. 5-9.)

D. Minimum Wages

One of the facts that characterize the past year in terms of employment standards legislation has been the large number of modifications to minimum wage provisions across Canada. Indeed, seven jurisdictions adopted regulatory amendments to increase minimum wage rates, one

introduced a new rate for inexperienced employees, and another extended its general minimum wage to youth.

In **British Columbia**, the *First Job/Entry Level Wage Regulation* amended the *Employment Standards Regulation* to create a special minimum wage rate for employees who have little or no previous paid employment experience. Since November 15, 2001, the minimum wage has been \$6.00 an hour for employees who had no paid employment experience before that date and who have since accumulated less than 500 hours of paid employment experience with one or more employers. After accumulating 500 hours of paid work experience, employees are entitled to receive the regular minimum wage, which increased to \$8.00 per hour on November 1, 2001. These new minimum wage rates do not affect employees covered by special daily/monthly minimum wage rates (i.e., live-in home support workers, live-in camp leaders and resident caretakers), or piece work rates (i.e., farm workers who hand harvest certain crops).

Yukon's Act to Amend the Employment Standards Act (Bill 62) was assented to on May 30, 2002. This Act, to come into effect on November 1, 2002, will amend the *Employment Standards Act* to ensure that all employees in Yukon, regardless of their age, are covered by the territorial minimum wage. (Currently, the territorial minimum wage only applies to employees who are at least 17 years of age.) All references to age related to minimum wage provisions will be removed. For instance, the Employment Standards Board will no longer have the power to prescribe a separate minimum wage with respect to the employment of persons under the age of 17.

Newfoundland and Labrador adopted an amendment to the *Labour Standards Regulations*, which repealed and replaced its minimum wage provisions. On May 1, 2002, the minimum wage increased by 25 cents (from \$5.50 to \$5.75 per hour). Moreover, it now applies to employees of all ages. Previously, only employees 16 years of age or over were covered. The minimum wage will increase by a further 25 cents (to \$6.00 per hour) on November 1, 2002.

This amendment will also repeal and replace overtime wage provisions in the Regulations. Effective April 1, 2003, overtime wages-currently set at one and a half times the provincial minimum wage-will be earned at a rate of not less than one and a half times the employee's regular rate of pay.

The *Labour Standards Regulations* was further amended to increase the minimum rate for overtime wages from \$8.25 to \$8.63 an hour, as of May 3, 2002, and to \$9.00 an hour effective November 1, 2002. This minimum overtime wage rate will cease to apply when the new overtime wage provisions come into effect.

In **Manitoba**, the *Minimum Wages and Working Conditions Regulation, amendment* increased the minimum wage by 25 cents (from \$6.25 to \$6.50 per hour) on April 1, 2002. The minimum wage will increase by a further 25 cents (to \$6.75 per hour) on April 1, 2003.

A new *Minimum Wage Regulation* was adopted in **New Brunswick**. On August 1, 2002, it increased the minimum wage rate in the province from \$5.90 to \$6.00 per hour, for the first 44 hours worked in a week, and from \$8.85 to \$9.00 for each additional hour worked in the same week (reflecting the overtime rate). The minimum wage for employees whose hours of work are unverifiable and who are not strictly employed on a commission basis was also raised from \$260.00 to \$264.00 per week.

In **Nova Scotia**, the *Minimum Wage Orders: General, Road Building and Heavy Construction Industry, and Logging and Forest Operations* provide for increases to the various minimum wage rates and to the maximum allowable deductions for board and lodging in the province. On October 1, 2002, the general minimum wage rate in Nova Scotia will rise 20 cents to \$6.00 an hour. The minimum wage rate for inexperienced employees will also increase by 20cents, to \$5.55 an hour. (Inexperienced employees are employees who have not been employed for more than three months by any employer to do the work for which they are currently employed, and who have been employed by their current employer for less than three calendar months.)

The minimum wage rate for employees engaged in road building and heavy construction and for "time workers" employed in a logging or forest operation will increase as well to \$6.00 an hour. Other workers employed in a logging or forest operation who have no fixed work week or whose hours of work are unverifiable (e.g., camp guardians, cooks, stable hands) will be entitled to at least \$1,175.00 per month, compared to \$1,135.00 currently.

Maximum deductions for board and lodging will also be raised on the same date. An employer providing board and lodging will be authorized to deduct up to \$55.15 per week from the minimum wage of an employee (an increase of \$2.00). Maximum deductions for board only will be \$44.65 per week (an increase of \$1.60); for lodging only, \$12.40 per week (an increase of \$0.45); and for single meals, \$2.85 (an increase of \$0.10). An employer in a logging or forest operation will be allowed to deduct from an employee's minimum wage an amount of up to \$8.65 per day (an increase of \$0.60) for board and lodging.

The Government of **Prince Edward Island** approved an order of the province's Employment Standards Board to increase the hourly minimum wage. The *Minimum Wage Order Amendment* will increase the minimum wage from the current \$6.00 per hour to \$6.25 per hour on January 1, 2003, \$6.50 on January 1, 2004, and \$6.80 on January 1, 2005.

On August 21, 2002, **Quebec** adopted the *Regulation to amend the Regulation respecting labour standards*. This Regulation will increase the general minimum wage rate by 30 cents per hour, raising it from \$7.00 to \$7.30 per hour. The minimum wage rate for employees who generally receive gratuities will increase from \$6.25 to \$6.55 per hour and the weekly rate for housekeeping service workers living at their employer's residence will be brought from \$280 to \$292.

This increase will be carried out in two steps. An initial increase of 20 cents per hour will take effect on October 1, 2002, with a second increase of 10 cents per hour scheduled for February 1, 2003. The minimum weekly salary for housekeeping service workers living at their employer's residence will increase by \$8 on October 1, 2002, and by an additional \$4 on February 1, 2003.

