

HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

September 1, 2003 to August 31, 2004

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INTRODUCTION

Many significant developments have occurred in the field of labour legislation during the period spanning from September 1, 2003 to August 31, 2004.

Both Nova Scotia and British Columbia made important changes to their employment standards statutes and regulations. British Columbia also reformed its administrative justice system, which will likely have an impact on the administration and enforcement of numerous laws. Perhaps the most remarkable development in the past year, however, has been the enactment of new compassionate care leave provisions in seven jurisdictions and the strengthening of existing provisions in Saskatchewan. Also worth mentioning are the addition of a new statutory holiday in New Brunswick; the introduction of Bill 63 in Ontario (which deals with hours of work provisions and other matters in the *Employment Standards Act, 2000*); the adoption of regulations to increase minimum wages in Manitoba, New Brunswick, Ontario and Quebec; and the adoption of employment standards specific to the clothing industry in Quebec and the home care and residential care sectors in Alberta. New Brunswick and Nova Scotia also took steps to lessen restrictions on Sunday shopping. In terms of human rights in the workplace, Nunavut enacted a new *Human Rights Act*, New Brunswick passed amendments to its legislation, and the *Criminal Code* was amended to provide whistleblower protection.

In the area of collective bargaining legislation of wide application, Quebec amended its *Labour Code* as regards the transmission of rights and obligations upon the transfer of ownership or operation of all or part of an undertaking; Manitoba brought some changes to the dispute resolution process provided under the *Labour Relations Act*, that can be triggered when a strike or lockout has lasted for 60 days or more and certain other conditions are met; and British Columbia passed a Bill dealing, among others, with the appointment of the members of the Labour Relations Board, and adopted a regulation relating to fees for services provided by the Board. In the public sector, the federal government passed a new *Public Service Labour Relations Act*, which will bring many significant changes to the current legislation, while maintaining the existing basic labour relations framework; British Columbia passed legislation to facilitate certain partnerships with the private sector in the health sector, and has modernized the *Railway and Ferries Bargaining Assistance Act*. In addition, Quebec adopted legislation reducing the number of bargaining units in the social affairs sector, and passed legislation to specify the non-employee status of certain persons in health and social services as well as in childcare centres and services. Moreover, during the period covered by this report, three emergency legislative measures were adopted with respect to the settlement of labour disputes in the forest industry and the health sector in British Columbia and with respect to the public service in Newfoundland and Labrador.

In the field of occupational health and safety, the laws of general application were amended as follows: the federal government's Bill C-45 has established a legal duty under the *Criminal Code* for all persons directing work to take reasonable steps to ensure the safety of workers, and has set rules for attributing to organizations criminal liability for the acts of their representatives; the Northwest Territories and Nunavut brought various amendments to their *Safety Act*; and Prince Edward Island rewrote and New Brunswick modified their *Occupational Health and Safety Act*. In addition, Alberta adopted a comprehensive *Occupational Health and Safety Code*; Ontario amended its regulation dealing with the control of exposure to biological or chemical agents; and other regulatory changes were made in British Columbia, notably with respect to

occupational first aid, and in Nova Scotia. Moreover, legislation minimizing exposure to tobacco smoke in workplaces was passed in Nunavut, Manitoba and New Brunswick; also, regulations on this subject were issued in the Northwest Territories and Nunavut. Other changes include: amendments to the *Construction Projects Regulation* in Ontario and to mine safety regulations in Nunavut, Quebec and Ontario; new legislative measures concerning railway safety in British Columbia and Manitoba; an amendment to the *Regulation respecting diving operations* in Ontario; and new legislation dealing with the safety of boilers, pressure vessels, elevating devices and other hazardous installations in British Columbia.

I. EMPLOYMENT STANDARDS

A. Proclamations and Repeals

In the **federal** jurisdiction, sections of the *Budget Implementation Act, 2003* amending the *Employment Insurance Act*, the *Employment Insurance (Fishing) Regulations* and the *Canada Labour Code* came into force on January 4, 2004. These amendments have added new compassionate care benefits to the other special benefits provided under the Employment Insurance program while also providing for compassionate care leave under the *Canada Labour Code*. (A summary of the *Budget Implementation Act, 2003* can be found in *Highlights of Major Developments in Labour Legislation 2002-2003*, pp. 18-19.)

Prince Edward Island's *Act to Amend the Employment Standards Act* (Bill 47) came into force on January 1, 2004. The proclamation was published on November 1, 2003 in the Royal Gazette, Part II.

These amendments added a new paid holiday (Remembrance Day) as well as family leave and sick leave provisions to the *Employment Standards Act*. They also enhanced the Act's bereavement leave and notice of termination provisions.

Two statutes recently adopted by the **Northwest Territories** were also proclaimed in force.

Sections of the new *Human Rights Act* providing for the establishment of the Human Rights Commission and the appointment of the Director and Deputy Directors of Human Rights, as well as provisions setting their powers, duties and functions, came into effect on January 1, 2004. All other provisions of the Act came into force on July 1, 2004. The *Fair Practices Act* was repealed on the same date.

The *Act to Amend the Public Service Act*, which had received Royal Assent on June 13, 2003, came into force on July 1, 2004. This Act has added to the *Public Service Act* new equal pay provisions and related enforcement mechanisms.

B. Legislation of General Application

Several jurisdictions modified their employment standards legislation during the past year. This includes significant statutory and regulatory amendments in British Columbia and Nova Scotia, changes to New Brunswick's public holiday provisions as well as the introduction of a Bill in Ontario to modify provisions regarding hours of work and other matters in the *Employment Standards Act, 2000*. The issue of compassionate care leave will be dealt with in another section of this report.

Following numerous changes in the previous two years, **British Columbia's** employment standards legislation was further amended in 2003 and 2004.

The *Skills Development and Labour Statutes Amendment Act, 2003* (Bill 37) received Royal Assent on October 23, 2003 and came into force on December 14, 2003.

In addition to amending the *Workers Compensation Act*, the *Skills Development and Labour Statutes Amendment Act* (the Act) brought changes to British Columbia's

Employment Standards Act (ESA). These amendments deal with many different provisions, including those pertaining to the administration of the Act, the banking of overtime wages and, most importantly, the hiring of children.

Employment of Children

Amendments to the ESA's provisions concerning the hiring of children had been passed as part of the *Employment Standards Amendment Act, 2002* but they never came into force. These amendments would have repealed existing provisions, which required that a permit be obtained from the Director of Employment Standards (the director) to employ a child under 15 years of age, and replaced them by hiring or employment conditions set by regulation.

This Act repealed both the ESA's previous provisions and the amendments mentioned above. A new section stipulates that a person must obtain the written consent of a parent or guardian in order to employ a child under 15 years of age. Employing a child under 12 years of age still requires the permission of the director. The government has retained the power to make regulations establishing conditions of employment for children under 15 years of age to protect their health, safety, physical or emotional well-being, education or financial interests.

It should be noted that compulsory school attendance requirements under the *School Act* and age restrictions regarding certain occupations under occupational health and safety legislation have remained in place.

Minimum Wage Requirements

A new provision prohibits an employer from deducting or withholding an amount from an employee's wages in one pay period to recover an amount that must be paid to the employee, in another pay period, to comply with minimum wage requirements.

Assignment of Wages

The director no longer has the power to authorize an assignment of wages for reasons other than those specified in the ESA.

Banking of Overtime Wages

An employer is now allowed to close an employee's time bank after providing one month's notice to the employee. Within six months of closing the time bank, the employer must pay the employee all overtime wages credited to the bank at the time it was closed, allow the employee to use the credited overtime wages to take time off with pay, or provide a combination of pay and time off.

In addition, the ESA no longer stipulates that overtime wages credited to an employee's time bank must be paid or taken as time off with pay within a six-month time limit.

Administration of the ESA

Among other administrative changes, the ESA has been amended to:

- add a 30-day time limit for the director to vary or cancel a determination that has been appealed (counted from the date the director receives a copy of the appeal request);
- clarify that liability for unpaid wages extends to directors and officers of corporations, firms, syndicates or associations that are treated by the director as one employer under section 95 of the ESA;
- require that a person who wishes to appeal a determination of the director to the Employment Standards Tribunal deliver to the latter, in addition to a written request specifying the grounds for appeal and any prescribed appeal fee, a copy of the director's written reasons for the determination.

In addition to the above amendments to the *Employment Standards Act*, new rules pertaining to conditions of employment for children have been added to the *Employment Standards Regulation* (ESR) by B.C. Regulation 431/2003 (in force December 14, 2003). This includes general provisions concerning youth employment as well as provisions specific to children in the entertainment industry. According to British Columbia's Minister of Skills Development and Labour, these rules mirror conditions that previously applied under Employment Standards Branch policies regarding the granting of child hiring permits.

General Rules for the Employment of Youth

The ESR now prohibits employers from requiring or allowing a child who is aged 12 years or more but less than 15:

- during school hours;
- for more than four hours on a school day;
- for more than seven hours on a non-school day, unless written approval of the Director of Employment Standards is first obtained;
- for more than 20 hours in a week that has five school days;
- for more than 35 hours in a week in any other case.

Section 37 of the ESA, which deals with agreements to average hours of work, does not apply to these children.

Moreover, employers must ensure that employees of 12, 13 and 14 years of age work under the direct and immediate supervision of a person who is at least 19 years old.

Rules for Children in the Entertainment Industry

Children in the entertainment industry—i.e., children under 15 years of age working as actors, including background performers and extras, in the film, radio, video, television, or television and radio commercials industry—are covered by rules that are different from those pertaining to other child employees.

Employers in the entertainment industry do not require a permit from the Director of Employment Standards to employ a child actor of any age, as long as written consent is obtained from the child's parent or guardian. However, in no case may a person employ a baby who is less than 15 days old.

The ESA's provisions regarding split shifts, daily and weekly rest periods and hours of work averaging agreements do not apply to children in the entertainment industry. Instead, other restrictions on hours of work have been put in place.

A workday must end eight hours after reporting to work, in the case of a child under 12 years of age, and 10 hours after reporting to work if the child is at least 12 but less than 15 years old. Unless prior written approval is received from the director, a child's shift may not start earlier than 5:00 a.m. or end later than 10:00 p.m. if the next day is a school day or 12:30 a.m. otherwise. If the child's school is not in session, a shift may not end later than 2:00 a.m.

Split shifts are forbidden and meal breaks are limited to one hour each.

With respect to rest periods, child actors are entitled to a minimum break period after spending a specified amount of time before a recording device (e.g., a camera or sound recorder). Children of less than three years of age must be provided a break of at least 20 minutes after spending 15 consecutive minutes before a recording device; those aged at least three but less than six are entitled to a break of 15 minutes after 30 consecutive minutes of recording; children who are six to 11 years of age and those aged 12 years or more are entitled to 10 minutes after spending, respectively, 45 or 60 consecutive minutes before a recording device. Employers of such children must also either provide them 48 consecutive hours free from work each week or, instead, pay them 1 ½ times their regular wage for any time worked during that period. As well, the employer must ensure that a child actor has at least 12 consecutive hours free from work between each shift and/or before the start of a school day. Furthermore, the ESR now stipulates that an employer may not require or allow a child to work more than five days in a week or, with the written approval of the director, more than six days in a week.

While on a production set, child actors must be chaperoned. The ESR specifies who may and who may not act as a chaperone and the maximum number of children who may be chaperoned by the same person.

Finally, a provision has been added to ensure that 25% of a child actor's earnings exceeding \$2,000 on a production be remitted to the Public Guardian and Trustee to be held in trust for the child.

Other Regulatory Changes

Three other significant changes were made to the *Employment Standards Regulation* during the period under review.

First, the adoption of B.C. Regulation 375/2003, which came into effect on October 23, 2003, broadened the definition of "high-technology professional" for the second time in

less than a year.¹ It now also includes employees who are primarily engaged in applying their specialized knowledge and professional judgement in the process of developing scientific or technological products, materials, devices or processes (including prototypes) or in carrying out “scientific research and experimental development”, as defined in subsection 248(1) of the *Income Tax Act* (Canada). Thus, professionals in biotechnology and robotics now fall within the scope of this definition, in addition to previously covered information technology professionals. (However, the new definition specifically excludes persons employed to provide basic operational technical support.) Sales and marketing professionals of high technology (e.g., scientific/technological systems, products and processes, and scientific research) are also considered to be “high-technology professionals”, unless their employment is in retail sales.

As was previously the case, the ESA’s provisions regarding hours of work, overtime and statutory holidays (except for the prohibition on excessive hours) do not cover high-technology professionals.

Secondly, B.C. Regulation 432/2003 amended the ESR’s definition of “farm worker” on November 27, 2003. The definition was broadened to include employees of a farm, ranch, orchard or agricultural operation whose principal employment responsibilities consist of:

- directly selling the farm’s products, on-site, during the normal harvest cycle; or
- performing the initial washing, cleaning, sorting, grading or packing unprocessed products from the farm, or similar products purchased from another operation, during the normal harvest cycle.

Hours of work, overtime and statutory holiday provisions of the ESA (except for the statutory prohibition on excessive hours of work) do not cover farm workers in British Columbia.

Thirdly, B.C. Regulation 257/2004 added a new section to the ESR (section 40.2) on June 10, 2004. As a result, farm labour contractors are now excluded, with respect to farm workers they employ, from section 20 of the ESA, which deals with the manner in which employers must pay wages. Instead, a new provision of the ESR specifies that a farm labour contractor must pay all wages to farm workers it employs in Canadian dollars and by direct deposit in each employee’s account in a savings institution.

Significant amendments were made to **Nova Scotia’s** *Labour Standards Code* and its regulations, including the enactment of new compassionate care leave provisions, which will be discussed in section D of this chapter.

The *Retail Business Uniform Closing Day Act (amended) and Labour Standards Code (amended)* (Bill 2) received Royal Assent and came into force on October 30, 2003. The purpose of this Bill when initially introduced was to permit the opening of retail establishments on Sundays during a trial period and to authorize a binding plebiscite on the issue of Sunday shopping, while providing certain protective measures for retail employees. However, Nova Scotia’s minority government agreed to include a series of

¹ Regulation 307/2002, which came into force on November 30, 2002, repealed and replaced the previous definition of “high technology professional”. See *Highlights of Major Developments in Labour Legislation 2002-2003*, pp. 12-13.

amendments to the *Labour Standards Code* (LSC) in order to obtain support from the opposition New Democratic Party for passage of the Bill.

The main changes made to the LSC are explained below. Amendments to the *Retail Business Uniform Closing Day Act* will be examined in section G of this chapter.

Protection of Retail Business Employees

Persons employed in retail businesses that were previously prohibited from opening on Sunday have the right to refuse to work on Sundays, regardless of the terms of their contract of employment or any other agreement.² Even after having agreed to work on Sundays, they have the option of refusing to work on one or more Sundays if they notify their employer at least seven days in advance—or within two days of being notified of their shift schedule, if later.

Protection against Discrimination and Retaliation

Section 30 of the LSC (“No discrimination against complainant or witness”) has been reinforced. Under previous provisions, employers were prohibited from discharging, laying off or discriminating against a person because that person, in accordance with the LSC, had made a complaint, testified in a proceeding, made a disclosure or taken—or shown an intention to take—a leave of absence provided for under the LSC. Bill 2 has made the following changes to section 30:

- extending the list of prohibited actions to make it unlawful for an employer to “suspend, intimidate, penalize or discipline” a person on such grounds;
- adding a clause prohibiting employers from retaliating against a retail business employee who has exercised (or attempted to exercise) his/her legal right to refuse to work on Sunday;
- adding a subsection to place on the employer the onus of proving that a provision set out in section 30 has not been contravened.

Moreover, new provisions clarify that, among other remedies available when the LSC has been contravened, the Director of Labour Standards (the Director) and the Labour Standards Tribunal may order the reinstatement of an employee. The Director has also been given more flexibility to decide whether or not to “endeavour to effect a settlement” after receiving a complaint.

A new section also provides for specific remedies where an employer, contrary to the provisions of the LSC, retaliates against a retail business employee for refusing to work on a Sunday. Where the Director determines that such a contravention has occurred, the employer must, by a specified date, reinstate the employee with no deterioration in the terms and conditions of his/her employment, pay the employee any wages or benefits lost due to the contravention, remove a reprimand or other references in the employee’s records, and do the things that, in the Director’s opinion, are necessary to secure compliance with the Act.

² These employees also have the right to refuse “to sign a contract of employment or agreement that requires [them] to work in a retail business on Sunday”.

Annual Vacation

An amendment provides for an unbroken annual vacation of at least three weeks for employees who have more than eight years of service with their employer.

