

HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

September 1, 2004 to August 31, 2005

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INTRODUCTION

Many significant developments have occurred in the field of labour legislation during the period spanning from September 1, 2004 to August 31, 2005

In the field of employment standards legislation of wide application, Newfoundland and Labrador amended its *Labour Standards Act* with regards to the day of rest provision and enacted new compassionate care leave provisions; Ontario brought some changes to the limits on hours of work, averaging agreements for overtime purposes and various other matters; Saskatchewan repealed unproclaimed sections of the *Labour Standards Amendment Act, 1994* respecting the distribution of work to part-time employees; Quebec brought amendments to its labour standards legislation in view of the implementation of its parental insurance plan; and the federal jurisdiction proposed legislation that would guarantee workers quick payment of unpaid wages in cases of bankruptcy. Other changes include the coming into force of certain legislative provisions which are part of the reform of the administrative justice system in British Columbia; amendments to the *Mechanics' Liens Act* in Nova Scotia; the adoption of regulations to increase minimum wages in seven jurisdictions; and the adoption of employment standards specific to certain industries in British Columbia, Nova Scotia and Ontario. New Brunswick also took steps to lessen restrictions on Sunday shopping, and Quebec passed legislative changes with regards to pay and employment equity. In the field of human rights in the workplace, New Brunswick and Ontario proposed new legislation to end mandatory retirement. Lastly, the federal jurisdiction, Nova Scotia and Saskatchewan proposed, enacted or modified whistleblower protection legislation.

In the area of collective bargaining legislation of wide application, amendments to the Ontario *Labour Relations Act, 1995* have, among other things, expanded the remedial powers of the Labour Relations Board, permitted the use of the "card-based certification" model in the construction industry, and made permanent a special collective bargaining regime in the Toronto and surrounding area residential construction sector. Saskatchewan also made changes to its general collective bargaining law, *The Trade Union Act*, for the purpose of accelerating the settlement of first collective agreements, improving case management of applications before the Labour Relations Board, and clarifying its procedural powers. In addition, British Columbia brought into force new rules regarding appointments and reappointments to the Labour Relations Board, and, at the federal level, proposed amendments to *the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* put forward legislated rules for the renegotiation of collective agreements. In the public sector, Quebec passed legislation to set up an Attorney General's prosecutors' collective bargaining system; the federal government brought into force its new *Public Service Labour Relations Act*, and Nova Scotia replaced the right to strike of police officers and the right to lock out of their employers with an interest arbitration procedure. Moreover, legislative measures relating to labour relations in the health sector were proclaimed in Quebec and passed in Saskatchewan and Prince Edward Island, and a law dealing with the term of operation of collective agreements in the education sector was enacted in Ontario. Moreover, during the period covered by this report, an emergency law was passed in British Columbia to settle a labour dispute between the provincial government and the British Columbia Crown Counsel Association. Lastly, Alberta designated the "Horizon Oil Sands Project" as a major construction project to which special provisions of the *Labour Relations Code* apply, and Newfoundland and Labrador extended the application of the *Voisey's Bay Special Project Order* to the construction of a demonstration facility at Argentina.

In the field of occupational health and safety, the legislation of general application was amended as follows: Newfoundland and Labrador brought a number of amendments to its *Occupational Health and Safety Act* regarding the appointment, in certain circumstances, of a workplace health and safety designate; New Brunswick proposed amendments to its *Occupational Health and Safety Act* concerning mainly health and safety committees and representatives; Manitoba approved amendments to the *Workplace Safety and Health Act* with respect to the use of needles in medical workplaces; British Columbia made various changes to its *Occupational Health and Safety Regulation*; Ontario updated occupational exposure limits for workplace hazardous substances and modified regulations on training requirements for certain skill sets and trades; and new regulations were issued regarding safety in the oil and gas industry in the Yukon Territory, fall protection in Prince Edward Island, and first aid in New Brunswick. In addition, legislation minimizing exposure to tobacco smoke in workplaces was brought into force in New Brunswick and Saskatchewan, and passed in Alberta, Newfoundland and Labrador, Ontario and Quebec; and a *Non-Smokers Health Protection Regulation* was issued in Manitoba. Other changes include amendments to the regulations dealing with asbestos on construction projects, and in buildings and repair operations in Ontario; legislative measures relating to farm safety in British Columbia, Prince Edward Island and Ontario; legislation on electrical safety in Manitoba; the adoption of radiation health and safety regulations in Saskatchewan; and the passing in Nova Scotia and Saskatchewan of legislation that will put in place a procedure regarding medical testing and disclosure of medical information notably for those who may have become infected with a pathogen or micro-organism as a result of coming into contact with a bodily substance of another individual in the course of their work.

I. EMPLOYMENT STANDARDS

A. Legislation of General Application

In **Newfoundland and Labrador**, effective December 16, 2004, *An Act to Remove Anomalies and Errors in the Statute Law* (Bill 59) has amended the *Labour Standards Act* with regards to the day of rest provision. Among other things, Bill 59 specifies that the Minister responsible for the *Labour Standards Act* may exempt an employer from the obligation to grant to every employee a minimum period of rest of 24 consecutive hours per week.

(The enactment of new compassionate care leave provisions will be discussed in section C of this part of the report.)

In **Ontario**, the *Employment Standards Amendment Act (Hours of Work and Other Matters)*, 2004 (Bill 63) received Royal Assent on December 9, 2004.

Bill 63, which came into force on March 1, 2005, amended provisions of the *Employment Standards Act, 2000* (ESA 2000) regarding limits on hours of work, averaging agreements for overtime purposes, and various other matters.