Lastly, **Saskatchewan** amended the minimum wage rate provisions of the *Minimum Wage Board Order, 1997* by way of the *Minimum Wage Board Amendment Order, 2002*. The minimum wage increased to \$6.35 an hour on May 1, 2002 (compared to \$6.00 an hour previously) and will go up a further 30 cents, to \$6.65 an hour, on November 1, 2002. Similarly, the minimum sum that must be paid to an employee who is required to report for duty, other than for overtime, increased from \$18 to \$19.05 on May 1, 2002, and will be raised to \$19.95 on November 1, 2002. This minimum reporting pay applies where an employee is required to be on duty for three hours or less.

E. Human Rights in the Workplace

Aside from the proclamation of Saskatchewan's *Human Rights Code Amendment Act, 2000*, as mentioned earlier, two significant bills pertaining to human rights were introduced this year: one in the Northwest Territories, the other in British Columbia. If passed, these bills would have an impact on a number of workplace issues, including discrimination in employment, equal pay and enforcement of human rights provisions.

In the **Northwest Territories**, the *Human Rights Act* (Bill 1) received second reading on February 22, 2002. The purpose of this Bill is to replace the *Fair Practices Act* and reform the territory's human rights legislation. It would expand the list of prohibited grounds of discrimination, establish an independent Human Rights Commission and put in place modern investigative and adjudicative processes for dealing with complaints.

While covering most of the fundamental principles underlying the *Fair Practices Act*, the *Human Rights Act* would have a broader scope. In addition to prohibited grounds of discrimination that were previously recognized, it would protect individuals against discrimination based on ethnic origin, religion, sexual orientation, social condition and disability (whether a disability is physical or mental, actual or perceived). Moreover, discriminating against an individual with respect to employment or any term or condition of employment on the basis of his/her political belief, political association or family affiliations would be prohibited. The new Act would also specify that protection against discrimination on the basis of sex includes protection from discrimination on the basis of potential or actual pregnancy. Furthermore, an intention to discriminate would not be necessary to be found guilty of discrimination.

With respect to equal pay provisions, the principle of "equal pay for equal work" would be maintained, but in a larger sense. Hence, no person would be allowed, *on the basis of a prohibited ground of discrimination*, to remunerate an employee at a lower rate than what is paid to other employees in the same establishment and who perform, for the same employer, the same or substantially similar work-i.e., work involving the

same or substantially similar skills, effort and responsibility and performed under the same or substantially similar conditions. Protection against pay discrimination would therefore no longer apply solely to female employees, but to all categories of employees protected by the *Human Rights Act*. However, it should be noted that paying an employee at a lower rate of pay would be allowed if the difference in the rate is attributable to a seniority system; a system that measures earnings by quantity or quality of production or performance; a compensation or hiring system that recognizes the existence of a labour shortage in respect of the field of work or regional differences in the cost of living; a downgrading, reclassification or demotion process or system; the existence of a temporary rehabilitation or training program; or any other system or factor that is not based on a prohibited ground of discrimination.

New anti-harassment provisions would also be added. These would forbid, on the basis of a prohibited ground of discrimination, harassment of any individual or class of individuals in the provision of goods, services, facilities or accommodation, commercial premises or residential accommodation, or in matters related to employment.

As previously mentioned, the new Act would establish an independent Human Rights Commission. This Commission, composed of three to five members appointed by the Government on the recommendation of the Legislative Assembly, would be responsible for the application of the Act. The Director of Human Rights, also appointed by the government on the recommendation of the Legislative Assembly, would act as the registrar of complaints filed or initiated under the Act, maintain a public register of decisions and orders made by adjudicators, supervise and direct the work of the Commission employees and assistants, oversee the work carried out by community organizations, give the Commission a written report on the status and disposition of complaints every three months and generally carry out the administration of the Act.

Complaints could be filed either by an individual (or group of individuals) claiming to be aggrieved because of a contravention to the Act or by the Commission itself, where it has reasonable grounds for believing that a person has contravened the Act. In both cases, the complaint would normally have to be filed or introduced within two years of the alleged contravention. After completion of a hearing for the adjudication of a complaint, an adjudicator would decide whether or not the complaint has merit in whole or in part.

After a complaint has been filed or initiated, the Director, a Commission employee or assistant, or a community organization would, by mediation or other means, assist the parties to the complaint in attempting to settle the matter by agreement.

In **British Columbia**, the *Human Right Code Amendment Act, 2002* (Bill 53) was introduced on May 30, 2002. If enacted, this Bill would bring significant changes to the administration of complaints under the *Human Rights Code*, by abolishing the Human Rights Commission and making the Human Right Tribunal directly responsible for receiving, mediating and adjudicating cases. The Human Rights Advisory Board-whose role is to provide information about the human rights system, serve as a channel for the concerns of the public, and advise the Minister responsible for the Code on matters relating to the administration of the Code-would also be eliminated.

The Code would no longer provide for the development and conduct of public education and information programs. Moreover, monitoring progress in achieving equality in British Columbia would no longer be included as one of the Code's purposes.

The time limit for filing a complaint under the Code would be reduced from one year to six months after the alleged contravention. A member or panel of the tribunal could accept a complaint filed after this time limit, but only if it determined that to do so would be in the public interest and that no substantial prejudice would result to any person because of the delay. (Currently, the commissioner of investigation and mediation may accept a complaint if the delay in filing it was "incurred in good faith" and no substantial prejudice will result to any person because of the delay.)

In addition to other grounds for dismissal, a member or panel of the tribunal could dismiss all or part of a complaint if "a reasonable settlement offer has been made with respect to the complaint and not accepted by the complainant". A dismissal could be reviewed by applying, within 30 days, to the chair of the tribunal. The chair would then designate a member of the tribunal to conduct the review in order to determine whether or not a complaint or part of a complaint should have been dismissed.

In light of its new responsibilities, the tribunal's powers would also be expanded. For instance, it would have the authority to make rules or make

an order permitting-or even requiring-that complaints be dealt with through mediation. As well, a member or panel of the tribunal could award costs against a party who contravenes a rule or an order of the tribunal.