(However, consequential amendments to vacation pay provisions were not made at the same time, which meant that vacation pay remained fixed at four percent of wages earned over the 12-month vacation entitlement period, regardless of an employee's length of vacation. To correct this situation, the LSC had to be amended, once again, by means of the *Justice Administration Amendment (2004) Act* (assented to May 20, 2004; coming into force on July 30, 2004). The LSC now specifies that employees who have completed more than eight years of service with the same employer are entitled to an amount of vacation pay equal to at least six percent of wages. The *Justice Administration Amendment (2004) Act* also amended the LSC's enforcement provisions by setting a six-month time limit for bringing appeals before the Labour Standards Tribunal, calculated from the time a complaint is received or an inquiry is initiated by the Director of Labour Standards.)

Overtime Rate

The overtime rate was increased from one and a half times the minimum wage, to one and a half times the employee's regular hourly wage. Overtime remains payable for hours worked in excess of 48 hours in a week. However, as will be discussed below, regulatory changes were later made to provide exceptions to this rule.

Minimum Wage

The LSC now provides for the establishment of a Minimum Wage Review Committee, composed of an equal number of employer and employee representatives appointed by the Minister of Labour. Its function is to conduct an annual review of the minimum wage and submit recommendations to the Minister in a report. The Minister must make the report and the response of the Government public within a specified period.

Sick Leave/Family Leave

Employees are now entitled to up to three days of unpaid leave per year. This leave may be taken due to family illness (i.e., the sickness of a child, parent or other unspecified family members) or for medical, dental or other similar appointments during the employee's working hours.

Penalties

Finally, penalties have been substantially increased for persons that are guilty of an offence under the LSC. On summary conviction, fines of up to \$25,000 may be imposed on a corporation, \$5,000 on an employer that is not a corporation or on a director of a corporation, and \$2,500 on an employee. A person guilty of a second or subsequent offence is liable to a fine equal to double these amounts and/or three months of imprisonment.

Shortly after amending the *Labour Standards Code's* overtime provisions, the government of Nova Scotia adopted three regulations: Regulations 200/2003, 201/2003 and 202/2003.

These regulations, which came into force on December 12, 2003, amended the *General Labour Standards Code Regulations* and the *Minimum Wage Order (General)*, repealed the *Minimum Wage Order (Road Building and Heavy Construction Industry)* and replaced it with the *Minimum Wage Order (Construction and Property Maintenance)*.

General Regulations

Amendments to the *General Labour Standards Code Regulations* have excluded numerous occupations and industries from new overtime pay requirements (some of these groups are nevertheless still covered by previously existing overtime rules contained in the *Minimum Wage Order (General)*—i.e., entitlement to at least 1 ½ times the minimum wage rate for hours worked in excess of 48 in a week):

- duly qualified practitioners or students engaged in training for architecture, dentistry, law, medicine, chiropody, professional engineering, public or chartered accounting, psychology, surveying and veterinary science;
- apprentices under apprenticeship agreements;
- trainees under government-sponsored and government-approved plans;
- employees at a playground or summer camp that is operated on a non-profit basis;
- licensed insurance agents;
- employees and employers covered by the *Minimum Wage Order (Logging and Forestry Operations)* or the *Minimum Wage Order (Construction and Property Maintenance)*;
- watches, janitors or building superintendents in buildings that include their place of residence;
- health or personal care providers, if the client is providing a residence as part of the terms of employment;
- employees in the transport industry;
- employees who are paid on a flat rate basis and work as automobile mechanics or auto body shop technicians;
- workers in the shipbuilding, ship repair, oil and gas industries, or related activities other than retail;
- individuals holding specified positions at the deputy minister level in the provincial civil service;
- employees of enterprises engaged in primary processing or related activities in the agriculture, Christmas tree or fishing industry, but not meat processing; and
- farm workers whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle, sheep, poultry or animal furs.

Moreover, the list of farm workers excluded from the application of LSC provisions regarding overtime, hours of work and general holidays with pay was expanded. It now includes workers employed in the primary production of Christmas trees and Christmas wreaths and all those working in agricultural establishments where production is carried on predominantly in greenhouses or otherwise under cover.

General Minimum Wage Order

A number of amendments have also been made to the *Minimum Wage Order (General)*.

- In all cases, farm workers whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, Christmas trees, Christmas wreaths, maple products, honey, tobacco, pigs, cattle, sheep, poultry or animal furs are not entitled to any premium wages (i.e., neither 1 ½ times the minimum wage nor 1 ½ times the employee's wage rate) for overtime work, or to call in pay when they must report to work outside their scheduled working hours. This includes agricultural workers who were previously covered by these provisions (i.e., persons working in agricultural establishments where the primary production of flowers, fruit, grain, seeds, tobacco or vegetables is carried on predominantly under cover from the elements). In addition, agricultural workers under 16 years of age who were previously covered by minimum wage provisions (e.g., youth working in greenhouses to produce specific crops) are now excluded.
- The definition of "harvesting of fruit, vegetables and tobacco" was also repealed. As a result, all employees paid on a piece work basis and whose work is directly related to the harvesting of these crops are excluded from minimum wage requirements. Previously, the exclusion only applied to persons engaged in the in-field, non-mechanized gathering—but not the transportation, grading or processing—of crops that are not grown under cover.
- All employees in the transport industry (not just those who are required to be away from home base overnight, as was the case before) are now only entitled to an overtime rate of 1 ½ times the minimum wage when they work in excess of 96 hours over a period of two consecutive weeks.
- Health and personal care workers employed in a building that includes their place of residence are excluded from any premium wages for overtime work.

Minimum Wage Order for Construction and Property Maintenance Employment

A new Regulation, the *Minimum Wage Order (Construction and Property Maintenance)*, has replaced the *Minimum Wage Order (Road Building and Heavy Construction Industry)*.

The scope of the new Regulation is broader. It covers employees engaged in: the construction, restoration or maintenance of roads, streets, sidewalks, structures (including buildings), bridges, paving, and water and sewer installations; earth and rock moving or related works; snow removal; primary production of raw construction materials, including primary production work in a saw mill; work in a machine shop and metal fabrication. However, it does not apply to municipal employees engaged in street construction, restoration or maintenance; persons receiving training under government-sponsored and government-approved plans; apprentices under apprenticeship agreements; employees of enterprises engaged in building sanitation or security; and employees engaged in supplying materials for shipbuilding, ship repair, the oil and gas industry or related activities other than retail.

Employees covered by this Regulation are entitled to the same minimum wage rate as employees covered by the *Minimum Wage Order (General)*. However, overtime wages,

equal to 1 ½ times the employee's regular hourly rate, only applies to time worked in excess of 110 hours within a 14-day period.

Also worth noting is the adoption of the *Act to Amend the Employment Standards Act* (Bill 31) in **New Brunswick**. This Act, which came into force on May 28, 2004, added Remembrance Day (November 11) to the six other public holidays provided for under the *Employment Standards Act* (i.e. New Year's Day, Good Friday, Canada Day, New Brunswick Day, Labour Day and Christmas Day).

Legislation was also introduced in **Ontario** to amend several provisions of the *Employment Standards Act, 2000* (ESA 2000), including those regarding limits on hours of work and averaging agreements. The *Employment Standards Amendment Act (Hours of Work and Other Matters), 2004* (Bill 63) received First reading on April 26, 2004.

Limit on Hours of Work

In 2000-2001, the previous Government of Ontario amended hours of work provisions to allow employers and employees to agree to a workweek of up to 60 hours³; such agreements no longer require, as was the case before, a permit from the Director of Employment Standards (the Director). Bill 63 would replace these provisions and require, once again, that an employer obtain the approval of the Director before allowing an employee to work more than 48 hours in a week (except in exceptional circumstances as provided for under section 19 of the ESA 2000).

An agreement in writing between the employer and the employee would still be needed before the daily or weekly limit on working hours may be exceeded (daily limit: eight hours or the number of hours in the employee's regular work day, if greater; weekly limit: 48 hours). Such an agreement would also continue to be revocable by the employee (with two weeks' notice) and by the employer (with "reasonable" notice). However, a new requirement would apply with respect to an agreement made between an employer and an employee who is not represented by a union. In order for such an agreement to be valid, the employer would have to provide the employee, before the agreement is made, with a copy of a document prepared by the Director describing the employee's rights under the ESA 2000's hours of work and overtime provisions. The agreement would also have to contain a statement acknowledging that the employee has received this document.

An employer could apply to the Director for an approval to exceed the weekly limit on hours of work by delivering or mailing an application to the Director's office, or sending it by electronic transmission or fax. A copy of the application would also have to be posted in at least one conspicuous place in every workplace by the employer, from the day the application is served on the Director until the latter's approval or refusal is received.

If the employer has not yet received a decision from the Director and 30 days have elapsed since the application was made, the employees concerned could start working additional hours, up to a maximum of 60 hours in a week, if certain conditions are met

³ The 60-hour limit may nevertheless be exceeded with the permission of the Director of employment standards.

(e.g., the most recent previous application of the employer must not have been refused and the most recent approval must not have been revoked).

In deciding whether or not to grant an approval, the Director⁴ could consider the employer's current and past compliance with provincial employment standards, the health and safety of employees, and any other factor prescribed by regulation or that the Director considers relevant. The Director could also impose conditions on an approval.

An approval to exceed the limit on weekly hours of work could apply to a single employee or to all employees in a specified class of employees (all the employees of an employer could be included in a specified class). It would expire no more than three years after being issued or, in the case of an approval allowing an employee to exceed 60 hours in a week, no more than one year after issuance. The Director could also revoke an approval before it has expired, by giving reasonable notice to the employer (the Director would determine what is to be considered a reasonable notice in the circumstances).

Where the Director approves an application, a copy of the approval would have to be posted in a conspicuous place in every workplace by the employer, until it expires or is revoked. An employer who receives notice that an application has been refused would have to post a copy of the notice during the 60-day period following the date on which it was issued.

Moreover, a new section would be added to the ESA 2000 to specify that the requirement to obtain the Director's approval for work exceeding 48 hours a week cannot be circumvented, regardless of any provision in an employee's employment contract.

Finally, Bill 63 also includes transitional provisions regarding existing agreements between employers and employees to exceed limits on hours of work. Agreements to work up to 60 hours per week that are in force on December 31, 2004 would remain valid, as long as the employer applies for the Director's approval within a specified period. Any employee covered by such an agreement who is not represented by a union would also have to be provided a copy of the document concerning his/her rights under the ESA 2000 on or before April 1, 2005.

Averaging Agreements

Existing provisions regarding the averaging of hours of work for overtime pay purposes would be amended. In addition to requiring the agreement of both the employee and the employer, the averaging of hours of work over periods of two or more weeks would necessitate the Director's approval (currently, such an approval is only needed where the averaging period exceeds four consecutive weeks). The process to obtain an approval for an averaging agreement and the related conditions and requirements would be virtually the same as those concerning an application to exceed weekly limits on hours of work (see above), except that there would be no requirement for the employer to provide the employee(s) concerned a document on their rights under the ESA 2000.

⁴ The Director could delegate his powers and duties regarding the approval of applications regarding excess hours or averaging agreements to individuals employed in the Ministry of Labour.

Pending the Director's approval or refusal of an application, and once 30 days have passed after the application has been made, the hours of work of the employee(s) concerned could start to be averaged "over separate, non-overlapping, contiguous periods" of no more than two consecutive weeks, provided that certain conditions are met.

Existing averaging agreements would remain valid, subject to the Director's approval.

Emergency Leave

Bill 63 would amend the ESA 2000's emergency leave provisions to specify that an eligible employee may take up to 10 days of leave in each calendar year (instead of "each year").

Publication Regarding Convictions

A new section would provide that the Director may publish—including on the Internet—the name of any person convicted of an offence under the ESA 2000. The Director may also make available to the general public a description of the offence, the date of the conviction and the person's sentence.

Posting of Information Concerning Rights and Obligations

The existing requirement to post materials concerning employment standards legislation in Ontario (i.e., section 2 of the ESA 2000) would be replaced. New provisions would authorize the Minister of Labour to determine what information about the ESA 2000 and its regulations that employers must post in each workplace (such information is currently prescribed by regulation) and would also provide for the preparation and publication of a new poster when the Minister believes information has to be updated.

Record Keeping Requirements

In addition to other record keeping requirements, an employer would have to retain (or arrange for another person to retain) a copy of every agreement made with an employee to exceed the limit on weekly hours of work or to average hours of work for overtime purposes. These copies would have to be kept for three years after the last day on which work was performed under the agreement.

The provision stipulating that an employer must ensure that specified records and documents are readily available for inspection would be amended to also cover records pertaining to vacation time and vacation pay.

Changes to Regulation-Making Provisions

In addition to certain consequential amendments, Bill 63 would add a new provision authorizing conditional regulations.

Coming into Force

If passed, Bill 63 would come into force on January 1, 2005.

C. Reciprocal Enforcement of Orders

Three jurisdictions made regulatory amendments to allow for the reciprocal enforcement of orders.

Alberta adopted the *Employment Standards Amendment Regulation* (Alberta Regulation 327/2003) on November 19, 2003, which declared Newfoundland and Labrador as a reciprocating jurisdiction for the purpose of enforcing orders, awards, certificates or judgements for the payment of earnings.

The **Northwest Territories** also declared Newfoundland and Labrador as a reciprocating province with respect to the enforcement of orders, judgements or certificates for the payment of wages (as provided for under section 55 of the *Labour Standards Act*). This was done by means of the *Reciprocating Jurisdictions Order, amendment* (Regulation 001-2004). This order was published in the Northwest Territories Gazette, Part II, of January 30, 2004.

In **Prince Edward Island**, the *Employment Standards Reciprocity Order Amendment* (EC-2004-267) added on May 22, 2004 the Northwest Territories to the list of reciprocating jurisdictions recognized for the purpose of enforcing orders, certificates or judgements for the payment of wages, overtime pay or entitlements.

D. Compassionate Care Leave

The most significant development with respect to employment standards in the past 12 months has been the enactment of compassionate care leave provisions by more than half of Canada's provinces and territories. This follows the adoption of the *Budget Implementation Act, 2003* (Bill C-28) by the Parliament of Canada in June 2003. The latter Act, which came into effect on January 4, 2004, added compassionate care benefits to the other special benefits provided under the Employment Insurance Program and amended the *Canada Labour Code* to afford job protection to employees under federal jurisdiction who take compassionate care leave.

Although provincial and territorial compassionate care leave provisions bear a strong resemblance to provisions found in the *Canada Labour Code*, there are nonetheless some noticeable differences in many cases. Distinguishing elements include the definition of "family member" (i.e., persons for whose care an employee may take leave), eligibility requirements (i.e., required length of service and minimum notice periods) and the manner in which the leave may be taken (i.e., fractioning and/or sharing of leave).

Manitoba⁵, **New Brunswick**⁶, **Nova Scotia**⁷, **Nunavut**⁸, **Ontario**⁹, **Prince Edward Island**¹⁰ and **Yukon**¹¹ enacted new compassionate care leave provisions. All of these

⁵ Manitoba, *Employment Standards Code Amendment Act* (Bill 4): Royal Assent December 4, 2003; in force January 4, 2004.

⁶ New Brunswick, *An Act to Amend the Employment Standards Act* (Bill 8): Royal Assent December 19, 2003; in force January 4, 2004.

⁷ Nova Scotia, *Labour Standards Code (amended) and Vital Statistics Act (amended)* (Bill 7): Royal Assent October 30, 2003; in force January 4, 2004.

⁸ Nunavut, *An Act to Amend the Labour Standards Act* (Bill 42): Royal Assent November 5, 2003; in force January 4, 2004.

jurisdictions provide for up to eight weeks¹² of leave without pay to provide care or support to a family member who has a serious medical condition with a significant risk of death within a 26-weeks period, as attested by a medical certificate.

In Manitoba, Nova Scotia and Nunavut, “family member” is defined as the employee’s spouse, common-law partner, child (including the child of his/her spouse or common-law partner) or parent (including the spouse or common-law partner of his/her parent). Ontario includes foster parents and foster children to this list. The definition is even broader in Prince Edward Island (which includes siblings¹³), New Brunswick (which includes siblings, grandparents, grandchildren and persons who, whether or not related by blood, demonstrate an intention to extend to one another the mutual affection and support normally associated with a close family relationship) and Yukon (which includes siblings, grandparents, grandchildren, step-parents, various in-laws and any relative permanently residing in the same household as the employee).

Duration

As indicated above, the maximum duration of compassionate care leave in all of these jurisdictions has been set at eight weeks, to be taken within a specified 26-week period. Should the family member die before the expiry of this period, however, leave must end on the last day of the week (i.e., Saturday) in which the death occurs (except in Manitoba, whose legislation contains no such provision). Compassionate care leave may be fractioned, but it must be taken in periods of at least one week each (leave in Manitoba may not be divided in more than two periods). Legislation in New Brunswick, Nunavut, Prince Edward Island, Ontario and Yukon stipulates that where two or more employees wish to avail themselves of compassionate care leave to provide care or support to the same person, their combined periods of leave may not exceed a total of eight weeks. In contrast, eligible employees in Manitoba and Nova Scotia are entitled to the full eight-week leave, even if other persons also take compassionate care leave in relation to the same family member.

Compassionate care leave is in addition to any other family-related leave to which an employee may be entitled under the applicable employment standards legislation. For example, under Ontario’s *Employment Standards Act, 2000*, an eligible employee may take emergency leave as well as compassionate care leave with regard to the same family member.

⁹ Ontario, *Employment Standards Amendment Act (Family Medical Leave), 2004* (Bill 56): assented to and in force June 29, 2004. Bill 56 will also replace the current definition of “spouse” by a broader definition that will include less traditional unions such as same-sex unions as well as void or voidable marriages entered into in good faith. The definition of “same-sex partner” will also be repealed and all references to “same-sex partner” and “same-sex partnership status” will be deleted from the *Employment Standards Act, 2000*.

¹⁰ Prince Edward Island, *An Act to Amend the Employment Standards Act* (Bill 19): assented to and in force December 16, 2003.

¹¹ Yukon, *An Act to Amend the Employment Standards Act* (Bill 38): Royal Assent November 17, 2003; in force January 4, 2004.

¹² This eight-week leave period covers the six weeks of EI compassionate care benefits as well as the applicable two-week waiting period.

¹³ However, in contrast to other jurisdictions, this definition does not include the children of the employee’s spouse or the spouse or common-law partner of the employee’s mother or father.

Eligibility Requirements

Eligibility requirements for compassionate care leave vary across the jurisdictions.

- Length of service requirements: an employee must have completed a minimum length of service with his/her current employer to qualify for leave in Manitoba (30 days) and Nova Scotia (three months).
- Notice: an employee must provide advance notice of the leave to his/her employer “as soon as possible” in New Brunswick, Nova Scotia and Ontario, and at least one pay period before the start of the leave in Manitoba, although a shorter period may be given if circumstances so necessitate. In Manitoba, an employee who wishes to end his/her leave before it expires must in addition provide at least 48 hours’ notice to the employer.
- Medical certificate: an employee must provide his/her employer a copy of the medical certificate attesting to the family member’s state of health in Manitoba and Prince Edward Island; in the other jurisdictions, a copy of the medical certificate must be given only if the employer requests it in writing.

Notwithstanding these differences, no jurisdiction requires that an employee receive or qualify for EI compassionate care benefits in order to be entitled to compassionate care leave under its employment standards legislation.

Employment Protection

The employment, seniority and benefits protections that apply with respect to maternity and parental leave in the various jurisdictions also covers employees taking a compassionate care leave.

In addition to enacting compassionate care leave provisions, **Manitoba’s** *Employment Standards Code Amendment Act* also strengthened job protection measures for employees taking leave. New complaint provisions and remedies were added to the *Employment Standards Code* for employees who are dismissed or laid off by reason of pregnancy or because they intend to take, or have taken, a pregnancy, parental or compassionate care leave. An employee in such a situation may file a complaint with an employment standards officer within six months of the date of the layoff or termination, or within six months after the date he/she should have been reinstated.

Where an officer investigating such a complaint determines that a contravention has indeed occurred, he/she may, by order, require that the employer pay compensation for any loss incurred by the employee as a result of the contravention, reinstate the employee, or do both. The employer must also pay administrative costs equal to 10% of any compensation ordered (although the amount of administrative costs may not be less than \$100 and no more than \$1,000). An order to pay compensation is deemed to be an order for the payment of wages for the purposes of the Code’s enforcement provisions, except that that there is no maximum limit to this amount.

A person named in an order may request that the Director of Employment Standards refer the matter to the Manitoba Labour Board. The deadline for making such a request is 30 days after the order is served on the person.

Saskatchewan also amended its *Labour Standards Act* (LSA) following the introduction of compassionate care benefits under the *Employment Insurance Act*. The *Labour Standards Amendment Act, 2004* (Bill 50) received Royal Assent and came into force on June 17, 2004.

The LSA already provided protection to eligible employees (i.e., those who have completed at least 13 consecutive weeks of service with their employer) against dismissal and other types of retaliation if they were absent from work, for up to 12 weeks in a period of 52 weeks, by reason of the serious illness or injury of a member of their immediate family who is dependent on them.¹⁴ (Immediate family is defined in the LSA as a spouse, parent, grandparent, child, brother or sister of the employee or his/her spouse. A medical certificate attesting to the illness or injury must be provided to the employer, if the latter so requests in writing.)

Bill 50 amended these provisions by extending the period of leave to cover any time during which an employee is receiving EI compassionate care benefits or serving the applicable waiting period for such benefits. However, the maximum length of leave in these circumstances is limited to 16 weeks in a period of 52 weeks.

Finally, the **federal government** also made regulatory changes to the *Employment Insurance Regulations* to complement the amendments regarding compassionate care benefits made to the *Employment Insurance Act* by the *Budget Implementation Act, 2003*. These allow compassionate care benefits to be treated in the same manner as maternity and parental benefits under various provisions (e.g., in determining what constitutes an interruption of earnings, what types of money are considered earnings for EI benefits purposes and the rules that apply as regards a wage-loss indemnity or other similar supplemental unemployment benefit plan provided by an employer).

Three new sections were also added to the *Employment Insurance Regulations*. The first of these new sections (s. 41.1) defines what constitutes care or support to a family member. As a result, to qualify for compassionate care benefits, a claimant must “directly provide or participate in providing care to the family member”, “provide psychological or emotional support to the family member” or “arrange for the care of the family member by a third party care provider”.

The second section (s. 41.2) specifies who, other than a medical doctor in Canada, may issue a medical certificate attesting to a family member’s serious medical condition and significant risk of death within 26 weeks. (A person must obtain such a medical certificate to qualify for compassionate care benefits under the *Employment Insurance Act* and compassionate care leave under the *Canada Labour Code*.) If the family member requiring care or support is in a geographic location in Canada where treatment by a medical doctor is not readily available, a medical certificate may be issued by a medical practitioner designated by a medical doctor to provide treatment. If the family member is outside Canada, the medical certificate must be issued by a medical doctor “who is recognized by the appropriate government authority and has qualifications that are substantially similar to those of a medical doctor in Canada” or, in geographic locations where no such medical doctor is readily available, by a medical practitioner designated by a medical doctor to provide treatment to the family member.

¹⁴ An eligible employee may normally take a shorter period of leave—up to 12 days per calendar year—in the case of an illness or injury that is not serious.

Finally, the third section (s. 41.3) sets out the rules for dividing the six weeks of compassionate care benefits where two or more persons make a claim for benefits in relation to the same family member but cannot agree on how they should be shared. In such a case, benefits are to be paid one week at a time to eligible claimants in turn, starting with the first family member to make a claim, until the six weeks of benefits have been exhausted. These amendments came into effect on January 4, 2004.

E. Administration and Enforcement

In **British Columbia**, two statutes having a significant impact on the provincial administrative justice system were passed during the period under review.

The *Administrative Tribunals Appointment and Administration Act* (Bill 68) received Royal Assent on October 23, 2003 and was proclaimed in force on February 13, 2004.

Bill 68 harmonized the appointment and reappointment processes for members of administrative tribunals and amended, among other statutes, the *Employment Standards Act* (ESA) and the *Human Rights Code*.

This Act specifies the duration of the initial term and subsequent reappointments of the chair and members of administrative tribunals, the replacement procedure when the chair or a member is absent or incapacitated, and a process for temporary and non-renewable appointments. It also provides for an extension of members' exercise of powers in any proceeding over which they had jurisdiction immediately before resignation or the end of their term. Furthermore, the Act provides the appointing authority a mechanism for terminating for cause the appointment of a chair, vice-chair or member of a tribunal, specifies a tribunal chair's responsibilities and sets the remuneration and benefits of administrative tribunal members.

Amendments were also made to the ESA. These have repealed the definition of "adjudicator" and replaced it with the term "member", while also providing a definition of "representative member". The Lieutenant Governor in Council remains the appointing authority for the chair of the Employment Standards Tribunal. But the Skills Development and Labour Minister has become the appointing authority for the other members of the tribunal. Moreover, the Minister now has the power to appoint, after consultation with the chair of the tribunal, individuals representing employers' interests and an equal number of individuals representing employees' interests (i.e. "representative members"). The chair and all members of the tribunal must be selected on a merit-based process. The ESA's provisions regarding the compensation and expenses of tribunal members have been repealed; the relevant provisions of the new Act apply instead. Finally, a panel of the tribunal may consist of one, three or five members. If representative members are appointed to the panel, there must be an equal number of individuals representing employers' interests and individuals representing employees' interests.

Bill 68 also amended the *Human Rights Code* to provide for a merit-based process for the appointment of Human Rights Tribunal members and to allow reappointments for additional five-year terms. The Code's provisions dealing with the responsibilities of the chair and the remuneration and expenses of tribunal members have been repealed, since the *Administrative Tribunals Appointment and Administration Act* now covers these issues.

The *Administrative Tribunals Act* (Bill 56) was passed a few months after Bill 68 came into force (it was assented to on May 20, 2004; it had not yet come into force at the time this report was written). This Act sets out the powers, rules and procedures pertaining to numerous administrative tribunals in British Columbia, including the Employment Standards Tribunal.¹⁵ It will repeal and replace the *Administrative Tribunals Appointment and Administration Act* and codify within a single act most rules governing the administration of administrative tribunals.

Bill 56 will make a number of changes to the *Employment Standards Act*. It will:

- specify that the Director of Employment Standards does not have jurisdiction over constitutional questions relating to the *Canadian Charter of Rights and Freedoms*;
- specify that the Employment Standards Tribunal “has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined in an appeal or reconsideration under Parts 12 and 13 [of the *Employment Standards Act*] and to make any order permitted to be made”;
- modify the existing privative provision (section 110) to specify that a court may not question or review a decision or order of the tribunal on a matter with regard to which the latter has “exclusive” jurisdiction;
- stipulate additional grounds on the basis of which the tribunal may dismiss an appeal without a hearing: e.g., appeal giving rise to an abuse of process; appeal filed for an improper purpose or motive; failure of appellant to diligently pursue the appeal or to comply with an order of the tribunal; no reasonable prospect that the appeal will succeed;
- specify that the tribunal must provide reasons in writing to the parties when it decides to dismiss all or part of an appeal.

Most provisions of the *Administrative Tribunals Act* will apply to the Employment Standards Tribunal, including those regarding the appointment of tribunal members, the powers of the tribunal to make rules and orders, procedures to follow when a constitutional question (other than one pertaining to the *Canadian Charter of Rights and Freedoms*) is raised in a tribunal proceeding, time limits for judicial review applications (generally 60 days) and the applicable standard of review for judicial review proceedings (patent unreasonableness in the case of matters falling under the tribunal’s exclusive jurisdiction). The chair of the tribunal will also have the power to appoint a person to conduct a dispute resolution process.

These changes will come into force on a date to be set by regulation.

F. Minimum Wages

Since September 2003, four provinces have adopted regulations to increase their minimum wage rates.

¹⁵ Many provisions of the *Administrative Tribunals Act* will also apply to the Human Rights Tribunal, by means of amendments to the *Human Rights Code*.

In **New Brunswick**, a new *Minimum Wage Regulation* (New Brunswick Reg. 2003-82) came into force on January 1, 2004.

It increased the minimum wage rate in New Brunswick from \$6.00 to \$6.20 per hour, for the first 44 hours worked in a week, and from \$9.00 to \$9.30 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 \$264.00 to \$272.80 per week. The Minister of Training and Employment Development had first announced these changes on August 1, 2003.

Ontario's minimum wage rate was raised for the first time since 1995, by way of amendments to the *Exemptions, Special Rules and Establishment of Minimum Wage Regulation* under the *Employment Standards Act, 2000* (Ontario Regulation 401/03).

These amendments have increased the general minimum wage rate from \$6.85 to \$7.15 an hour on February 1, 2004. This is the first in a series of increases that will take place every February 1 until the year 2007, at which point the general minimum wage rate will reach \$8.00 an hour. The minimum wage rates for specific groups will also increase during that period. Below are the upcoming changes to minimum wage rates in Ontario.

	Previous	Feb. 1/04	Feb. 1/05	Feb. 1/06	Feb. 1/07
General Minimum Rate	\$6.85 per hour	\$7.15 per hour	\$7.45 per hour	\$7.75 per hour	\$8.00 per hour
Students under 18 years of age ¹⁶	\$6.40 per hour	\$6.70 per hour	\$6.95 per hour	\$7.25 per hour	\$7.50 per hour
Liquor Servers ¹⁷	\$5.95 per hour	\$6.20 per hour	\$6.50 per hour	\$6.75 per hour	\$6.95 per hour
Hunting and Fishing Guides working less than five consecutive hours in a day	\$34.25	\$35.75	\$37.25	\$38.75	\$40.00
Hunting and Fishing Guides working five or more hours in a day	\$68.50	\$71.50	\$74.50	\$77.50	\$80.00
Homeworkers ¹⁸	\$7.54 per hour	\$7.87 per hour	\$8.20 per hour	\$8.53 per hour	\$8.80 per hour

A section has also been added to the Regulation to ensure that employers comply with the new minimum wage rates as soon as they come into effect, even if this occurs in the middle of a pay period.

¹⁶ This rate applies to students under the age of 18 working no more than 28 hours per week or who are employed during a school holiday.

¹⁷ Applies to employees serving liquor directly to customers, guests, members, or patrons in premises for which a licence or permit has been issued under the *Liquor Licence Act*.

¹⁸ Homeworkers are defined as people doing paid work in their home for compensation but who are not independent contractors. They are entitled to at least 110% of the general minimum wage rate.

No changes were made to maximum wage deductions allowed for room and board provided to an employee by his/her employer.

In **Manitoba**, Regulation 25/2004 amended the *Minimum Wages and Working Conditions Regulation* under the *Employment Standards Code*. It raised the provincial minimum wage from \$6.75 to \$7.00 an hour on April 1, 2004. The Minister of Labour and Immigration also announced, in an official news release on December 4, 2003, that she would convene a new Minimum Wage Board in 2004.

In **Quebec**, the *Regulation to amend the Regulation respecting labour standards* (O.C. 327-2004) will increase the provincial minimum wage to \$7.60 an hour over the next year. A first increase of 15 cents occurred on May 1, 2004 and a second, of the same amount, will take effect on May 1, 2005. The applicable minimum wage for employees earning tips will also increase by 30 cents during that period, thereby rising to \$6.85 an hour on May 1, 2005.

A second amendment to the *Regulation respecting labour standards* (O.C. 525-2004), which came into effect on June 24, 2004, has set minimum standards regarding the remuneration of fruit and vegetable pickers. These were the only remaining agricultural employees in Quebec not to be covered by minimum wage provisions.

Employees assigned to the picking of raspberries, strawberries and apples are now entitled to be paid a minimum piece rate, based on the quantity of fruit picked. (Employees assigned to the picking of other fruit are entitled to the general minimum wage rate.) The applicable amounts are \$0.458 per 250 ml container of raspberries (\$0.467 as of May 1, 2005) and \$0.208 per 551 ml container of strawberries (\$0.212 on May 1, 2005). With respect to apple picking, the amount of remuneration depends on the type of apple tree:

- dwarf apple trees: \$1.11 per bushel (19.05 kilograms), increasing to \$1.13 per bushel on May 1, 2005;
- semi-dwarf apple trees: \$1.36 per bushel, increasing to \$1.39 per bushel on May 1, 2005;
- standard apple trees: \$1.57 per bushel, increasing to \$1.60 on May 1, 2005.

However, an additional provision specifies that an employee is entitled to at least the general minimum wage rate (i.e. \$7.45 per hour, increasing to \$7.60 per hour on May 1, 2005) if, "for reasons beyond the employee's control and linked to the state of the field or fruit", he/she cannot receive at least the same amount by using the piece rate to calculate his/her remuneration.

Furthermore, employees assigned mainly to non-mechanized operations relating to the picking of processing vegetables (e.g., the picking of cucumbers for canning) will be entitled to the general minimum wage rate as of January 1, 2007.

In addition, the government of the **Northwest Territories** adopted Regulation 019-2004 to amend the *Wages Regulations* under the *Labour Standards Act*.