British Columbia's Ministry of Attorney General indicated that it would hold consultations on Bill 53. The Bill would then be revised before being debated in the fall 2002 session of the legislature.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

On December 18, 2001, **Quebec** enacted legislation (Bill 63) which modified the *Act to amend the Labour Code, to establish the Commission des relations du travail and to amend other legislative provisions*, among other things, to establish rules governing the appointment of labour commissioners as commissioners of the new Labour Relations Commission (Commission des relations du travail) and to provide for the prolongation of the first term of the first Commission's president for a maximum period of two years by reason of the work required for the establishment of the Commission.

In addition, provisions of the *Labour Code* dealing with the appointment of commissioners of the Labour Relations Commission were brought into force on February 13, 2002.

On May 30, 2002, **British Columbia** enacted the *Labour Relations Code Amendment Act, 2002* (Bill 42).

This Act brought a number of changes to the *Labour Relations Code*, notably with respect to the administration of the Code, the right to communicate with employees and the power to make regulations.

Effective September 1, 2002, a change to the introductory provisions of the Code requires the Labour Relations Board and other persons having powers and duties under the Code to consider stated principles in their decisions. One of those principles, which is new, is fostering the employment of workers in economically viable businesses.

Effective July 30, 2002, the right to communicate provision was amended to provide that, subject to the regulations, a person may express his/her views on any matter, including matters relating to an employer, a trade union or the representation of employees by a trade union, provided that the person does not use intimidation or coercion.

Another amendment that came into force on July 30, 2002 authorizes the Lieutenant-Governor in Council to make regulations respecting presentations by employers and trade unions related to votes under the Code or establishing and authorizing fees to be payable for any services provided by the Board or its staff.

B. Public and Parapublic Sectors

In **Ontario**, The *Public Sector Labour Relations Transition Act, 1997* was adopted to provide 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. When it was passed, the Act was to apply to occurrences during a "transitional period" beginning on October 29, 1997 and ending on December 31, 2001 or a later date prescribed by regulation. This regulatory power was used on December 7, 2001, when December 31, 2004 was prescribed as the date on which the transitional period will end.

On December 3, 2001, the **Yukon** Government adopted the *Education Staff Relations Act* (Bill 47).

This Act, which will come into force on a date fixed by the government, will repeal Part 10 of the *Education Act*, which deals with teachers staff relations, and will provide the legal framework governing the relationship between the Government of Yukon (the employer) and the Yukon Teachers' Association (the bargaining agent).

The term "employee" will be redefined, among other things, to extend the coverage of the new Act to all part-time teachers, but not those employed on a relief, casual or substitute basis. With respect to the process for the resolution of collective bargaining disputes, both parties (not just the bargaining agent) will have the right to apply for mediation. In the case of a deadlock in negotiations, the bargaining agent will continue to have the right to choose the resolution process - referral to binding arbitration, or to a conciliation board with the parties having the right to declare a strike or lockout when that right is acquired under the Act.

In addition, the Act will include a new provision on the operation of schools during a strike or lockout. Prior to any such action, the parties will have to discuss a protocol to be effective during the labour dispute to ensure the health and safety of students. If there is no agreement on a protocol, the issue may be referred by either party to the chair of the Yukon Teachers Staff Relations Board for a final and binding determination.

On January 28, 2002, **British Columbia** enacted two pieces of legislation having a bearing on labour relations in the public education and health and social services sectors.

The *Public Education Flexibility and Choice Act* (Bill 28) states that despite any other Act or a collective agreement, an institution (i.e. a college or institute) has the right to, among other things, establish the size of its classes, the number of students who may be enrolled in or assigned to a class and the total number of students who may be assigned to a faculty member in a semester, a term or an academic year. An institution also has the right to provide support for faculty members, including teaching assistants, senior students, contractors and support staff members. These provisions came into force on January 28, 2002.

In addition, this Act amended the *School Act*. New provisions state, among other things, that there must not be included in a teachers' collective agreement any provision restricting or regulating the power of a board of school trustees to establish class size and composition or its power to determine staffing levels or ratios or the number of teachers or other staff it employs. These provisions came into force on July 1, 2002.

With respect to the health sector, the *Health and Social Services Delivery Improvement Act* (Bill 29) deals with certain rights of health sector employers, for example, the right to reorganize service delivery and the right to contract outside of the collective agreement for non-clinical services. Another provision states that a party to the Employment Security and Labour Force Adjustment Agreement (ESLA) is not required to carry out a term of the ESLA, effective January 28, 2002. Also, a party to a collective agreement is not required to carry out any part of a provision that is based on or derived from the ESLA. In addition, for the period ending December 31, 2005, a collective agreement must not contain a provision that restricts or limits a health sector employer from laying off an employee, that requires such an employer to meet conditions before giving layoff notice or to provide more than 60 days' notice of layoff to an employee directly or indirectly affected and to the trade union representing the employee, or that provides an employee with bumping options other than the bumping options set out in the regulations.

In addition, the Act defines three accords signed in 1999 by the government and the unions representing employees in the social services sector, including an agreement on equity adjustments, and states that a party to an accord is not required to carry out any term of the accord. A provision of a collective agreement that is based on or derived from such an accord is void. Also, a member of the Community Social Services Employers' Association that is a party to a collective agreement that includes employment security provisions is not required to carry out those provisions. The Act lays down new employment security provisions.

This Act came into force on January 28, 2002.

Lastly, on April 11, 2002, Bill 74, *An Act to Amend the Public Service Act*, was tabled in the **Yukon** Legislative Assembly. That Bill would

incorporate into the *Public Service Act* protection for public servants that is commonly known as whistleblower legislation.

Currently, only employees who are requested by the Conflict of Interest Commission to provide assistance during an investigation of a conflict of interest are protected against retaliatory action under the *Public Service Act*. With these amendments, an employee who voluntarily brings forward a complaint to the Conflict of Interest Commission would be protected.

The scope of the complaints that can be made would also be expanded. Under the proposed changes, employees could make a complaint to the Commission if they reasonably believe that a policy or practice of the Government of Yukon may:

1. violate current legislation;
2. contravene criminal law; or
3. pose a grave hazard to public health or safety.

Under the proposed legislation, the employee must first report such a policy or practice to his/her immediate supervisor, the Deputy Minister who is concerned or the public service commissioner, depending on the circumstances. A Deputy Minister must be given a reasonable opportunity to respond to such a report. If the employee is not satisfied with the results of their investigation, he/she can then proceed with making a complaint to the Conflict of Interest Commission. No retaliatory action may be taken against him/her for doing so, except if the Commission dismisses the complaint on the ground that it is frivolous or vexatious or made in bad faith.

If the Commission determines that an investigation is necessary, it would report its findings to the Legislative Assembly and could make recommendations on actions the Government of Yukon should take.

C. Emergency Legislation

During the period covered by this report, legislative measures were adopted to settle labour disputes in the public education sector in British Columbia and Alberta, and in certain municipal services in Ontario.

In **British Columbia**, the *Education Services Collective Agreement Act* (Bill 27) was assented to and came into force on January 27, 2002.

This Act was passed to settle a labour dispute between the British Columbia Teachers' Federation (BCTF) and the British Columbia Public School Employers' Association.

The collective agreement between the parties that expired on June 30, 2001, as amended by the Act, is deemed to constitute a collective agreement and is effective from July 1, 2001 to June 30, 2004. The Act provides for a wage increase of 2.5%, effective July 1, 2001, and the same percentage increase on the same date in 2002 and 2003. Provisions negotiated and agreed to by the parties during collective bargaining may be included in the collective agreement.

The Minister of Skills Development and Labour may appoint a commission, consisting of one or more persons, to inquire into the structures, practices and procedures for collective bargaining by the employers' association, school boards and the BCTF. The commission makes recommendations, after taking into consideration a series of factors mentioned in the Act, with a view to improving those structures, practices and procedures, and reports these recommendations to the Minister within the time he/she sets. The commission may not recommend the expiry of the collective agreement constituted under the Act before its expiry date.

The *Labour Relations Code* and the regulations made under it apply in respect of a matter to which the Act applies, but the Act overrides any conflicting or inconsistent provisions.

In **Alberta**, emergency procedures were ordered on February 21, 2002 with respect to labour disputes between teachers in 22 school districts,

represented by the Alberta Teachers' Association (ATA), and the concerned school boards. This followed a government public emergency declaration under the *Labour Relations Code* that job action by Alberta teachers was causing unreasonable hardship to third parties.

Strikes by teachers in those school districts were then prohibited as well as any lockout by school boards. The teachers covered by the emergency procedures were required to go back to work on February 22, 2002, and the Minister of Human Resources and Employment established a Teachers' Dispute Resolution Tribunal. The parties had until March 15, 2002 to meet on their own or with a government-appointed mediator to reach a settlement. If the parties were unable to reach a settlement by that date, the dispute was to be referred to the one-person Teachers' Dispute Resolution Tribunal. The tribunal would have had until May 15, 2002 to consider the parties' positions and issue a binding award in each dispute.

This order was quashed by the Court of Queen's Bench on March 1, 2002, and the Government of Alberta passed the *Education Services Settlement Act* (Bill 12) on March 14, 2002.

The purpose of the Act was to end labour disputes between 47 board of trustees and regional authorities for francophone education, represented by the Alberta School Boards Association (ASBA), and ATA.

Any employees on strike were required to terminate their work stoppage immediately upon the coming into force of the Act on March 14, 2002, and any strikes and lockouts were prohibited until the expiry of the collective agreements entered into under the Act. Employees were required to resume or continue the duties of their employment.

The legislation applies to all parties whose collective agreements expired in August 2001 and which have not negotiated new agreements. The matters remaining in dispute between a school board and ATA were referred to a three-member arbitration tribunal having the power to issue a binding award. The employer and employee representatives each had the opportunity to appoint a member of the arbitration tribunal and the Minister of Human Resources and Employment appointed the third member, who serves as chair. The award of the chair is the award of the tribunal if there is no majority.

In determining an award on wages and benefits, the arbitration tribunal must consider a number of factors on a case-by-case basis, such as wages and benefits in private and public, and unionized and non-unionized, employment, including those of teachers in other provinces and territories in Canada, the continuity and stability of private and public employment; as well as the general economic conditions in Alberta and the local economic conditions within the geographic location of the dispute.

The arbitration tribunal must be satisfied that an award can be implemented without an employer incurring a deficit, or if the employer already has a deficit, without incurring any greater deficit, over the period during which the collective agreement is in effect.

It is not within the tribunal's mandate to review certain matters such as the number of students in a classroom, pupil-to-teacher ratios, and maximum instructional time. These items will be examined in a broad review of the learning system in Alberta.

The term of every new collective agreement will extend until August 31, 2003.

Fines are provided for offences under the Act. If the ATA causes an illegal strike, it is liable to a maximum fine of \$1,000 in respect of each day or part of a day on which the offence occurs or continues; if one of its officers or representatives causes or consents to an illegal strike, he/she is liable to a maximum fine of \$10,000; and if any other person strikes or causes an illegal strike, he/she is liable to a maximum fine of \$1,000. Likewise, if an employer commences or causes an illegal lockout, it is liable to a maximum fine of \$1,000 in respect of each day or part of a day on which the offence occurs or continues; and if a person commences, causes or consents to an illegal lockout, he/she is liable to a maximum fine of \$10,000. In addition, any person who fails to comply with the Act is guilty of an offence and is liable to a fine not exceeding \$1,000.

In **Ontario**, the *City of Toronto Labour Disputes Resolution Act, 2002* (Bill 174) was enacted on July 11, 2002 to resolve labour disputes between the Canadian Union of Public Employees, Locals 79 and 416, and the City of Toronto (the employer).

As soon as the Act was assented to, each bargaining agent was required to terminate any strike by employees it represents, and the employer was required to terminate any lockout. After new collective agreements have been entered into by the parties under the Act, any right to strike or to lock out will be governed by the collective bargaining statute that is applicable.