On January 28, 2004, this Regulation repealed section 5 of the *Wages Regulations*, which specified the communities and other places in which prevailed a lower minimum

wage rate. This amendment is directly linked to recent changes to the *Labour Standards Act* that eliminated, as of December 28, 2003, “sub-minimum” wage rates based on age and place of employment.

Finally, **Saskatchewan**’s legislature passed legislation that will have an impact on the setting of minimum wages in the future.

Bill 50—the *Labour Standards Amendment Act, 2004*—which received Royal Assent and came into force on June 17, 2004, modified the Minimum Wage Board’s powers and responsibilities (it also amended leave provisions, as was indicated previously). An amendment to the *Labour Standards Act* (LSA) specifies that the Minimum Wage Board must review the provincial minimum wage at least once every two years. In addition, regulation-making powers as regards the setting of minimum wages, the minimum age of employment, maximum wage deductions for room and board and the other matters previously set out under subsection 15(4) of the LSA now rest entirely with the Lieutenant Governor in Council. (Previously, the Lieutenant Governor in Council had the power to approve or reject regulations proposed by the Minimum Wage Board.) Now, the Board’s role is to undertake reviews and make recommendations to the Minister of Labour pertaining to any of these matters.

As mentioned earlier, **Nova Scotia** also amended its *Labour Standards Code* to provide for the establishment of a Minimum Wage Review Committee, whose role is to conduct an annual review of the provincial minimum wage and submit recommendations to the Minister of Labour.

G. Retail Establishments

Legislative changes regarding Sunday shopping were passed in two provinces.

In **Nova Scotia**, the *Retail Business Uniform Closing Day Act (amended)* and *Labour Standards Code (amended)* (Bill 2) amended the *Retail Business Uniform Closing Day Act* on October 30, 2003 to allow all retail businesses to open on the six Sundays before Christmas in 2003. A plebiscite will also be held during the next municipal elections, in October 2004. Voters will be asked two questions: whether to allow Sunday shopping in all retail businesses and, if so, whether it should be restricted to the six-week period immediately before Christmas or allowed throughout the year. Sunday shopping will not be allowed before 1 p.m. or after 6 p.m., nor on designated statutory holidays (New Year’s Day, Easter Sunday, July 1, Remembrance Day, Christmas Day and Boxing Day). The provincial government will have the power to implement the decision of the plebiscite by regulation. (The *Regulations Respecting the Provincial Sunday Shopping Plebiscite*, adopted on July 7, 2004, will govern the conduct of the vote.)

The legislation provides that owners and operators of retail businesses may not be required to operate on a Sunday, regardless of any lease or other agreement. Provisions also prohibit discrimination or retaliation (e.g., by refusing to renew a lease) against a person who refuses to operate a retail establishment on a Sunday.

As mentioned earlier in this report, Bill 2 also made a number of amendments to the *Labour Standards Code*, including measures to protect employees of retail businesses.

In **New Brunswick**, the *Act Respecting Sunday Shopping* (Bill 38) was assented to on June 30, 2004. It will come into force on a day or days fixed by proclamation.

Bill 38 will amend the *Days of Rest Act* (DRA), the *Employment Standards Act* (ESA) and the *Municipalities Act* to give municipalities the power to regulate Sunday shopping on their territory.

The existing permit system, whereby the Municipal Capital Borrowing Board may grant an exemption from Sunday closing requirements to certain small retail businesses and to areas of New Brunswick that it designates as tourist areas, will be eliminated. The provision dealing with ministerial exemption permits related to festivals will also be repealed.

Municipalities will be given the authority to pass by-laws to permit or prohibit Sunday shopping (except if a Sunday coincides with a prescribed day of rest under the DRA) and to set retail business opening hours, where applicable. If certain conditions are met, the Minister of the Environment and Local Government will be able to issue a permit authorizing the operation of retail businesses on Sunday in a local service district or rural community.

Other amendments to the DRA will exempt retail businesses associated with already exempted sporting, recreational, entertainment or amusement activities from the obligation to close on Sundays or on prescribed days of rest. A similar exemption will apply to businesses and industries that are by necessity engaged in a continuous operation (currently, such a business or industry must obtain a permit from the Municipal Capital Borrowing Board to be exempted from the application of the DRA). Moreover, a person will be allowed to engage, on a Sunday—including on a Sunday that is also a prescribed day of rest—in activities prohibited by the DRA (e.g., carrying on retail business) without the need to obtain prior approval, if the person, due to the dictates of his/her conscience or religion, cannot engage in these activities on another day of the week.

A consequential amendment will be made to section 17.1 of the ESA. As a result, the right to refuse to work on Sunday will apply to employees of a retail business or part of a retail business that is exempted from the application of the DRA solely under a municipal by-law or under a ministerial permit issued to a local service district or rural community.

Finally, an exemption permit issued under the DRA for a designated tourist area will remain in effect for one year after Bill 38 comes into force or, if sooner, until the commencement of a municipal by-law or issuance of a ministerial permit allowing (or prohibiting) Sunday shopping in that area.

H. Clothing Industry

Quebec adopted the *Regulation respecting labour standards specific to certain sectors of the clothing industry* under *An Act respecting labour standards* (O.C. 1288-2003, published in Quebec Official Gazette, Part II, of December 17, 2003).

This Regulation covers employees in the men's and boys' shirt industry, the women's clothing industry, the men's clothing industry and the leather glove industry (thereafter called employees in the clothing industry). Historically, four collective agreement decrees established certain minimum conditions of employment applicable to those sectors. On November 11, 1999, *An Act respecting the conditions of employment in*

certain sectors of the clothing industry and amending the Act respecting labour standards came into force. It extended the application of the decrees until June 30, 2000, stipulating that after that day the government of Quebec could adopt, by regulation, transitional provisions regarding minimum standards for those sectors. Afterwards, in accordance with this legislation, the government could adopt a regulation permanently establishing standards of employment applicable to these four sectors of the clothing industry. Consequently, the government adopted, as a temporary measure, the *Regulation respecting minimum labour standards in certain sectors of the clothing industry*, which came into force on July 1, 2000. The Regulation's expiry date was subsequently deferred to December 31, 2003. On January 1, 2004 came into force the new *Regulation respecting labour standards specific to certain sectors of the clothing industry*, which is the subject of this summary. This Regulation sets in a more permanent manner the standards pertaining to these sectors of the clothing industry. It should be noted that, notwithstanding this Regulation, provisions of the *Act respecting labour standards* continue to apply to employees of the clothing industry as long as they are not incompatible with the Regulation.

Minimum Wage

The Regulation provides for a minimum wage rate of \$8.00 an hour, payable to employees of the clothing industry, whereas the general rate under the *Regulation respecting labour standards* is currently \$7.45 an hour.

Standard Workweek

Moreover, for the purpose of calculating overtime, the standard workweek for employees covered by the Regulation is set at 39 hours, whereas it is 40 hours for other employees covered by the *Act respecting labour standards* (the Act).

Statutory General Holidays with Pay

Regarding statutory general holidays with pay, the Regulation provides for two more days than what is set out under the Act. Employees in the clothing industry are entitled to a holiday on January 2nd as well as on Good Friday and Easter Monday, whereas under the Act only one of the latter two days, at the employer's discretion, is considered a statutory general holiday with pay.

Annual Leave with Pay

The new Regulation provides for annual leave with pay. When, at the end of a reference year, an employee has less than one year of uninterrupted service with the same employer, he/she is entitled to an uninterrupted annual leave, established on the basis of one working day for each month of uninterrupted service, for a total leave not exceeding two weeks. In the case of an employee who is credited with one year of uninterrupted service, he/she is eligible for a minimum leave of three weeks, of which two weeks must be consecutive. As for an employee who has three years of uninterrupted service with the same employer, he/she is eligible for an annual leave of a minimum duration of four weeks of which three weeks are to be taken consecutively. Also, the Regulation provides for an annual leave indemnity of 4% of an employee's gross earnings when the latter has less than one year of uninterrupted service, of 6% when the employee is credited with at least one year of uninterrupted service and of 8% when he/she has three years of uninterrupted service, with the same employer. These

provisions are more generous than those of the Act. (The maximum provided for under the Act is three weeks of annual leave and an indemnity representing 6% of the employee's gross earnings after five years of uninterrupted service with the same employer.)

Leave for Family Events

Finally, the new Regulation contains leave provisions relating to the death or funeral of an employee's relative. In the case of the employee's spouse, child, father, mother, brother or sister, or the child of the employee's spouse, the employee is entitled to three consecutive days of leave, without reduction of wages, as well as two additional days without pay. In addition, an employee is entitled to one day without reduction of wages by reason of the death or funeral of one of his/her grandparents or the father or mother of his/her spouse, and a day without pay with respect to a son-in-law, daughter-in-law, one of his/her grand-children as well as a brother or sister of the employee's spouse. These standards are also more generous than the provisions of the Act. (The maximum leave provided for under the *Act respecting labour standards* in the case of the death or funeral of an employee's immediate family member is of one day without reduction of wages and four days without pay.)

Other Regulatory Changes

Consequential amendments were made to two other regulations shortly thereafter.

The *Regulation amending the Regulation respecting contribution rates* (O.C. 1334-2003), which came into force on January 1, 2004, repealed section 2 of the *Regulation respecting contribution rates*. As a result, the supplementary contribution that had to be paid by employers in certain sectors of the clothing industry (which was equal to 0.12% of the remuneration subject to contribution that was paid to employees in the year) has been eliminated. The general contribution rate, set at 0.08% of remuneration subject to contribution, nevertheless continues to apply.

These contributions, which are collected by the Ministry of Revenue (ministère du Revenu), are remitted to the Labour Standards Board (Commission des normes du travail).

The *Regulation to amend the Regulation respecting a registration system or the keeping of a register and report transmittal* (O.C. 524-2004) came into force on July 1, 2004. It revoked sections 1.1 and 3 as well as Schedule I of the *Regulation respecting a registration system or the keeping of a register and report transmittal*. It also modified the title of the Regulation by removing the words "and report transmittal".

As a result, employers covered by the *Regulation respecting labour standards specific to certain sectors of the clothing industry* no longer have to send monthly reports to the Labour Standards Board (Commission des normes du travail). Moreover, the information that they have to keep in a registration system or register regarding each of their employees is now the same as for other employers covered by provincial labour standards legislation.

I. Home Care and Residential Care Sectors

In **Alberta**, the *Employment Standards Amendment Regulation* under the *Employment Standards Code* (Alberta Regulation 28/2004) came into force on April 1, 2004. The Regulation sets distinct hours of work and overtime provisions for the home care¹⁹ and residential care²⁰ sectors that apply in lieu of the provisions of the *Employment Standards Code* (ESC). It replaced a permit system set up for the home care and residential care industries, which had been in place since 1995. The provisions of the new Regulation are very similar to the conditions previously imposed by the permit system.

A caregiver employed for a 24-hour shift must be paid an amount at least equivalent to the minimum wage for 12 hours when providing home care, and for 24 hours when providing residential care. Also, hours of work exceeding 264 hours in a month are payable as overtime. However, only 12 hours per 24-hour shift are counted in the calculation of hours worked for overtime purposes.

When employed for less than a 24-hour shift, a caregiver must be paid an amount at least equivalent to the minimum wage for hours worked. Overtime rates apply to hours worked in excess of 12 hours for each work day or in excess of 264 hours in a work month, whichever is greater. However, the employer may schedule, during a work day, a designated sleep time period, not exceeding eight hours, which is not counted in the calculation of overtime unless care is provided during those hours.

If a caregiver accompanies a client on a vacation or outing, the caregiver must be paid at least an amount equivalent to what he/she would have been paid for providing home care or residential care at the client's home or residential setting. However, the caregiver and the client may agree to another arrangement with respect to pay.

Finally, a home care worker providing less than two consecutive hours of work, excluding an unpaid meal period of an hour or less, must be paid for two hours at no less than the minimum wage. For that purpose, the hours worked immediately after the meal period are considered to be consecutive to the hours worked before the meal period.

J. Human Rights in the Workplace

In addition to the proclamation of the **Northwest Territories'** new *Human Rights Act*, developments with respect to human rights legislation occurred in two jurisdictions.

Nunavut' legislature passed the *Human Rights Act* (Bill 12) on November 4, 2003. Most of the Act will come into force on November 5, 2004—i.e. one year after the day it

¹⁹ "Home care" means the provision of a health care service, a personal care service or a homemaking service at the clients homes, but does not include heavy housework service, handyman service, the services commonly known as "Meals-on-Wheels" and "Wheels-to-Meals", transportation service, office or administrative services.

²⁰ "Residential care" means the provision of a health care service or a personal care service to residential care clients, but does not include office or administrative services, menu planning or meal preparation, housekeeping, janitorial and maintenance services, or other services not directly related to the personal care and health care of the client.

received Royal Assent—except sections establishing the Human Rights Tribunal (sections 16 to 19), which came into effect on the date of assent.

The purpose of this Act is to replace the *Fair Practices Act* and reform human rights legislation in Nunavut, while taking into account Inuit culture. It will expand the list of prohibited grounds of discrimination, establish an independent Human Rights Tribunal and put in place a new process for hearing and resolving issues concerning human rights. Although this legislation bears some resemblance to the Northwest Territories' *Human Rights Act*, which was adopted in the fall of 2002, there are nevertheless many important differences between the two laws. Following are the most significant elements of Nunavut's *Human Rights Act* (HRA) with respect to employment-related issues.

Interpretation and Application

In terms of the HRA's application, provisions specify that nothing in the Act will abrogate or derogate from the protections provided for in the Nunavut Land Claims Agreement, or from any existing aboriginal and treaty rights under section 35 (Recognition of existing aboriginal and treaty rights) of the *Constitution Act, 1982*.

Prohibited Discrimination

Nunavut's *Human Rights Act* will provide protection against discrimination and harassment on the following grounds: race, colour, ancestry, ethnic origin, citizenship, place of origin, creed, religion, age, disability, sex, sexual orientation, marital status, family status, pregnancy, lawful source of income and a conviction for which a pardon has been granted. Protection against discrimination on the basis of sex will be deemed to include protection against discrimination on the basis that a person may become pregnant or, regardless of whether the person is male or female, that he/she may adopt a child. As for the term "disability", it will be defined as "any previous or perceived mental or physical disability", including "disfigurement and previous or existing dependency on alcohol or a drug". In addition, individuals will be protected from discrimination on the basis of their association or relationship, whether actual or perceived, with an individual or class of individuals identified by a prohibited ground of discrimination.

As is currently the case in the *Fair Practices Act*, the HRA will prohibit discrimination in employment, including any term or condition of employment, whether such term or condition was prior to or is subsequent to the employment. However, this provision will not affect, with respect to age and marital status, the operation of any genuine retirement or pension plan, or the terms of a genuine group or employee insurance plan. Nor will it prevent certain employment practices based on justified occupational requirements, if accommodating the needs of an individual or group of individuals would impose undue hardship²¹ on an employer. Moreover, not for profit organizations, societies and corporations of a charitable, educational, fraternal, religious, athletic, social or cultural nature, or operated primarily to foster the welfare of a religious or racial group will, under specified circumstances, be entitled to give preference in employment

²¹ The Act defines "undue hardship" as "excessive hardship as determined by evaluating the adverse consequences of a provision in this Act that requires a duty to accommodate, by reference to such factors as (a) health and safety; (b) disruption to the public; (c) effect on contractual obligations; (d) cost; and (e) business efficiency."

to an individual or group of individuals. A similar exemption will apply when hiring a person to provide personal services²² in a private residence.

An additional provision will forbid harassment of any individual or group of individuals on the basis of a prohibited ground of discrimination in matters related to employment or with respect to membership in an employees' organization, trade union, trade association, occupational or professional association or society, employers' organization or co-operative association or organization. Furthermore, it will be unlawful for such organizations and associations to exclude from full membership any individual or class of individuals, expel, suspend or otherwise discriminate against any of its members, or discriminate against an individual "in regard to his or her employment by an employer" on the basis of a prohibited ground of discrimination unless, (1) this is done in good faith and with reasonable justification and, (2) accommodating the needs of the individual or class of individuals would impose undue hardship.

Rules governing employment applications and advertisements in the HRA will be akin to those currently found in the *Fair Practices Act*.

Absence of Equal Pay Provisions

Contrary to the *Fair Practices Act*, the HRA does not contain any equal pay provisions. (Currently, the *Fair Practices Act* is the only Nunavut statute requiring employers to pay female employees the same rate of pay as male employees for similar or substantially similar work.)

Human Rights Tribunal

The HRA provides for the establishment of a Human Rights Tribunal (the Tribunal), composed of members appointed by the government who have "an interest in and a sensitivity to human rights and to Inuit culture and values that underlie the Inuit way of life". The Tribunal will be responsible for enforcing the HRA, including receiving, hearing and settling complaints, as well as preparing an annual report. In contrast with most other jurisdictions in Canada (except British Columbia), there will be no Human Rights Commission in Nunavut, nor any specific procedures for the investigation of complaints.