If, by the end of the day on July 16, 2002, the City of Toronto was not satisfied that it could ensure that the garbage accumulation in the city resulting from the labour disputes was removed and disposed of by the end of the day on July 18, 2002, it was permitted to contravene one or more terms or conditions of employment made applicable to employees under the Act or contained in a new collective agreement for the purpose of ensuring that the garbage accumulation in the city was removed and disposed of as soon as possible. No person or trade union could interfere with or counsel, procure, support or encourage the interference with anything done by the City of Toronto to remove and dispose of the garbage accumulation.

If any person, including the employer, or a trade union contravenes or fails to comply with the above-mentioned provisions, on conviction an individual is liable to a maximum fine of \$3,000, and, in any other case, to a maximum fine of \$50,000. These fines are applicable to each day of a contravention or failure to comply.

The employer and the bargaining agent or agents that represent employees in a bargaining unit for which no new collective agreement has been entered into could, by unanimous agreement, appoint one person as a mediator-arbitrator. If no appointment was made by the parties by July 16, 2002, the Minister of Labour was to immediately appoint a mediator-arbitrator for the purposes of the Act and notify the parties accordingly.

If the parties cannot conclude a new collective agreement with respect to the employees in a bargaining unit, the mediator-arbitrator will issue an award regarding all matters in dispute. In doing so, the mediator-arbitrator will have to take into consideration the following criteria:

- The employer's ability to pay in light of its fiscal situation.
- The extent to which services may have to be reduced, in light of the award, if current taxation levels are not increased.
- The economic situation in Ontario and in the City of Toronto.
- A comparison, as between the employees and comparable employees in the public and private sectors, of the nature of the work performed and of the terms and conditions of employment.
- The employer's ability to attract and retain qualified employees.
- The purposes of the *Public Sector Dispute Resolution Act, 1997*.

Each award is final and binding on the parties and must specify that the new collective agreement expires on December 31, 2004.

D. Construction Industry

In **Quebec**, *An Act to amend various legislative provisions relating to the building trade and the construction industry* (Bill 181) was assented to and came into force on December 20, 2001.

This Act contains, among other things, a provision excluding for the application of the *Act respecting labour relations, vocational training and manpower management in the construction industry* certain work executed by professional artists who are members of a recognized association in the visual arts or arts and crafts fields or by professional restorers who are members of a restorers association recognized by the Minister of Labour.

In **Ontario**, effective March 9, 2002, a Regulation has prescribed Quebec as a designated jurisdiction for the purposes of the *Fairness is a Two-Way Street Act (Construction Labour Mobility), 1999*.

This means, among other things, that residents of Quebec who wish to do construction work in Ontario must:

- register annually with the Jobs Protection Office (JPO) and pay a fee of \$100;
- provide evidence satisfactory to the JPO Director of work experience in a prescribed trade, occupation or construction activity;
- meet Quebec's certification requirements (where applicable) and have Ontario certification (where compulsory);
- carry their JPO registration card.

Quebec residents working in Ontario on construction contracts and sub-contracts that were in force before March 9, 2002 can continue to work on those projects, without being affected by the requirements contained in the Act, for the duration of the contract. Also, when Quebec workers cannot register with the JPO either because they have no certification or because they are certified in only one of the two provinces, it is possible for an Ontario contractor to apply to the JPO Director to have these workers exempted from the certification requirements for the duration of the project for which they are required. Exemptions are allowed in the following circumstances only:

- the workers are employed by the Ontario contractor;
- in the Director's opinion, the workers' skills are necessary to the project; and
- in the Director's opinion, because of a shortage of those skills, no Ontario workers with those skills are available to carry out the work. The contractor is expected to show proof of the absolute need for any Quebec workers.

All other registration requirements still have to be fulfilled, and no exemption will be granted for a worker who wishes to work in a trade for which certification is compulsory in Ontario (e.g. as an electrician), but is not certified in either Ontario or Quebec.

A Quebec resident who works in the construction industry in Ontario and does not register with the JPO is guilty of an offence and on conviction is liable to a fine ranging from \$500 to \$2,000 for each day or part of a day worked without a JPO registration card.

In **Quebec**, the *Regulation respecting the issuance of competency certificates* under the *Act respecting labour relations, vocational training and manpower management in the construction industry* has been amended.

Changes have been made to the conditions under which the Quebec Construction Commission (Commission de la construction) issues competency certificates in order to take into account the work experience acquired in a province, in particular Ontario, the government of which is, together with the Government of Quebec, party to a bilateral intergovernmental agreement respecting the mutual recognition of qualifications, skills and work experience in trades and occupations in the construction industry.

The Regulation allows the Commission to issue a competency certificate to a person who proves that he/she has worked for at least 1,500 hours in the construction industry, between January 1, 2000 and December 31, 2001, in a province where the applicant is not domiciled and with which the Government of Quebec has a bilateral intergovernmental agreement of the type mentioned above. If the application relates to an apprentice competency certificate, at least 750 hours must pertain to work related to the trade in question, and, in the case of certain trades (e.g. electricians), the person must demonstrate that he/she meets the admission requirements for a program of study leading to a secondary school vocational diploma pertaining to the trade. The workers were able to file an application for a competency certificate from April 17 to June 1, 2002.

Those who hold a competency certificate issued under these provisions are allowed a specified period of time to provide, if they have not already done so, proof that they have successfully completed a safety course required by the *Safety Code for the Construction Industry*. In addition, certain holders of apprentice competency certificates issued under the same provisions are exempted from requirements relating to the training program pertaining to their trade.

E. Fishing industry

In **New Brunswick**, *An Act to Amend the Fisheries Bargaining Act* (Bill 16) was assented to and came into force on December 21, 2001. This Act has abolished the Fishing Industry Relations Board established under the *Fisheries Bargaining Act*. That Board has been replaced by the Labour and Employment Board established under the *Labour and Employment Board Act*. The Labour and Employment Board may exercise such powers as may be conferred on it by the *Labour and Employment Board Act* and the *Fisheries Bargaining Act*.

III. OCCUPATIONAL HEALTH AND SAFETY

A. Legislation of General Application

In **Ontario**, the *Occupational Health and Safety Amendment Act, 2001* (Bill 145) came into force on December 12, 2001.

This Act has amended provisions dealing with the issuing of warrants for investigations under the *Occupational Health and Safety Act*. On application without notice, a justice of the peace or a provincial judge now has the power to authorize, by warrant, occupational health and safety inspectors to use any investigative technique or procedure or to do any thing described in the warrant if he/she is satisfied by information under oath that there are reasonable grounds to believe that an offence against the *Occupational Health and Safety Act* or the regulations has been or is being committed and that information and other evidence concerning the offence will be obtained through the use of the technique or procedure or the doing of the thing.

The justice of the peace or provincial judge is also authorized to permit experts to help in the execution of the warrant as well as authorize the inspector to take any or all of the steps set out in the terms and conditions of the warrant.

Under new provisions introduced by the Act, things not covered by a warrant may be seized or examined if they are found in the course of an authorized search and if the inspector believes on reasonable grounds that the thing affords evidence of an offence under the *Occupational Health and Safety Act* or the regulations. Warrantless searches are permitted in exigent circumstances. An inspector has the same duties as are imposed under the *Occupational Health and Safety Act* in respect of giving notice and providing receipts and bringing things seized before a provincial judge or justice of the peace. The procedures set out in the *Provincial Offences Act* apply.

Also in Ontario, amendments have been made to the *Industrial Establishments Regulation* under the *Occupational Health and Safety Act* to enhance safety training requirements for workers employed in logging operations. The amendments have updated training for cutters and skidder operators and have mandated additional new safety training for operators of mechanical tree harvesting equipment and their supervisors. These amendments took effect on June 1, 2002.

Lastly, an amendment has been made to the *Firefighters - Protective Equipment Regulation* under the Ontario *Occupational Health and Safety Act* with respect to head protective equipment. The reference to the Ontario Code for the Head Protection of Fire Fighters has been removed, and the Regulation now stipulates that a firefighter who is exposed to the hazard of head injury must wear head protective equipment that is appropriate in the circumstances. This amendment took effect on March 12, 2002.

In **New Brunswick**, *An Act to Amend the Occupational Health and Safety Act* (Bill 2) received Royal Assent on December 21, 2001.

When it comes into force by proclamation, this Act will introduce a definition of "contracting employer" (i.e. a person who through a contract, agreement or ownership, directs the activities of one or more employers), and will require that every contracting employer comply with the *Occupational Health and Safety Act*, the regulations and any order made under their provisions. So far as is reasonably practicable, a contracting

employer who directs the activities of one or more employers involved in work at a place of employment will also be required to ensure that each employer complies with the Act and the regulations.

Amendments will also be made to the provisions relating to the right to refuse dangerous work. When an occupational health and safety officer finds that an employee does not have reasonable grounds for believing that certain work is likely to endanger his/her health or safety or that of another employee, the officer will have to advise the employee **in writing** to do that work. The right to refuse of an employee, who has appealed that officer's advice, will be protected until the appeal process is concluded. In such as case, the employee will be required to remain available at a safe place near his/her work station during his/her normal working hours.

Another amendment will extend from seven to 14 days the delay for appealing an order given by an occupational health and safety officer.

In **Manitoba**, *The Safer Workplaces Act (Workplace Safety and Health Act Amended)* (Bill 27) received Royal Assent on August 9, 2002.

This Act brought various amendments to the *Workplace Safety and Health Act*, the most important of which are described below.

New duties for employers

In addition to the general duty of an employer to provide safety and health information, instruction and training to all his/her workers, new provisions require an employer to provide information, instruction and training to a worker to ensure, so far as is reasonably practicable, his/her safety and health, before the worker begins performing a work activity at a workplace, performs different work than the worker was originally trained for, or is moved to another area of the workplace or a different workplace that has different facilities, procedures or hazards.

However, a worker may perform work while being trained if he/she is under the direction of a supervisor or another person who is fully trained and has sufficient experience in performing that work activity to ensure that the safety or health of the worker and any other person is not at risk.

A worker is entitled to the same wages and benefits for any time spent in training that he/she would be entitled to had the worker been performing his/her regular work duties during that time.

New duties for supervisors

Supervisors are specifically required, among other things, to take reasonable precautions to protect the safety and health of workers under their supervision and to make them aware of all known or reasonably foreseeable risks in the area where they work.

New duties for contractors, owners and suppliers

Prime contractors are required for construction projects involving more than one employer or self-employed person at the same time. Their duties include co-ordinating work on the project and ensuring, so far as is reasonably practicable, that all persons working on the project comply with the Act and the regulations.

When work is performed by employers, their workers or self-employed persons under a contract with a contractor, the latter must ensure, so far as is reasonably practicable, that workplaces and work processes or procedures, that are not in the direct and complete control of the employers or self-employed persons, do not create a risk to the safety or health of any person.

Owners of land or premises used as a workplace are required to take reasonable precautions to ensure that matters under their control do not create a risk to the safety or health of any person.

Duties of suppliers include ensuring, so far as is reasonably practicable, that any tool, equipment, machine, device, or chemical or biological substance provided for use at a workplace is safe when used in accordance with the instructions provided by the supplier, and conforms with the requirements of the Act and the regulations.

Workplace safety and health program

Employers must establish a written safety and health program for each workplace where 20 or more of their workers are regularly employed. However, the Director of the Workplace Safety and Health Division may issue an order permitting an employer to establish a workplace safety and health program for more than one workplace or parts of more than one workplace.

Specific matters must be included in a workplace safety and health program, and an employer must design the program in consultation with the workplace safety and health committee or, if there is no committee, the worker safety and health representative for the workplace.

Duty to provide required information

The Act requires information relating to workplace safety and health to be shared between prime contractors, contractors, owners, employers and self-employed persons.

Workplace safety and health committees and representatives

New duties for committees and representatives are specified. They include making recommendations to the employer or prime contractor about the safety and health of workers, inspecting the workplace at regular intervals and participating in investigations of accidents and dangerous occurrences at the workplace.