Complaints and Adjudication

An individual or group of individuals aggrieved by a contravention of the HRA will be able to file a notification with the Human Rights Tribunal, generally within two years of the last alleged instance of the contravention. A notification may also be filed by someone on behalf of another person or a group or class of persons. In that case, however, the Tribunal will have to refuse to accept the notification if satisfied that it was filed against the will or that proceeding with the notification is not in the interest of the alleged victim(s) of discrimination.

The Tribunal will have the power to dismiss a notification that is trivial, frivolous, vexatious or not made in good faith, or filed after the expiration of the two-year delay. It may also dismiss a notification where, in its opinion, there is no evidence of

²² "Personal services" is defined as "work of a domestic, custodial, companionship, personal care, medical care, child care, or educational nature, or other work within a residence that involves frequent contact or communication with persons who live in the residence."

discrimination on a prohibited ground, undisputed facts clearly provide a defence, or the person who filed the notification has refused a reasonable offer of settlement.

Before holding a hearing with respect to a notification, the Tribunal may assist the parties in reaching a settlement. Should an ensuing settlement agreement be breached, its terms may be enforced in the same manner as an order of the Tribunal (but only to the extent that the Tribunal has the power to make an order regarding the terms of the agreement).

Where a notification has neither been dismissed nor settled, the HRA provides that the Tribunal will hold a hearing.²³ If it finds that the notification has merit in whole or in part, the Tribunal will have the power to order a party to cease contravening the Act or regulations, to compensate an injured party for losses (which may include the payment of an amount for injury to dignity, feelings or self-respect and/or an amount for any malice or recklessness involved in the contravention), to hire or reinstate a person, to adopt an affirmative action program, or to take any other action that the Tribunal deems appropriate having regard to Inuit culture and values. The Tribunal may also make a declaratory order that the conduct that was the subject matter of a notification, or similar conduct, is discrimination contrary to the HRA and its regulations. In addition, the Tribunal may order, in some cases, that a party pay all or some of the costs of another party. With respect to false claims, it can also order the payment of damages for injury to a person's reputation.

A party to a notification will have 30 days to appeal a decision or order of the Tribunal to the Nunavut Court of Justice, from the date it has been served. However, such an appeal will only be allowed on questions of law.

Moreover, the HRA will provide for special remedies, allowing a person to apply for a court order or an injunction in specified circumstances to ensure compliance with key aspects of the Act.

Penalties

A person who fails to comply with an order or decision of the Tribunal or a court under the Act, or who discharges, suspends, intimidates or retaliates against an individual for notifying or attempting to notify the Tribunal of a contravention or for assisting in the application of the Act (e.g., giving evidence in a proceeding), will be liable to a fine of up to \$25,000 on summary conviction.

In **New Brunswick**, a private member's bill (Bill 24, *An Act to Amend the Human Rights Act*, Royal Assent on June 30, 2004) will amend the provincial *Human Rights Act* by adding "social condition" and "political belief or activity" to the other prohibited grounds of discrimination under this statute. Currently, the Act prohibits discrimination in respect of employment as well as other matters—except on the basis of bona fide qualifications—because of race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, sexual orientation or sex.

These amendments will come into force on December 31, 2004, unless proclaimed

²³ Hearings will be open to the public unless the Tribunal decides, on its own initiative or at the request of a party, that there are sufficient reasons to justify holding all or part of the hearing in private.

earlier by the Lieutenant-Governor in Council.

K. Whistleblower Protection

In the **federal jurisdiction**, the Parliament of Canada passed *An Act to amend the Criminal Code (capital markets fraud and evidence-gathering)* (Bill C-13), which was assented to March 29, 2004.²⁴

Among other amendments to the *Criminal Code*, this Bill will create a new general criminal offence aimed at preventing employer reprisals against employees who “blow the whistle” with respect to a violation of any federal or provincial/territorial law.

A new section of the *Criminal Code* (section 425.1) will thus prohibit an employer, a person acting on behalf of an employer, or a person in a position of authority from taking disciplinary action, demoting, terminating or otherwise adversely affecting the employment of an employee, or threatening to do so, with the intent of compelling the employee not to provide information to law enforcement officials concerning an offence committed by the employer (or an officer, employee, or one or more directors of the employer). Retaliating against an employee who has already provided such information will also constitute an offence. The maximum punishment for anyone found guilty of an offence under section 425.1 will be five years of imprisonment.

These amendments will come into effect on a day to be fixed by order in council.

A separate bill (the *Public Servants Disclosure Protection Act*, Bill C-25) was introduced in the House of Commons on March 22, 2004. The purpose of this Bill was to establish a mechanism for the good faith disclosure of wrongdoing by public servants while providing protection to “whistleblowers”. However, Bill C-25 died on the order paper when Parliament was dissolved and federal elections were called on May 23, 2004.

²⁴ An identical Bill (Bill C-46) was introduced and passed third reading in the House of Commons during the previous parliamentary session. However, the session was prorogued before the Senate could adopt the Bill.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In **Quebec**, *An Act to amend the Labour Code* (Bill 31) was assented to on December 18, 2003.

This Act has amended the provisions of the *Labour Code* as regards the transmission of rights and obligations upon the transfer of ownership or operation of all or part of an undertaking (sections 45 to 45.3 of the Code).

As a result of the repeal of a measure introduced in 2001, which provided that the employer had to give to the association of employees concerned a notice indicating its intention to transfer the ownership or operation of all or part of an undertaking and that the association could apply to the Labour Relations Commission, within certain time limits, for a determination as to the application of section 45 (section 45.1 which came into force on November 25, 2002), the automatic applicability of section 45 has been reestablished.

An amendment to section 45 of the *Labour Code* provides that the certification of an association of employees or a collective agreement is not transferred when the transfer of part of the operation of an undertaking does not entail transferring to the transferee, in addition to functions or the right to operate, most of the elements that characterize the part of the undertaking involved.

Where the operation of part of an undertaking is transferred²⁵ and, by virtue of section 45, the certification of an association of employees and a collective agreement that is in force are transferred to the transferee's undertaking, the collective agreement is deemed to expire on the day the transfer of part of the operation becomes effective and the notice to start negotiations to make a new collective agreement may be given by either party within the following 30 days. The working conditions of the employees affected may not be altered without the consent of the certified association of employees for a period of at least 90 days, as provided in the *Labour Code*.

The Commission may, on the motion of an interested party filed in the 30 days that follow the effective date of the transfer of the operation of part of an enterprise, set aside the provisions mentioned in the two preceding paragraphs if it considers that the transfer was carried out for the main purpose of hindering the formation of an association of employees or undermining the continued integrity of a certified association of employees.

These provisions apply to the transfer of part of the operation of an undertaking taking effect on or after February 1, 2004.

²⁵ This does not apply in the case of the transfer of the operation of part of an undertaking between employers of the public and parapublic sectors.

In **Manitoba**, the *Labour Relations Act* provides that if a collective agreement has expired; a strike or lockout has continued for at least 60 days; and the employer and the bargaining agent have attempted to conclude a new agreement with the assistance of a conciliation officer or mediator for at least 30 days during the strike or lockout, either party may apply to the Manitoba Labour Board to have a collective agreement settled by the Board or, if the parties agree, by an arbitrator chosen by them. Effective, June 10, 2004, *The Labour Relations Amendment Act (Bill 37)* brought the following changes to that process.

- The Manitoba Labour Board must make its initial determination – as to whether the parties are bargaining in good faith and whether an agreement is likely to be concluded within 30 days if they continue bargaining — within 21 days after the Board notifies the parties that it has received an application to settle the provisions of a collective agreement. This does not apply if the Board decides to delay making such a determination until it is satisfied that the party making the application has bargained sufficiently and seriously with respect to the unsettled provisions of a collective agreement.
- The party making the application must be bargaining in good faith in order for the Board or arbitrator to proceed to settle the provisions of a collective agreement.
- If the Board's initial determination is that the applicant is not bargaining in good faith, the applicant may re-apply at a later date for the settlement of the provisions of a collective agreement.
- If a collective agreement is settled more than six months after the last collective agreement expired, the new agreement is to remain in effect for a period of six months following the date of settlement.

In **British Columbia**, effective January 5, 2004, the *Labour Relations Board Fees Regulation*, issued under the *Labour Relations Code*; prescribes fees payable for services provided by the Labour Relations Board. This includes fees for filing different types of complaints, applications or requests or for replying to those complaints, applications or requests; for the services of a mediator appointed by the Mediation Division of the Board at the request of one of the parties to assist them in negotiating a first collective agreement; for the services of a mediator appointed by the Mediation Division to assist the parties to reach an agreement on essential services; and for the services of a mediation officer appointed by the Mediation Division at the request of one of the parties to assist them to conclude or review a collective agreement.

Also in British Columbia, the *Administrative Tribunals Act (Bill 56)*, assented to on May 19, 2004, will repeal and replace the *Administrative Tribunals Appointment and Administration Act* passed in 2003.

The new Act sets rules regarding the appointment and reappointment of individuals to administrative tribunals under various Acts. This includes appointments and reappointments to the Labour Relations Board established under the *Labour Relations Code*. Requirements are laid down regarding the appointment, after a merit based process, of the chair of the Board and members, and for consultations with the chair before the appointment of members. The initial term of appointment will be from three to five years for the chair of the Board and from two to four years for a member. A chair or

a member of the Board may be reappointed for additional terms not exceeding five years.

Other provisions deal notably with statutory standards for the courts to apply in reviewing Board decisions and the scope of the Board's jurisdiction to decide constitutional questions.

The changes made to the *Labour Relations Code* by Bill 56 will come into force on a date to be set by regulation.

B. Public and Parapublic Sectors

In the **federal jurisdiction**, the *Public Service Modernization Act* (Bill C-25) was assented to on November 7, 2003.

The purpose of this Bill is to modernize staffing procedures, labour relations, learning and human resources management in the public service.

With respect to labour relations, the Bill will provide for a new *Public Service Labour Relations Act* (Part 1 of the *Public Service Modernization Act*), which will bring many changes to the current legislation, while maintaining the existing basic labour relations framework.

Current Law Replaced

The *Public Service Labour Relations Act* will replace the *Public Service Staff Relations Act*.

Preamble

A new preamble will underscore the value of cooperative labour relations, within a context where protection of the public interest remains paramount.

Consultation and Co-development of Workplace Improvements

The new Act will require each deputy head, in consultation with bargaining agents, to establish a labour-management committee for their department for the purpose of exchanging information and obtaining views and advice on workplace issues affecting the employees. Such issues may include, among other things, harassment in the workplace and the disclosure of information concerning wrongdoing in the public service and the protection from reprisal of employees who disclose such information.

It will also include an enabling provision whereby the employer or deputy heads may engage in co-development of workplace improvements with bargaining agents, through the National Joint Council (NJC) or any other forum they choose. Co-development of workplace improvements will be defined as "the consultation between the parties on workplace issues and their participation in the identification of workplace problems and the development and analysis of solutions to those problems with a view to adopting mutually agreed to solutions."

New Public Service Labour Relations Board (PSLRB)

The PSLRB will replace the Public Service Staff Relations Board. Its mandate will be broadened to provide adjudication, mediation and compensation analysis and research services. It will also continue to provide facilities and administrative support to the NJC, which will be recognized in the Act.

Adjudication services will consist of the hearing of applications and complaints dealing with labour relations and occupational health and safety matters, and the referral of grievances to adjudication. Mediation services will assist the employer and bargaining agents in concluding a collective agreement, in managing their relations while a collective agreement is in force and in mediating in relation to grievances.

Compensation analysis and research services will consist of conducting compensation surveys, compiling and analyzing compensation data, and sharing the information with the parties and the public, as well as conducting market-based compensation research that the Chairperson of the PSLRB may require. An advisory board will be established to provide advice to the Chairperson on the compensation analysis and research services provided by the Board.

Elimination of Certain Exclusions

Lawyers hired by the Department of Justice or the Canada Customs and Revenue Agency and employees of the Treasury Board Secretariat will no longer automatically be considered to be in managerial or confidential positions and, as such, be excluded from collective bargaining. Rather, the employer may apply to the PSLRB for an order declaring that any position is a managerial or confidential position under the Act. If an objection is filed by an employee organization seeking to be certified or the bargaining agent in respect of a position, the PSLRB will, after giving the parties an opportunity to make representations, make a determination on a case-by-case basis, depending on the particular functions involved. A transitional provision will ensure that non-excluded Department of Justice and Canada Customs and Revenue Agency lawyers are given the choice of whether they wish to be represented by a bargaining agent.

When the position of an employee in a bargaining unit for which a bargaining agent has been certified is proposed for exclusion by the employer and the bargaining agent files an objection, the membership dues paid by the employee will be held by the employer pending a determination by the PSLRB. If the Board concludes that the position must be excluded or if the objection is withdrawn, the dues held by the employer will be remitted to the employee; otherwise, they will be remitted to the bargaining agent.

Management Rights

Management rights will remain unchanged. The employer will retain the right to determine its own organization, the assignment of duties and classification of positions.

Scope of Bargaining

The scope of bargaining will not change. Matters which currently are not bargainable - notably matters provided for by the *Public Service Superannuation Act* and the *Public Service Employment Act* (e.g. staffing) - will remain non-bargainable.

Two-tier Bargaining

Two-tier bargaining will allow for service-wide bargaining to set the broad parameters for terms and conditions of employment in a bargaining unit, while permitting precise details to be negotiated in departments, if the employer, bargaining agent and deputy head jointly agree. It is designed to result in terms and conditions more appropriately tailored to the needs of the parties.

Mediation

The new Act will enable the PSLRB Chairperson, upon request or on his/her own initiative, to appoint a mediator at any time to assist the parties in resolving a collective bargaining dispute. The techniques at the disposal of the latter will include mediation, fact-finding and facilitation. The mediator will be able to make recommendations for resolving the dispute, if requested by the Chairperson or the parties.

Mediation services will also be available to assist parties to resolve grievances.

Choice of Dispute Resolution Process

A bargaining agent will continue to be able to choose which dispute resolution process - binding arbitration or conciliation - it wishes to apply to resolve an impasse in collective bargaining.

Arbitration

When the process for the resolution of a collective bargaining dispute is arbitration, the factors to be considered by the arbitration board will be broadened to include the state of the Canadian economy and the Government of Canada's fiscal circumstances.

Enhanced Conciliation

When the process for the resolution of a dispute is conciliation, conciliation boards and conciliation commissioners will be replaced by public interest commissions. A public interest commission (PIC) will be a non-permanent body consisting of one or three persons, appointed by the Minister responsible, to assist the parties to resolve their dispute and to make recommendations for settlement. The Chairperson of the PSLRB will be able to recommend to the Minister the appointment of a public interest commission either at the request of one of the parties or on his/her own initiative.

If a public interest commission is to consist of one person, that person will be appointed from a list of persons jointly recommended by the parties plus, if necessary, persons chosen by the Chairperson of the PSLRB after consultation with the parties. If either party requests that the PIC consist of three members, each party will nominate a person and the two nominees will jointly select a chair from the list (the Minister will nominate a person and/or select a chair from the list, if there is failure to do so).

The factors to be considered in making a PIC report will be the same as for arbitration (see the preceding sub-title). The PIC may be appointed even if the parties have not yet concluded or amended an essential services agreement - both procedures may take place simultaneously.

Essential Services

The current essential services provisions, applicable when the collective bargaining dispute resolution process is conciliation, will be replaced by new ones. Essential services will continue to be based on the safety or security of the public. The employer will continue to have the exclusive right to establish the level at which an essential service must be provided (e.g. the employer may determine the extent and frequency of essential services).

If the employer has given notice to the bargaining agent that employees in the bargaining unit occupy positions considered necessary to provide essential services, the parties will be required to negotiate and make every reasonable effort to enter into an essential services agreement (ESA), determining the types and number of positions needed to provide the essential services at the levels determined by the employer and identifying the specific positions in question. If they are unable to do so, either of them may apply to the PSLRB to determine any unresolved matter. ESAs may be amended from time to time by the parties or, if they are unable to do so, by the Board upon application by either of them. The Act will also provide that the employer or bargaining agent may apply to the PSLRB to temporarily amend, or suspend, an ESA in cases of emergency.

Procedures for notifying employees that they provide essential services will be streamlined by allowing the employer to give a one-time notification. The notice will remain valid so long as the employee continues to occupy the position, unless the employer notifies him/her that the position is no longer necessary to provide essential services.