An employer (including a prime contractor) who receives written recommendations from a committee or representative identifying anything that may pose a danger to the safety or health of any person in a workplace under his/her control, must respond in writing to the committee or representative no later than 30 days after receiving the recommendations, unless the employer implements all the recommendations within that period. The response of an employer must contain a timetable for implementing the recommendations that he/she accepts, and give reasons why the employer disagrees with any recommendations and does not accept them. If no agreement can be reached regarding the response of an employer, the matter may be referred to a safety and health officer.

Upon request, the employer or prime contractor must disclose to the committee or representative information concerning the testing of any equipment, device, or chemical or biological substance used at a workplace as well as reports on workplace safety and health inspections, investigations, monitoring or audits.

The worker co-chair of a committee at a workplace or a committee member who represents workers, or a representative if one has been designated and is available, will be involved in the resolution of a situation involving a right to refuse dangerous work.

Exemption from regulation

After consulting with any parties he/she considers appropriate, the Director of the Workplace Safety and Health Division may issue a written order exempting a person or class of persons from any provision of a regulation to meet the special circumstances in a particular case. The Director may make such an order only if he/she is satisfied that no worker's health or safety is materially affected by the exemption. (Previously, the Director had the power to vary provisions or standards of codes of practice.)

Stop work orders

While a stop work order is in effect, any worker who is directly affected by the order is entitled to the same wages and benefits that he/she would have received had the stop work order not been issued, and the employer may re-assign the worker to alternate work. If the employer provides satisfactory evidence that alternate work is not available, the Director of the Workplace Safety and Health Division may order that the obligation to continue paying the same wages and benefits does not apply for a specified period.

Discriminatory action

The actions that constitute discriminatory actions under the Act are more clearly defined.

Safety and health officers appointed under the Act will investigate and resolve discriminatory action complaints rather than the Manitoba Labour Board.

Appeal process

The process for appealing orders or decisions of safety and health officers has been standardized. Decisions made by officers regarding improvement orders, stop work orders, discriminatory action, or the right to refuse dangerous work may be appealed to the Director of the Workplace Safety and Health Division. Decisions made by the Director may be appealed to the Manitoba Labour Board. A further appeal may only be made to the Court of Appeal on a question of law or jurisdiction and by leave of a judge of that Court.

Administrative penalties and additional fines

The Act also includes a system of administrative penalties for non-compliance with improvement orders. A person who pays an administrative penalty (maximum \$5,000) for failure to comply with an improvement order cannot be charged with an offence respecting that failure, unless the failure continues after the penalty is paid. The Act requires the government to use the amounts paid for the purpose of educating the public on matters relating to workplace safety and health.

When a person is convicted of an offence under the Act, the court may, having regard to the nature of the offence and the circumstances of the case, order the offender to pay to the Minister responsible for the administration of the legislation an amount that the government must use for the purpose of educating the public on matters relating to workplace safety and health. Such a penalty may be required in addition to any other penalty that may be imposed under the Act, but the combined amount cannot exceed the maximum penalty for which the offender could be liable.

Coming into force

The Act came into force on August 9, 2002, except for the provisions dealing with administrative penalties, which are scheduled to take effect 90 days after that date.

In **Nova Scotia**, amendments to the *Occupational Health and Safety First Aid Regulations* under the *Occupational Health and Safety Act* were made on September 3, 2001. They include the following measures: expanding the list of qualified first aid providers under the Regulations; permitting employers who share the same work site to share first aid services (this was previously limited to construction projects); clarifying which costs for first aid training are to be paid by the employer; allowing employers to maintain first aid treatment records in a way that best suits their operation (e.g. a record book in a first aid kit or electronic filing); clarifying the requirements for first aid remote location plans, when work is far from a health care facility; and removing the restriction on administering medication as a first aid measure.

Effective October 30, 2001, a number of changes have been made to the **British Columbia** *Occupational Health and Safety Regulation* under the *Workers Compensation Act*, notably with respect to codes or standards for tools, machines or pieces of equipment manufactured before April 15, 1998; temporary and permanent horizontal lifeline systems; the cleanup of used abrasive blasting materials containing a designated harmful substance; and level indicating devices for self-propelled elevating work platforms.

Other amendments were made to the British Columbia *Occupational Health and Safety Regulation* with respect to first aid. Coming into effect on October 28, 2002, these amendments will require that persons (e.g. external agencies) authorized by the Workers' Compensation Board provide training, examination and certification of occupational first aid attendants and instructors. The Prevention Division will be responsible for ensuring that standards acceptable to the Board are maintained.

In **Newfoundland and Labrador**, a section of the *Occupational Health and Safety Regulations* under the *Occupational Health and Safety*, which

dealt with the establishment of occupational health and safety committees and the appointment of worker health and safety representatives, was repealed on January 1, 2002. (The circumstances where such committees are to be established or representatives are to be designated are prescribed under the *Occupational Health and Safety Act*.) At the same time, new provisions were added to the Regulations concerning the content of an occupational health and safety program and an occupational health and safety policy, and the circumstances when such a program or policy must be reviewed.

B. Protection against Tobacco Smoke

In **Saskatchewan**, *The Tobacco Control Act* came into force on March 11, 2002. One of the goals of this Act is to reduce exposure to second hand smoke in public places. Measures to achieve this include: requiring restaurants, taverns, bingo halls, billiard halls, casinos and bowling centres to have a designated non-smoking area that is not less than 30% of the public area of the premises by January 1, 2002 (that percentage is scheduled to increase to 40% on January 1, 2003 and to 60% on January 1, 2004); and prohibiting smoking in other enclosed public places where young persons (those under the age of 18) have access, except in some places as specified in the Act or prescribed by regulations, such as, for example, a separately ventilated place in a special-care or personal care home.

In **British Columbia**, amendments to the *Occupational Health and Safety Regulation* under the *Workers Compensation Act* have provided for revised health and safety regulations dealing with workers' exposure to environmental tobacco smoke in public entertainment facilities, which include bars, bingo halls, bowling alleys, cocktail lounges, restaurants, gambling casinos, nightclubs or pubs.