The right to strike will not be acquired until 30 days after an ESA has been concluded or amended. No employee who occupies a position necessary to provide essential services will be allowed to participate in a strike. It will be prohibited for any person to impede or prevent employees who provide essential services from entering or leaving their place of work.

Strike Votes

Provisions similar to those added to the *Canada Labour Code* in 1999 will require a bargaining agent to hold a secret ballot vote in order to obtain approval for a strike. The Act will ensure that all bargaining unit employees have the right to vote and are given reasonable opportunity to vote. To be valid, a strike vote will have to be held within the 60 days (or any longer period agreed to by the parties) preceding any strike. A majority of those voting will have to be in favour of a strike before it may be declared.

Unfair Labour Practices

Similar to the *Canada Labour Code*, the unfair labour practices provisions will be more comprehensive, including more detailed provisions as to what constitutes prohibited actions by the employer or an employee organization. A provision will state that it does not constitute an unfair labour practice for the employer to permit employees to attend to the business of an employee organization during hours of work.

Prohibitions and Enforcement

The prohibition provisions will be more comprehensive, including express authority for the PSLRB to make certain compliance orders relating to illegal strikes, as is the case for the Canada Industrial Relations Board under the *Canada Labour Code*.

Informal Conflict Management System

Each deputy head in the core public administration will be required, in consultation with bargaining agents representing employees in the department or organization, to establish an informal conflict management system and inform the employees in the department or organization of its availability.

Grievances Related to Discrimination

Employees will no longer be prevented from grieving if the grievance involves an issue of discrimination, except as it relates to the right to equal pay for work of equal value. If discrimination is an aspect of a grievance that is referred to adjudication, the adjudicator will be able to interpret and apply the *Canadian Human Rights Act* and, if appropriate, give monetary relief in accordance with that Act for pain and suffering and/or special compensation where the behaviour was wilful or reckless.

If a grievance involving discrimination is referred to adjudication, the Canadian Human Rights Commission (CHRC) will receive notice of it and will have standing to make submissions to the adjudicator. This is designed to promote better decision-making by adjudicators in the area of discrimination in employment and to streamline recourse. However, the provisions of the Act will not prevent an employee from making a complaint to the CHRC. Also, the CHRC will continue to have the exclusive responsibility to examine complaints of systemic discrimination such as those filed in respect of the right to equal pay for work of equal value.

Complaints under Internal Policies

In order to minimize duplication, an employee who wishes to have a workplace dispute settled will have to choose between presenting a grievance or making a complaint under any applicable internal policy of the employer (such as, in the case of harassment disputes, the Treasury Board Policy on the Prevention and Resolution of Harassment in the Workplace). This requirement to choose will only apply where the internal policy expressly states that the employee gives up his/her right to present a grievance under the Act when he/she pursues relief under the policy.

Group and Policy Grievances

Group grievances will be allowed under the new Act, subject to some limitations (e.g. a group grievance may not be presented in respect of the right to equal pay for work of equal value). A group grievance will involve two or more employees in a single department who are directly affected by the same interpretation or application of a collective agreement or an arbitral award. Employees will be able to opt into a group grievance and their bargaining agent will present the grievance. If an employee decides that he/she no longer wishes to participate in a group grievance, the employee may opt out at any time before a final decision is made.

A policy grievance may be presented by either the bargaining agent or the employer respecting the interpretation or application of a collective agreement or an arbitral award, subject to some limitations (e.g. a policy grievance may not be presented in respect of the right to equal pay for work of equal value). A party that presents a policy grievance may refer it to adjudication. If the policy grievance relates to a matter that was or could have been the subject of an individual or group grievance, an adjudicator will be limited to determining the correct interpretation or application of the collective agreement or arbitral award.

Unsatisfactory Performance and Grievance Adjudication

If an employee grieves against a termination of employment or demotion for unsatisfactory performance and refers the grievance to adjudication, new provisions in the Act will require the adjudicator to examine the reasonableness of the deputy head's opinion of unsatisfactory performance. Adjudicators will not be allowed to substitute their own opinion for that of the deputy head, if the deputy head's opinion is determined to have been reasonable.

Deployment Grievances

Grievances against deployment will be allowed under the Act. Deployment grievances will only be adjudicable when they relate to deployment without the employee's consent, where consent is required. An adjudicator will be allowed to examine the circumstances of the case to determine whether consent to being deployed was a condition of employment or the grievor harassed another person in the course of his/her employment.

Judicial Review and Enforcement

New provisions will state that every decision of the PSLRB or an adjudicator is final and may not be questioned or reviewed in any court, except on a question of law or jurisdiction.

Other new provisions will make it possible for PSLRB or adjudicators' orders to be filed in the Federal Court for purposes of enforcement.

Restriction on Lawsuits

In order to avoid multiple legal proceedings, a provision will prevent employees from bringing civil actions in respect of disputes relating to their terms and conditions of employment. Employees may seek redress exclusively under the Act and the *Federal Court Act*.

Five-Year Review

There will be a requirement to review the Act five years after its coming into force.

Coming into Force

The provisions of the new *Public Service Labour Relations Act* will come into force on a date or dates to be set by the government.

In **Alberta**, effective March 18, 2004, the *Post-Secondary Learning Act* (Bill 43) has replaced certain statutes, including the *Universities Act*, the *Colleges Act* and the *Technical Institutes Act*.

With respect to labour relations, the new legislation requires that the board and the academic staff association of a public post-secondary institution²⁶ enter into negotiations for the purpose of concluding or renewing an academic staff agreement. Provisions dealing with certain matters, such as remuneration, the settlement of grievances and procedures respecting the negotiation of future agreements, must be included in such an agreement. In the case of a public college or technical institute, the procedures respecting the negotiation of future agreements must include procedures for the final resolution, by compulsory binding arbitration, of disputes that may arise during the negotiation of future agreements. If an agreement between the board and the academic staff association of a public college or a technical institute does not provide for such procedures, the agreement is deemed to contain the provisions set out in the regulations in respect of which it is silent.

When a dispute that arises during the negotiation of an agreement cannot be resolved by the board and the academic staff association of a public college, a technical institute, or a public post-secondary institution established after the coming into force of the Act, the dispute must be referred to compulsory binding arbitration.

The graduate students association of a university has exclusive authority to conclude or renew an agreement with respect to the employment of graduate students with the board of the university. Provisions dealing with certain matters must be included in a graduate student employment agreement (i.e. remuneration, the settlement of grievances and procedures respecting the negotiation of future agreements, including procedures for the final resolution, by compulsory binding arbitration, of disputes that may arise during the negotiation of those future agreements). If an agreement between the board and the graduate students association of the university does not provide for such procedures, the agreement will be deemed to contain the provisions set out in the regulations in respect of which the agreement is silent. If a labour dispute cannot be resolved by the parties, they must refer the dispute to compulsory binding arbitration.

The *Employment Standards Code* and the *Labour Relations Code* do not apply to the initial governing authority of a newly established university, board members when acting in their capacities as members, the graduate students association or the graduate students of a university employed by the board as instructional staff, or the academic staff association or the academic staff members of a public post-secondary institution.

In **British Columbia**, the *Health Sector Partnerships Agreement Act* (Bill 94) was assented to on December 2, 2003.

This Act, which came into force on February 2, 2004, applies if a health sector partner enters into an agreement with a private sector partner under which the latter agrees to provide capital for building, modifying or renovating a designated health care facility or any part of it, or for equipment to support services delivered in the health care facility, and agrees to provide one or more non-clinical services at or for that health care facility.

²⁶ "Public post-secondary institution" is defined as comprising a university, a public college, a technical institute, and Banff Centre.

This new legislation provides that the Labour Relations Board or an arbitrator appointed under the *Labour Relations Code* or under a collective agreement must not declare a person, who is an employee of the designated private sector partner²⁷ and provides non-clinical services under the type of agreement mentioned above, to be an employee of a health sector partner, unless the latter intended the employee to be fully integrated with its operations and working under its direct supervision and control.

It also provides that a collective agreement between a designated private sector partner and a trade union representing its employees must not contain a provision that in any manner restricts, limits or regulates the right of the designated private sector partner to contract outside of the collective agreement for the provision of non-clinical services at or for a designated health care facility. Also, any provision of such a collective agreement requiring a person to consult with a trade union prior to contracting outside of the agreement for the provision of non-clinical services at or for a designated health care facility is void.

Moreover, the Labour Relations Board or an arbitrator appointed under the *Labour Relations Code* or under a collective agreement must not declare a person who provides non-clinical services at or for a designated health care facility under a contract between a designated private sector partner and another person, and is an employee of the other person, to be an employee of the designated private sector partner, or of a health sector partner, unless the designated private sector partner or the health sector partner intended the employee to be fully integrated with the operations of either of them and intended the employee to be working under its direct supervision and control. This applies despite the provisions of the *Labour Relations Code* dealing with successor rights and obligations, and businesses that can be treated as one employer for the purposes of the Code.

Provisions similar to those mentioned in the previous two paragraphs apply to a contractor. The term "contractor" is defined as a person who contracts with a designated private sector partner for the provision of non-clinical services at or for a designated health care facility, and includes any other person who contracts with that contractor for the provision of those services.

A collective agreement that conflicts or is inconsistent with this Act is void to the extent of the conflict or inconsistency. The *Labour Relations Code* and regulations apply in respect of the matters dealt with in the Act, but the latter overrides the Code if there is any conflict or inconsistency.

Also in British Columbia, the *Railway and Ferries Bargaining Assistance Amendment Act, 2003* (Bill 95) was assented to on December 2, 2003 and took effect on the same date.

That Act has amended the 1976 *Railway and Ferries Bargaining Assistance Act*. The definition of the term "employer" has been updated, and covers both BC Rail Ltd. and British Columbia Ferry Services Inc. The definition of the term "trade union" remains the same (i.e. a trade union representing some or all of the employees of an employer).

²⁷ A "designated private sector partner" is a private sector partner which enters into an agreement with a health sector partner as described previously.

Also, a definition of the term “Code” (i.e. the *Labour Relations Code*) has been added, and references to the *Labour Code of British Columbia* and the *Public Service Labour Relations Act* in the Act have been changed to references to the Code.

The *Railway and Ferries Bargaining Assistance Act* permits the Minister responsible to appoint Special Commissions, with the approval of the Lieutenant Governor in Council. A Special Commission may inquire into all matters pertaining to the relationships between an employer and its employees or their trade unions and the disputes or differences arising between them, with a view to securing and maintaining industrial peace.

This Act also provides, among other things, that where an employer and a trade union are unable to conclude a collective agreement and the Lieutenant Governor in Council is of the opinion that there is, or will likely be, an immediate and substantial threat to the economy and welfare of the province and its citizens, he/she may order a cooling-off period not exceeding 90 days, which may later be extended for a maximum of 14 days, during which any strike or lockout is prohibited. Only one cooling-off period may be ordered in respect of the same dispute. When the Lieutenant Governor in Council has ordered such a cooling-off period, the Minister must immediately appoint a special mediator to confer with the parties to assist them in settling the terms of a collective agreement.

In **Quebec**, *An Act respecting bargaining units in the social affairs sector and amending the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors* (Bill 30) was assented to on December 18, 2003.

This Act has introduced a union representation system applicable to associations of employees and institutions in the social affairs sector whose negotiation process is governed by the *Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors*. In addition, it has amended that Act to introduce into the social affairs sector the negotiation of matters defined as necessarily being the subject of clauses negotiated and agreed at the local or regional level.

The Act first sets out the general rules that are applicable when an association of employees is certified to represent employees in an institution in the social affairs sector. To that end, the Act establishes the bargaining units that may be constituted on the basis of four classes of personnel²⁸. It specifies that only one association of employees

²⁸ These classes of personnel are as follows: (1) the class of nursing and cardio-respiratory care personnel comprising employees whose practice is governed by the Nurses Act, employees who are members of the Professional Order of Quebec Nursing Assistants and employees assigned to nursing and cardio-respiratory care, and who hold employment under one of the job titles listed in Schedule 1 of the Act; (2) the class of paratechnical personnel and auxiliary services and trades personnel comprising employees whose job consists in performing semi-skilled tasks to provide functional support, generally to health and social services professionals or technicians, and employees whose job consists in providing manual auxiliary services or pursuing skilled or semi-skilled trades that may require a qualification certificate, and who hold employment under one of the job titles listed in Schedule 2 of the Act; (3) the class of office personnel and administrative technicians and professionals comprising employees whose job consists in performing a set of administrative, professional, technical or routine tasks and who hold employment under one of the job titles listed in Schedule 3 of the Act; and (4) the class of health and social services technicians and professionals comprising employees whose job consists in providing health services or social services to users or in carrying out professional or technical

may be certified to represent the employees of a bargaining unit in an institution and that only one collective agreement may be applicable to the employees in that bargaining unit.

The Act also provides for a mechanism permitting an association of employees to be certified to represent the employees included in a bargaining unit following an integration of activities, an amalgamation of institutions or a partial transfer of activities. From the date of certification of a new association of employees following an integration of activities or an amalgamation of institutions, the parties must negotiate the matters defined as being the subject of clauses negotiated and agreed at the local or regional level. In addition, the Act provides for the appointment by the Minister of Labour of a mediator-arbitrator at the joint request of the parties during the first 12 months following certification or at the request of one of the parties in the following 12 months, when they cannot agree on one or more of these matters. Failing an agreement, in the ten days that follow this period of 24 months, the institution must request the Minister of Labour to appoint a mediator-arbitrator to settle the disagreement. The final offer selection process will be used if there is arbitration. It is specified that when the mediator-arbitrator must settle matters negotiated and agreed at the local or regional level on which there is no agreement, the offer selected by him/her must not entail additional costs for the implementation of the matters concerned and must ensure the provision of client services. If, in the opinion of the mediator-arbitrator, neither of the offers presented meet those criteria, he/she modifies the offer selected in order to meet them. The decision of a mediator-arbitrator may not be the subject of negotiations before the expiry of a period of two years, unless the parties decide to amend it before then. Once the clauses defined as being the subject of negotiations at the local or regional level have been negotiated and agreed or determined by the mediator-arbitrator, any negotiation on such clauses must comply with the *Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors*. The provisions described in this paragraph will come into force on a date or dates set by the government.

The Act also contains transitional provisions concerning the merger of bargaining units and the determination of the first clauses negotiated and agreed at the local or regional level, and empowers the Minister of Health and Social Services to determine when those provisions takes effect in each institution he/she indicates.

Except as otherwise indicated, this Act came into force on December 18, 2003.

Also in Quebec, *An Act to amend the Act respecting health services and social services* (Bill 7) was assented to and came into force on December 18, 2003.

Bill 7 has brought amendments to the *Act respecting health services and social services* to specify, in a declaratory manner, that an intermediate resource or a family-type resource is deemed not to be in the employ of or an employee of the public institution that calls upon the services of the resource and that any agreement between them to determine the applicable rules of operation is deemed not to constitute a contract of employment.

work as part of such services, and who hold employment under one of the job titles listed in Schedule 4 of the Act.

The Bill has conferred on the Minister of Health and Social Services the power to enter into an agreement with one or more bodies representing intermediate resources or family-type resources to determine, among other things, the general conditions according to which the activities of all those resources are to be carried on and to establish various measures relating to compensation for their services.

In addition, the Bill has granted to the Minister, rather than to the regional boards, the power to determine, with the approval of the Treasury Board, the rates or scale of rates of compensation applicable to the services of intermediate resources.

Lastly, Quebec adopted *An Act to amend the Act respecting childcare centres and childcare services* (Bill 8), which came into force on December 18, 2003.

Bill 8 has brought amendments to the *Act respecting childcare centres and childcare services* in order to define, in a declaratory manner, that neither a person recognized as a home childcare provider by a childcare centre permit holder nor any adult assisting him/her or person in his/her employ are employees of the childcare centre permit holder.

The Bill makes it possible for the Minister of Employment, Social Solidarity and Family Welfare to make an agreement, following consultations, with one or more associations representative of home childcare providers concerning, among others, the provision and financing of home childcare. If approved by the Government, such an agreement is applicable to all home childcare providers, whether or not they are members of an association party to the agreement, and to all childcare centre permit holders.

C. Emergency Legislation

During the period covered by this report, legislative measures were adopted with respect to the settlement of labour disputes in the forest industry and the health sector in British Columbia and in the public service in Newfoundland and Labrador.

In **British Columbia**, the *Coastal Forest Industry Dispute Settlement Act* (Bill 99) was assented to on December 16, 2003.

That Act was passed to settle a labour dispute between Forest Industrial Relations Limited (FIR) (an accredited employers' organization) and a trade union (i.e. various locals of the Industrial, Wood and Allied Workers of Canada (I.W.A. Canada) and the Council of I.W.A. Locals certified as bargaining agent for employees of Weyerhaeuser Company Limited.)