These regulations, which came into force on May 1, 2002, provide, among other things, for the following:

- Public entertainment facilities that choose to allow smoking on their premises must have separate places for smoking and non-smoking customers.
- A separate place for smoking must be structurally separate and can be no more than 45% of the total floor space (65% in bingo halls) that is used by the public.
- A room designated for smoking must be ventilated by a non-recirculating exhaust ventilation system, an air cleaning system or a combination of both. Various requirements are prescribed for those systems.
- Workstations cannot be located in a room designated for smoking.
- Workers can enter a room designated for smoking intermittently to perform their functions, but cannot spend more than 20% of their daily working hours in such a room.
- Employers must allow workers to choose never to enter a room designated for smoking, except to respond to an emergency or to investigate for illegal activity, or to enter such a room to perform their functions for a total period that is less than 20% of their daily working hours. If they make one of these choices, the workers are protected from any discriminatory action that may be taken by their employer.

The revised regulations do not override municipal bylaws that prohibit smoking in certain places to which the public has access.

In **Nova Scotia**, the *Smoke-free Places Act* (Bill 125) received Royal Assent on May 30, 2002 and will come into force on January 1, 2003. It will prohibit smoking in a variety of enclosed places.

No smoking in indoor areas of workplaces will be permitted, except in a designated smoking room that is enclosed and separately ventilated. Youth under 19 years of age will not be permitted to enter a smoking room. However, special provisions will apply to certain establishments, including restaurants, bars, bingo halls, private clubs, psychiatric facilities, nursing homes or residential care facilities, and parts of a health care facility used for the acute or long term care of veterans. These provisions will protect persons under the age of 19 from exposure to tobacco smoke and will prescribe rules regarding smoking areas in certain establishments.

In addition, the Act will specify that no employer may require an employee to work in any part of an enclosed place in a restaurant, lounge, beverage room or any building or facility designated by regulations or in any part of the outdoor area of such a place at any time when smoking is permitted. No employer may discharge or lay off an employee because he/she has refused to work in a part of such an enclosed space or outdoor area.

C. Mining Safety

In **Alberta**, amendments to the *Mines Safety Regulation* under the *Occupational Health and Safety Act* have deferred the expiration of the Regulation as a whole, which was to occur on December 31, 2001. The application of the Regulation was first extended until June 30, 2002 and then until March 31, 2003. 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.

In **Quebec**, the *Regulation to amend the Regulation respecting occupational health and safety in mines* under the *Act respecting occupational health and safety* has introduced new provisions relating to the forwarding of a notice to the Occupational Health and Safety Commission (Commission de la santé et de la sécurité du travail) where certain events occur as well as provisions dealing with the use in an underground mine of a new type of motorized vehicle, the all terrain vehicle. In addition, it has amended certain provisions concerning air quality and certain equipment, such as motorized vehicles and remote controlled equipment, and has provided increased safety measures for certain equipment, such as electrical hoisting plants, friction hoists and hoists controlled by a programmed electronic system.

The Regulation has also clarified provisions dealing with the handling, use, storage and transportation of explosives, and provides that certain categories of persons working underground will have to receive more elaborate training with respect to occupational health and safety. It came into force on May 16, 2002.

D. Railway Safety

In **Nova Scotia**, *Railway Safety Regulations* were issued under the *Railways Act* on November 30, 2001.

These Regulations provide for the safe operation of railways under provincial authority (i.e. short-line railroads operating in Nova Scotia). They adopt by reference existing federal regulations, standards and operating rules.

In **New Brunswick**, amendments have been made to the *General Regulation* under the *Shortline Railways Act* for the purpose, among other things, to add the *On Board Trains Occupational Safety and Health Regulations*, issued under the *Canada Labour Code*, as regulations adopted for the purposes of the *Shortline Railways Act*. The amendments came into force on February 25, 2002.

E. Boilers, Pressure Vessels, Elevating Devices and Cranes

In **Nova Scotia**, the *Power Engineers Regulations* issued under the *Crane Operators and Power Engineers Act*, took effect on September 1, 2001. Among other things, they prescribe various requirements for boiler plants, refrigeration plants and compressor plants, and deal with the classification of plants and the qualifications of power engineers as well as refrigeration and compressor plant operators. Regulations respecting stationary engineers made in 1988 were repealed.

In addition, *Crane Operators Regulations*, issued under the *Crane Operators and Power Engineers Act*, took effect on September 1, 2001. They deal with the classification of cranes and the qualifications of operators.

Also in Nova Scotia, the *Elevators and Lifts Act* (Bill 105) received Royal Assent on May 30, 2002. When it comes into force by proclamation, this

Act will replace the current *Elevators and Lifts Act*. Among other things, temporary hoisting mechanisms used for raising and lowering persons or materials during the construction, repair, alteration or demolition of buildings, structures or works will be removed from the list of elevating devices that are excluded from the application of the Act.

In **Nunavut**, the *Technical Standards and Safety Act* (Bill 15) received Royal Assent on March 6, 2002.

This Act creates a unified permit and inspection system for administering technical codes and standards for electrical and gas installations, elevating devices, and boilers and pressure vessels.

The Act repeals the *Electrical Protection Act*, the *Gas Protection Act*, and the *Boilers and Pressure Vessels Act*.

Notes

[1] Many amendments to Newfoundland and Labrador's legislation were based on a report of the Labour Standards Board, submitted in June 2000. In British Columbia, a consultation process was launched on November 14, 2001 with the release, by the Ministry of Skills Development and Labour, of a discussion paper entitled "*Fair and Effective: A Review of Employment Standards in British Columbia*".[\[1\]](#)

[2] September 4, 2001, is the date on which Ontario's *Employment Standards Act, 2000* came into force. Information about the Act and the *Exemptions, Special Rules and Establishment of Minimum Wage Regulation* can be found in "*Highlights of Major Developments in Labour Legislation 2000-2001*".[\[2\]](#)

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