A collective agreement between a trade union and an employer represented by FIR that was in effect immediately before June 14, 2003, was considered to be a collective agreement between the parties as of December 16, 2003. It was to remain in force until the date of coming into effect of the new or revised collective agreement, concluded by a mediation-arbitration commissioner appointed under the Act.

Immediately after the coming into force of the Act on December 16, 2003, any strike or lockout was prohibited.

The Minister of Skills Development and Labour was required to appoint a mediation-arbitration commissioner to resolve and decide all matters in dispute, and conclude a

new or revised collective agreement between the parties. The commissioner had to do so before May 31, 2004, unless the Minister had issued an order specifying an earlier or later date. With or without the consent of any party, the commissioner was permitted to use fact-finding, mediation, conciliation, arbitration or any other procedure that he/she considered appropriate.

In carrying out his/her functions, the commissioner was required to take into consideration the need for terms and conditions of employment that are consistent with the economic viability and competitiveness of the coastal forest industry in both the short and long term, the importance of good labour management relations in that industry, and the interests of the employees and trade unions.

A new or revised collective agreement concluded by the commissioner is considered to be a collective agreement between the parties. It takes effect on the date specified in that agreement, and is binding on a trade union and an employer represented by FIR and on the employees affected. The parties may agree to modify such a collective agreement.

Also in British Columbia, the *Health Sector (Facilities Subsector) Collective Agreement Act* (Bill 37) was assented to on April 29, 2004.

That Act was passed to settle a labour dispute between the Health Employers Association of British Columbia (HEABC) and the association of unions formed for the health services and support-facilities subsector bargaining unit. The collective agreement had expired on March 31, 2004, and a work stoppage had been declared by the association of unions.

The Act came into force on April 29, 2004. On that date, strikes and lock outs were prohibited, and health workers were ordered to immediately resume their duties with their employer.

The former collective agreement, as modified by the Act, is deemed to constitute a new collective agreement between HEABC and the association of unions. The legislation provides for a 15% wage reduction – 4% of this reduction is achieved by increasing the work week from 36 to 37.5 hours.

Alternatively, the association of unions could, within 14 days after the coming into force of the Act, request the Minister of Skills Development and Labour to appoint an arbitrator. If such a request was made, the Minister was to appoint an arbitrator to assist the parties to negotiate a reduction in wages and/or benefits (i.e. 14% in total compensation – including a 4% reduction from the extended work week). If an arbitrator was appointed, he/she had 60 days to help the parties reach an agreement on the compensation package or could impose a binding settlement. The arbitrator was given the authority to make decisions on where to make the reductions, such as to hourly wages, overtime or shift premium time and to benefits such as paid vacation and sick leave. However, pay equity adjustments were not to be affected.

The collective agreement constituted under the Act will be binding on the parties and will be in force until March 31, 2006.

In addition, British Columbia's Bill 19 (assented to April 29, 2004) has amended the *Education Services Collective Agreement Act*, which was passed in 2002 to settle a

labour dispute between the British Columbia Teachers' Federation and the British Columbia Public School Employers' Association to delete specified provisions of the teachers' collective agreement constituted under that Act, effective the school year that began July 1, 2002.

In **Newfoundland and Labrador**, the *Public Services Resumption and Continuation Act*, (Bill 18) was passed on May 4, 2004 to settle a labour dispute between the government of the province and the Newfoundland and Labrador Association of Public and Private Employees and the Canadian Union of Public Employees and certain of its locals who are parties to collective agreements listed in a schedule of the Act.

Immediately upon the coming into force of this Act on May 4, 2004, the employees affected were required to cease strike actions and to continue or resume the duties of their employment. The unions and their representatives were prohibited from directing, encouraging or assisting employees to engage in an action contrary to the Act.

Effective May 4, 2004, it is considered that the terms and conditions of employment contained in collective agreements that expired on March 31, 2004 apply to the employees covered by them. These collective agreements have been modified by the Act with respect to salary increases (April 1, 2004: 0%; April 1, 2005: 0%; April 1, 2006: 2%; April 1, 2007: 3%), sick leave entitlement, classification and job evaluation as well as pensions. The collective agreements have also been changed to include amendments negotiated by the parties. These terms and conditions of employment are scheduled to expire on March 31, 2008.

Fines are provided for failure to comply with the Act by an official or representative of a union (\$25 000) or by a union (\$250 000). These fines are applicable to each day or part of a day during which the offence continues.

Employees affected by this Act who, starting on May 4, 2004, do not cease actions engaged in for the purpose of compelling an employer to agree to terms and conditions of employment or, where applicable, do not continue or resume the duties of their employment are dismissed.

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

III. OCCUPATIONAL HEALTH AND SAFETY

A. Legislation of General Application

At the **federal** level, *An Act to amend the Criminal Code (criminal liability of organizations)* (Bill C-45) was assented to November 7, 2003.

That Act has established a legal duty under the *Criminal Code* for all persons directing work to take reasonable steps to ensure the safety of workers and the public, and has set rules for attributing to organizations, including corporations, criminal liability for the acts of their representatives. These amendments to the *Criminal Code* came into force on March 31, 2004.

Before the coming into force of that Act, a corporation could be found liable for a *Criminal Code* offence, but it had largely been left to the common law, as developed through the courts, to determine the nature and scope of this liability.

In the new legislation, the term "organization" is used rather than "corporation." "Organization" includes "a public body, a body corporate, a society, a company," taken from the previous *Criminal Code* definitions, but now also comprises "a firm, a partnership, a trade union or an unincorporated association."

The *Criminal Code* amendments build on recent reforms to Part II (Occupational Health and Safety) of the *Canada Labour Code* by imposing a legal duty on employers and those who direct work to take reasonable measures to protect worker and public safety. If this duty is wantonly or recklessly disregarded and bodily harm or death results, an organization may be charged with criminal negligence.

The Act also updates the law on corporate criminal liability by ensuring that it reflects the current structures of modern organizations. Amendments make corporations criminally liable:

- as a result of the actions of those who oversee day-to-day operations, but who may not be directors or executives;
- when officers with executive or operational authority intentionally commit, or direct employees to commit, crimes to benefit the organization;
- when officers with executive or operational authority become aware of offences being committed by other employees, but do not take action to stop them; and
- when the actions of those with authority and other employees, taken as a whole, demonstrate a lack of care that constitutes criminal negligence.

Organizations cannot be imprisoned and so the *Criminal Code* provides for fines. The new legislation has increased the maximum fine on an organization for a summary conviction, a less serious offence, from \$25 000 to \$100 000. There was previously no set limit on fines for indictable or more serious offences, and this remains unchanged under the new legislation.

The new legislation also identifies factors that a court must consider in setting the level of fines. For example, judges must consider aggravating factors, such as the degree of

planning or economic advantages gained by the organization in committing the offence. Mitigating factors may include measures taken by the organization to significantly reduce the likelihood of further criminal activity.

Under the new legislation, an organization that takes steps to ensure that it does not commit further crimes may be subject to a probation order, which may result in reduced fines in certain circumstances. A judge may elect to have the organization inform the public of the offence, the sentence and the remedial measures taken. A court may also impose conditions which may possibly avert future criminal occurrences by the organization, including the requirement to develop related policies and procedures and to appoint a senior officer to oversee their implementation.

In the **Northwest Territories**, *An Act to amend the Safety Act* (Bill 23) was assented to on October 10, 2003, and came into force on January 1, 2004, except for provisions dealing with safety programs which will come into force by order of the Commissioner of the NWT. The most significant amendments to the *Safety Act* are as follows:

- The definition of "employer" has been modified to include an "owner" and a person having charge of "an establishment in which one or more workers are engaged in work" (previously, the definition referred to "an establishment in which one or more persons are employed").
- The Act now provides that, if two or more employers have charge of an establishment, the principal contractor or, if there is none, the owner of the establishment must coordinate the activities of all employers in the establishment for health and safety purposes.
- Duties are imposed on suppliers of any tool, equipment, machine, device or any biological, chemical or physical agent used at establishments.
- It is provided that every employer must implement and maintain the applicable prescribed safety program for its work site and, if required by the regulations or if directed by the Chief Safety Officer, must establish a joint work site health and safety committee as part of the program. When there are two or more employers at a work site, they must jointly implement and maintain a safety program if one is required. (As mentioned above, these provisions have not yet taken effect.)
- Provisions relating to the disclosure of information have been amended in recognition of the Workers' Compensation Board's responsibility for administering the Act, the regulations and other legislation, in recognition of the need to share information with other governmental agencies or departments in Canada and with regulatory bodies or agencies approved by the Board, and to take into account the *Access to Information and Protection of Privacy Act*.
- It is now provided that the identity of persons from whom information is obtained in confidence under the Act can only be disclosed when this is necessary to investigate or prosecute an alleged contravention of the legislation (previously, the names of such persons could be disclosed when this was required for the purposes of the Act or the regulations).

- A safety officer is authorized to give notice to an employer that, if his/her direction arising out of an inspection is not carried out, a further direction may be given to address a potential danger, and, in the event of a subsequent non compliance with a direction in respect of which such a notice was given, the safety officer has the power to order that a place, matter or thing not be used until the direction is complied with.
- The Chief Safety Officer is given the power to approve and issue codes of practice to provide practical guidance with respect to the requirements of the Act or the regulations.
- Lastly, a Safety Advisory Committee, including an equal number of members representing workers and employers, is established to make recommendations respecting amendments to the Act and regulations that it determines are needed.

In **Nunavut**, *An Act to amend the Safety Act* (Bill 49) was assented to on December 5, 2003. It came into force on January 1, 2004, except for provisions dealing with safety programs which will come into force by order of the Commissioner of Nunavut. The most significant amendments to the *Safety Act* are as follows:

- The definition of "employer" has been modified to include an "owner" and a person having charge of "an establishment in which one or more workers are engaged in work" ((previously, the definition referred to "an establishment in which one or more persons are employed").
- The Act now provides that, if two or more employers have charge of an establishment, the principal contractor or, if there is none, the owner of the establishment must coordinate the activities of all employers in the establishment for health and safety purposes.
- Duties are imposed on suppliers of any tool, equipment, machine, device or any biological, chemical or physical agent used at establishments.
- It is provided that every employer must implement and maintain the applicable prescribed safety program for its work site and, if required by the regulations or if directed by the Chief Safety Officer, must establish a joint work site health and safety committee as part of the program. When there are two or more employers at a work site, they are required to jointly implement and maintain a safety program if one is required. (As mentioned above, these provisions have not yet taken effect.)
- It is stipulated that a joint work site health and safety committee must be composed of an equal number of worker representatives chosen by the workers at the work site and persons chosen by the employer or by each employer when there is more than one.
- Provisions relating to the disclosure of information have been amended in recognition of the Workers' Compensation Board's responsibility for administering the Act, the regulations and other legislation, in recognition of the need to share information with other governmental agencies or departments in Canada and with regulatory bodies or agencies approved by the Board, and to take into account the *Access to Information and Protection of Privacy Act*.

- It is now provided that the identity of persons from whom information is obtained in confidence under the Act can only be disclosed when this is necessary to investigate or prosecute an alleged contravention of the legislation (previously, the names of such persons could be disclosed when this was required for the purposes of the Act or the regulations).
- A safety officer is authorized to give notice to an employer that, if his/her direction arising out of an inspection is not carried out, a further direction may be given to address a potential danger, and, in the event of a subsequent non compliance with a direction in respect of which such a notice was given, the safety officer has the power to order that a place, matter or thing not be used until the direction is complied with.
- The Chief Safety Officer is given the power to approve and issue codes of practice to provide practical guidance with respect to the requirements of the Act and the regulations.
- Lastly, a Safety Advisory Committee, including an equal number of members representing workers and employers, is established to make recommendations respecting amendments to the Act and regulations that it determines are needed.

In **Prince Edward Island**, the *Occupational Health and Safety Act* (Bill 39) was assented to on May 20, 2004.

The passage of that Bill has resulted in a rewrite of the previous *Occupational Health and Safety Act*, effective May 20, 2004. The text has been made easier to understand and gender neutral, and a few substantive changes have been made.

The Act continues to be administered by the Workers Compensation Board, and the duties of the Board and the Director of Occupational Health and Safety have been clearly defined with some adjustments. Moreover, additional penalties may be imposed when a person is convicted of an offence under the Act or the regulations. Among other things, the court may, having regard to the nature of the offence and the circumstances of the case, order the offender to publish the facts relating to the offence and/or to pay to the Board an amount to be used for the purpose of educating the public on occupational health and safety matters. Such penalties may be required in addition to other penalties that may be imposed by a court under the Act and the regulations, but the combined amount of these penalties may not exceed the maximum amount prescribed in the main section of the Act dealing with offences and penalties.

Lastly, new regulatory powers permit the Board to exempt, with government approval, certain workplaces from the regulations, while allowing coverage under the Act.

In **New Brunswick**, amendments to the *Occupational Health and Safety Act*, passed on December 21, 2001, were proclaimed into force on August 1, 2004. These amendments were described in the *Highlights of Major Developments in Labour Legislation 2001-2002*.

One of the 2001 amendments introduces 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 requires 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 is also required to ensure that each employer complies with the Act and the regulations. These provisions were later amended by Bill 15, assented to on May 28, 2004 and effective August 1, 2004, to specify that they do not apply to a place of employment that is a private home.

Other 2001 amendments provide that when an employee has exercised his/her right to refuse dangerous work, and an occupational health and safety officer finds that the 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 must advise the employee in writing to do that work. Under these amendments, the right to refuse of an employee, who has appealed that officer's advice, was to be protected until the appeal process was concluded. In such a case, the employee must remain available at a safe place near his/her work station during his/her normal working hours. Bill 15 has modified these provisions so that the right to refuse of an employee, who has appealed such advice of an officer, is protected until the decision of the Chief Compliance Officer is rendered. The right to refuse does not continue to be protected when an appeal is made to the Appeals Tribunal, or to the Court of Appeal on a question of law or jurisdiction.

Also in New Brunswick, *An Act to Amend the Occupational Health and Safety Act* (Bill 58) was assented to on June 30, 2004. Effective on that date, this amendment to the *Occupational Health and Safety Act* provides that the Chief Compliance Officer may delegate any or all of his/her powers, duties, authority or discretion to an occupational health and safety officer.

In **British Columbia**, amendments were made to the *Occupational Health and Safety Regulation* and the *Regulations for Agricultural Operations* under the *Workers Compensation Act*. The purpose of these amendments was to reduce duplication and redundancy of requirements in the *Occupational Health and Safety Regulation* (OHSR) and the *Regulations for Agricultural Operations* (RAO) and to address the Workers Compensation Board's restricted jurisdiction in aircraft operations.

Effective October 28, 2003, the amendments to the OHSR and RAO have removed the following:

- Provisions allowing the Workers' Compensation Board to accept publications, codes, standards, practices, procedures or rules other than those specified in a provision of the OHSR. These provisions have been replaced with one general provision that allow the Board to accept alternative publications, codes, standards, practices, procedures or rules.
- Provisions that duplicate the general duties relating to manufacturer's requirements found in the OHSR. A new section requires that equipment must be used and maintained in accordance with the manufacturer's requirements.
- Specific provisions that repeat general duty provisions in the OHSR relating to the capacity of buildings, structures and equipment to withstand the loads or stresses imposed upon them.

- Provisions that simply provide a cross-reference to other parts of the OSHR.
- Provisions that incorporate other statutes and regulations that would apply in any event.
- Provisions that duplicate the general duty provision in the OHSR relating to the operation of machines or pieces of equipment by authorized persons.
- Provisions that repeat general duty provisions in the Workers Compensation Act relating to the duties of supervisors.
- Provisions in the OHSR and RAO relating to aircraft operations which have been determined to be within federal, not provincial, jurisdiction.
- Provisions in the OHSR that duplicate the Act or other parts of the OHSR.

Other amendments were also made to the OHSR, the RAO and the *Industrial Health and Safety Regulation* (IHSR) under the *Workers Compensation Act* to revise occupational exposure limits for hazardous chemical substances.

Effective October 28, 2003, amendments to the OSHR have resulted in the adoption of exposure limits published by the American Conference of Governmental Industrial Hygienists (ACGIH) (exposure limits were previously listed in a table entitled "Exposure Limits and Designations"). This applies to ACGIH Threshold Limit Values and not to "biological exposure indices". Also, the new provisions have authorized the Workers' Compensation Board to set exposure limits different from the ACGIH values, or to develop exposure limits for substances not listed by the ACGIH.

In addition, the OSHR still designates substances that, when they are present in the workplace, the employer must replace, if practicable, with material that reduces the risk to workers. However, these substances are now described as including certain substances identified in ACGIH or IARC (the International Agency for Research on Cancer) publications. As was the case previously, if it is not practicable to substitute a material which reduces the risk to workers posed by a designated substance, the employer must implement an exposure control plan to maintain workers' exposure as low as reasonably achievable below the exposure limit.

Amendments have also been made to the RAO and IHSR to reference the new exposure limits established under the OSHR and to ensure that some requirements are consistent with the OSHR.

Lastly, regulatory amendments have repealed the mainly prescriptive occupational first aid requirements contained in the *Occupational Health and Safety Regulation*, and have replaced them with significantly more performance-based occupational first aid requirements. These amendments came into force on March 30, 2004.

In **Alberta**, the *Occupational Health and Safety Code* (OHS Code) made by the Occupational Health and Safety Council was adopted under the *Occupational Health and Safety Act* and came into force on April 30, 2004.

The OHS Code has replaced the technical safety requirements of the following 11 regulations under the *Occupational Health and Safety Act*:

- *General Safety Regulation*
- *First Aid Regulation*
- *Chemical Hazards Regulation*
- *Mines Safety Regulation*
- *Noise Regulation*
- *Ventilation Regulation*
- *Joint Work Site Health and Safety Committee Regulations* (four regulations)
- *Explosives Safety Regulations*.

The OHS Code only replaces the technical safety requirements of these regulations. The administrative and policy provisions of the 11 regulations were replaced by the *Occupational Health and Safety Regulation* which came into effect on March 31, 2003. This regulation includes matters such as applications for permits and certificates, posting of orders and notices and availability of documents.

Many of the changes incorporated into the OHS Code recognize hazards, such as violence in the workplace and fall protection requirements for roofers, that have become sufficiently prevalent that the adoption of specific requirements is considered necessary.

Some provisions are in response to work hazards that did not exist when the regulations were adopted, such as safety requirements for the use of all terrain vehicles, snowmobiles and robots at work. Others originate from experience in the occupational health and safety field suggesting that a change is needed, such as specific regulations for controlling lead exposure and mandatory written hazard assessments.

Major changes from previous regulations, which were incorporated into the new OHS Code, include the following: when there is a risk of violence in the workplace, mandatory hazard assessment, worker training and response plan; mandatory written hazard assessments by employers; a director's power to order an employer to prepare and implement an occupational health and safety plan; new requirements for residential roofing fall protection; the obligation for employers to develop an exposure control plan for employees where they may be adversely affected by exposure to lead; specific safety standards for the safe lifting of loads; measures to protect against biohazards, including proper equipment and procedures; protective measures and training requirements for emergency response workers; safety requirements for the operation of all terrain vehicles and snowmobiles at work, including prohibiting the use of three wheel all terrain vehicles at work; the safe use of robots; requirements for underwater diving as part of work; and protective measures for tree care operations.

In April 2004, a new system to regularly update exposure limits for workplace hazardous substances was announced by the **Ontario** government. As well, amendments to the *Regulation respecting Control of Exposure to Biological or Chemical Agents* under the *Occupational Health and Safety Act* have introduced more protective occupational exposure limits (OELs) for four substances (i.e. for manganese (dust and compounds) effective June 30, 2004, and for benzene, carbon monoxide, and 1, 3-butadiene effective December 31, 2005). Ontario currently has OELs for more than 700 workplace substances. Under the new system, the Ministry of Labour will regularly consult on OELs based on new American Conference of Government Industrial Hygienists (ACGIH)

recommendations and their relevance to Ontario. Additional updates can be made beyond the ACGIH recommendations based on the best available scientific and medical research.

Lastly, in **Nova Scotia**, some amendments have been made to the *Occupational Safety General Regulations* under the *Occupational Health and Safety Act*. They notably deal with procedures to follow where a welding or allied process is performed on a natural gas pipeline or an associated liquids pipeline. These amendments took effect on January 23, 2004.

B. Protection against Tobacco Smoke

In **Nunavut**, the *Tobacco Control Act* (Bill 33) was assented to on November 5, 2003.

Among other things, that Act prohibits smoking in any workplace or in the three metre radius surrounding any entrance to or exit from a workplace whether or not a sign prohibiting smoking is posted. The three metre rule does not apply to an enclosed shelter set aside for smoking when it is close to an entrance or exit, if persons entering or leaving the workplace are not exposed to smoke from the shelter.

Every employer has the following obligations: to ensure compliance with these provisions; to give notice to every employee that smoking is prohibited in the workplace; to post signs prohibiting smoking, as prescribed by regulation, in conspicuous locations at every entrance and every washroom in the workplace; and to ensure that there are no ashtrays or similar smoking equipment in any part of the workplace.

These requirements do not apply to some workplaces, including restaurants and bars for two years after their coming into force, and areas set aside for smoking in elder homes or other premises designated by regulation, if the area meets prescribed requirements.

An employer or his/her representative is prohibited from taking retaliatory measures against an employee (i.e. dismissal, disciplinary action, suspension, or threat of any such action) or from imposing a penalty, or intimidating or coercing an employee because he/she has acted in accordance with or has sought the enforcement of the new legislation.

If there is any conflict between the *Tobacco Control Act* and another Act, a regulation, or a by-law made by a municipal council under the *Cities, Towns and Villages Act* or the *Hamlets Act* that deals with smoking, the provision that is the most restrictive of smoking prevails.

Effective May 31, 2004, the Minister of Health and Social Services is authorized to appoint inspectors for the purpose of enforcing the new Act, and those who are found guilty of an offence are liable to a fine, which varies according to the type of infraction.

Except for the provisions just mentioned, the Act came into force on February 1, 2004.

In both **Nunavut** and the **Northwest Territories**, similar *Environmental Tobacco Smoke Work Site Regulations* were adopted under their respective *Safety Act* and *Mine Health and Safety Act*.

The *Environmental Tobacco Smoke Work Site Regulations* made under their *Safety Act* prohibit smoking in any enclosed work site, and within a three meter radius of any entrance to or exit from an enclosed work site if that area is under the control of the employer. An employer may permit smoking, under certain conditions, in a designated smoking shelter near the entrance to or exit from an enclosed work site.

When an enclosed work site contains private units or another kind of facility in which people, other than workers at the work site, reside, an employer may, if certain conditions are met, permit those persons to smoke in a designated smoking area.

When workers reside at an enclosed work site on a temporary or permanent basis, an employer may permit smoking in a designated smoking area that is structurally separated from other areas of the work site, including other break areas, and meets specific requirements.

An employer may not require a worker to enter a designated smoking area, unless the place is free from second-hand smoke or entrance is required to respond to an emergency that may endanger a person's life, health or property, or to investigate for illegal activity.

The *Environmental Tobacco Smoke Worksite Regulations* adopted under their *Mine Health and Safety Act* prohibit smoking in an enclosed work site (e.g. an underground mine) and within a three meter radius of any entrance to or exit from an enclosed work site. A mine manager may permit smoking, under certain conditions, in a designated smoking shelter near the entrance to or exit from an enclosed work site. A manager may also permit smoking in designated smoking areas where employees are required to remain in an enclosed work site for the duration of their shifts. These designated smoking areas must be structurally separated from other areas of the work site, including other break areas, and meet various other requirements specified in the Regulations. A manager may not require an employee to enter a designated smoking area, unless it is free from second-hand smoke or entrance is required to respond to an emergency that may endanger a person's life, health or property, or to investigate for illegal activity.

The Regulations just mentioned came into force on May 1, 2004.

In **Manitoba**, *The Non-Smokers Health Protection Act (Various Acts Amended)* (Bill 21) was assented to on June 10, 2004.

Effective October 1, 2004, Bill 21 will bring amendments to *The Non-Smokers Health Protection Act* to broaden the ban on smoking in "enclosed public places", which include office buildings, restaurants and health care facilities, and will include licensed premises and any other place prescribed by regulation. In addition, smoking will be prohibited in indoor workplaces and in vehicles used in the course of employment while transporting two or more employees. However, there will be some exceptions. For example, the boards or proprietors of certain group living facilities, such as personal care homes and other longer-term care facilities, may designate smoking rooms for patients or residents; and guest rooms in hotels may be designated as smoking rooms. The new legislation will contain requirements concerning smoking rooms.

Proprietors of places or vehicles in which smoking is prohibited will have to post no-smoking signs and ensure that there is no smoking in those places or vehicles.

Provisions will be added with respect to inspectors and their powers under *The Non-Smokers Health Protection Act*. An employer will be prohibited from taking adverse employment action against an employee because that person provided information in good faith regarding the enforcement of the Act or the regulations. Also, minimum fines will be provided for offences under the Act (currently only maximum fines are provided).

In addition, *The Workplace Safety and Health Act* (WSHA) will be amended to provide that the government may make regulations respecting the prohibition of smoking at workplaces, including deeming a contravention of *The Non-Smokers Health Protection Act* relating to workplaces to be a contravention of the WSHA for the purpose of issuing an improvement order.

Lastly, in **New Brunswick**, the *Smoke-Free Places Act* (Bill 75) was assented to on June 30, 2004

That Act will come into force, in whole or in part, by proclamation. It will ban smoking in certain places, such as enclosed public places (including bars and restaurants), indoor workplaces and vehicles used in the course of employment, while carrying two or more employees.

In group living facilities, such as nursing homes and group homes, smoking will be permitted in designated smoking rooms, which meet requirements prescribed by regulation.

A manager or employer will be required to ensure that no person smokes in a place, area or vehicle over which he/she has control if this is prohibited by the Act.

Signs indicating that smoking is prohibited or permitted will have to be posted in accordance with the regulations. In addition, no manager or employer may permit any ashtrays or similar receptacle in any place or area under his/her control, in which smoking is prohibited under the Act.

An employer will be required to take reasonable precautions to ensure that the exposure of employees to smoke in a place where smoking is permitted under the Act is minimized.

The Minister of Health and Wellness may appoint or designate inspectors for the purpose of ensuring compliance with the Act and the regulations. Among other things, inspectors will have the power to issue compliance orders.

Those who commit an offence under the Act will be liable to fines.

As a result of an amendment to the *Occupational Health and Safety Act* (OHSA), an employee who has sought the enforcement of the *Smoke-free Places Act* or the regulations or an order made under that Act in relation to a place of employment covered by the OHSA will be protected against any actual or threatened discriminatory action, intimidation or any coercive measure originating from this action by the employee.

C. Construction Safety

In **Ontario**, amendments have been made to the *Construction Projects Regulation* under the *Occupational Health and Safety Act*. They include revised requirements for fall protection systems, including new standards set by the Canadian Standards Association with respect to certain equipment, and new requirements concerning multi-point suspended scaffolds.

These changes came into force on April 2, 2004, except for those relating to multi-point suspended scaffolds, which will take effect on October 1, 2004.

D. Mine Safety

In **Nunavut**, numerous amendments have been made to the *Mine Health and Safety Regulations* under the *Mine Health and Safety Act*. Some of the amendments reflect changes and advances in mining technology. Others focus on enlarging the roles and responsibilities of existing occupational health and safety committees within mines and making them more effective. For example, when a committee makes recommendations to the manager of a mine and the employees regarding occupational health and safety, the manager must respond in writing to the committee within 15 days after receiving the recommendations. Many of the amendments serve to update the Regulations to reflect new practices. Some new sections contain safety requirements and operational procedures related to raise mining and slusher operation, and work hour/schedule requirements. Lastly, several sections specifying brake testing requirements for mobile equipment have been replaced by a general provision requiring mine managers to ensure that a procedure is established according to the manufacturer's recommendations for the testing of each braking system of all mobile equipment used in underground or surface operation.

These amendments were made retroactive to February 28, 2003.

In **Quebec**, amendments have been made to the *Regulation respecting occupational health and safety in mines* under the *Act respecting occupational health and safety*. These amendments have added new definitions with regard to ventilation and blasting work, and have modified certain provisions relating to air quality, certain equipment such as motorized vehicles, and mine evacuation drills. In addition, they have provided for increased safety features on equipment such as hoisting material and hoisting ropes installed on a hoisting plant.

The amendments have also brought more detailed requirements concerning combustible and inflammable materials, signal and communication systems, and the handling, use, storage, and transportation of explosives.

These amendments took effect on February 12, 2004.

In **Ontario**, on February 27, 2004, a number of amendments were made to the *Mines and Mining Plants Regulation* under the *Occupational Health and Safety Act*. The most important changes include the following:

- Employers engaged in contiguous underground mine operations and smelter operations must establish and maintain prescribed training programs.

- There are enhanced standards for motor vehicles used in a mine, and an amendment requires the use of protective devices for workers repairing energized rubber tires with multi-piece rims.
- In a blasting operation, the worker who makes the final connections necessary to allow the blast to be fired is the only person who is permitted to fire the blast. If this is not possible, the employer, in consultation with the joint health and safety committee or the health and safety representative, if any, must develop written safe procedures for performing the blasting operation. The workers involved in a blasting operation must be informed about these procedures before performing any tasks in connection with the blasting.
- Amendments have also been made with respect to the safety of hoisting ropes. Mine operators are permitted to choose standards prescribed previously in the Regulation or new standards that are appropriate for deep mining and are based on standards issued by the South African Bureau of Standards.

E. Railway Safety

In **British Columbia**, the *Railway Safety Act* (Bill 20) was assented to on March 31, 2004.

The *Railway Safety Act*, which has replaced the safety provisions of the *Railway Act*, is intended to harmonize railway safety regulation in British Columbia with federal regulations.

The main purposes of the *Railway Safety Act* are as follows:

- To provide that the Minister responsible for the administration of the Act must appoint a registrar of railway safety and may appoint railway safety inspectors. The registrar of railway safety has the power to issue permits to railway companies covered by the Act, provide exemptions from safety provisions that may have been adopted by regulation, and suspend or cancel a permit if the permit holder fails to pay fees as required under the Act or to comply with a term or condition of the permit. (A railway company may apply to the deputy minister for the reconsideration of a decision of the registrar to suspend or cancel a permit.)
- To allow for the delegation of the administration of most provisions of the Act and the regulations to the government of Canada, its agents, the British Columbia Safety Authority or other persons.
- To enable the Minister to adopt by regulation, with or without changes, provisions of the *Railway Safety Act* (Canada), the *Canadian Transportation Accident Investigation and Safety Board Act*, the *Canada Transportation Act*, and the *Transportation Appeal Tribunal of Canada Act*, and any regulations, standards, codes, rules or procedures made under any of those Acts, and a code or standard regarding railway safety established by any other standard making body.
- To provide that an individual who is convicted of an offence under the Act is liable to a maximum fine of \$100 000 or to imprisonment for not more than 18 months, or to both, and to an additional maximum fine of \$5 000 for each day during which the offence continues. A corporation that is convicted of an offence under the Act is liable to a maximum fine of \$200 000 and to a further penalty of not more than \$10 000 for each day during which the offence continues.

The *Railway Safety Act* took effect on April 1, 2004. Effective on that date, the administration of specific sections of that Act has been delegated to the British Columbia Safety Authority.

In **Manitoba**, effective July 20, 2004, amendments were made to the *Provincial Railways Fitness Criteria and Safety Regulation* under the *Provincial Railways Act*.

These amendments to the Regulation have expanded railway safety requirements, notably with respect to reportable railway accidents and incidents. They have also updated lists of Government of Canada regulations and of rules and standards made under the *Railway Safety Act* (Canada), with which railway companies covered by the Act must comply as required by the Regulation.

F. Diving Operations

In **Ontario**, an amendment to the *Regulation respecting diving operations* under the *Occupational Health and Safety Act* has added a section which states that an employer must ensure that all persons who participate in a diving operation are trained to a level of competency at least equal to the competency requirement of CSA Standard Z275.4-02 "Competency Standard for Diving Operations" that applies to that type of operation. It is specified that, for the purposes of this provision, the standard applies to scientific diving.

The amendment took effect on June 3, 2004.

G. Boilers, Pressures Vessels, Elevating Devices and other Installations

In **British Columbia**, the *Safety Standards Act* was brought into force on April 1, 2004 and, on the same date, new regulations were adopted under that Act, including the *Boiler Code Adoption Regulation*, the *Electrical Safety Regulation*, the *Elevating Devices Safety Regulation*, the *Gas Safety Regulation*, and the *Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation*. These regulations have replaced a series of previously adopted regulations dealing with the same topics.

A *Safety Standards General Regulation* was also adopted on April 1, 2004 under the Act. It notably deals with certificates of qualification and contractors' licences, permits, safety officers and inspections by them, field safety representatives, and incident reporting.

Except to the extent that the administration of the *Safety Standards Act* or regulations made under it is delegated to a local government, the administration of specified sections of the Act, and the regulations has been delegated to the British Columbia Safety Authority.