Limit on Hours of Work

In 2000-2001, the previous Government of Ontario had amended hours of work provisions to allow employers and employees to agree to a workweek of up to 60 hours¹; such agreements did not require, as was the case before, a permit from the Director of Employment Standards (the Director). Bill 63 replaced these provisions and the new ones 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 concerned is still 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 is revocable by the employee—with two weeks' notice—and by the employer—with "reasonable" notice. However, a new requirement applies 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 has 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 also has to contain a statement acknowledging that the employee has received this document.

An employer may 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 by telephonic transmission of a facsimile. A copy of the application also has 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.

¹ It was nevertheless possible to exceed the 60-hour limit with the permission of the Director.

If the employer has not yet received a decision from the Director and 30 days have elapsed since the application was served, the employees concerned may start working additional hours, up to a maximum of 60 hours in a week, if certain conditions are met (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 Director² may 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 may also impose conditions on an approval.

An approval to exceed the limit on weekly hours of work may apply to a single employee or to all employees in a specified class of employees (all the employees of an employer may be included in a specified class). It will 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 may also revoke an approval before it has expired, by giving reasonable notice to the employer (the Director determines what is to be considered a reasonable notice in the circumstances).

Where an application is approved by the Director, a copy of the approval has 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 has to post a copy of the notice during the 60-day period following the date on which it was issued.

Moreover, a new section is added 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 permitting to exceed limits on hours of work. Subject to the Director's approval, agreements to work up to 60 hours per week that were in force on February 28, 2005 can remain valid. Any employee covered by such an agreement who is not represented by a union also had to be provided a copy of the document concerning his/her rights under the ESA 2000 on or before June 1, 2005.

Averaging Agreements

Existing provisions regarding the averaging of hours of work for overtime pay purposes have been 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 necessitates the Director's approval (before, such an approval was only needed where the averaging period exceeded four consecutive weeks). The process to obtain an approval for an averaging agreement is similar to that concerning an application to exceed weekly limits on hours of work (see above) except, for example, that there is no requirement for the employer to provide the employee(s) concerned with a document on their rights under the ESA 2000 and no requirement to post the application form. Also,

² The Director may delegate his/her powers and duties regarding the approval of applications regarding excess hours or averaging agreements to individuals employed in the Ministry of Labour.

averaging agreements must contain an expiry date and are revocable only if the employer and employee agree.

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

Subject to the Director's approval, existing averaging agreements can remain valid.

Emergency Leave

Bill 63 amends the ESA 2000's emergency leave provisions to clarify 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 provides 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) has been modified. New provisions authorize the Minister of Labour to determine what information about the ESA 2000 and related regulations to include in the poster that employers must post in each workplace (such information used to be prescribed by regulation) and 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 has 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 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 has been 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 has modified the regulatory powers for the purpose of permitting the issuing of regulations that set out different standards for certain industries.

In **Saskatchewan**, *The Miscellaneous Labour Statutes Amendment Act, 2005* (Bill 122) received Royal Assent and came into force on May 27, 2005.

The purpose of this Bill is, among other things, to set out explicitly an employer's obligation under *The Labour Standards Act* to pay annual holiday pay to an employee whose employment has been terminated, even if the employee has not completed a full year of service. This Bill also repeals the unproclaimed sections of *The Labour Standards Amendment Act, 1994*, respecting the distribution of work, that would have forced employers to offer to part-time employees, based on their seniority and qualifications, any additional hours of work that become available.

In **Quebec**, *An Act to amend the Act respecting parental insurance and other legislative provisions* (Bill 108) was assented to on June 17, 2005.

This Bill has amended, among other things, the *Act respecting parental insurance* in view of the implementation of the Quebec parental insurance plan. The amendments allow for a person who adopts a child of full age or a spouse's child to receive adoption benefits.

This Bill has also amended the *Act respecting labour standards* in order to harmonize it with the *Act respecting parental insurance*, in particular with regards to parental leave in cases of adoption of a child of full age or a spouse's child. The amendments also enable an employee to request that the maternity, paternity or parental leave be divided into weeks if, among other things, the child is hospitalized or, in case of a serious illness or accident. In addition, if the child is hospitalized during the paternity or parental leave, the said leave may be suspended, following an agreement with the employer, during the hospitalization. Furthermore, an employee is entitled to an extension of the paternity or parental leave, if he/she sends his/her employer, before the expiry date of the leave, a notice accompanied by a medical certificate attesting that the state of health of the child requires it.

These amended provisions will come into effect on the date or dates to be fixed by the Government.

In **Manitoba**, the *Budget Implementation and Tax Statutes Amendment Act, 2005* (Bill 44) received Royal Assent on June 16, 2005.

Pursuant to the amendments brought by this Bill, a lien for taxes under the *Tax Administration and Miscellaneous Taxes Act* takes priority over a lien or charge of an employee or the Director of Employment Standards, with respect to unpaid wages, administrative costs and interest under the *Employment Standards Code*. This amendment came into force on July 1, 2005.

Finally, legislation was introduced in the **federal jurisdiction** to, among other things, create the legislative basis for a Wage Earner Protection Program (WEPP) that would guarantee workers quick payment of unpaid wages where their employers have become bankrupt or subject to a receivership.

An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts (Bill C-55) received first reading on June 3, 2005.

To be eligible to make a claim, a worker would have to be employed by the former employer for more than three months. Wages recoverable would be those earned during the six months immediately before the bankruptcy or the first day on which there was a receiver in relation to the former employer, less any applicable provincial or federal deductions, to a maximum equal to the greater of \$3,000 and four times the maximum weekly insurable earnings under the *Employment Insurance Act*.

Under this Bill, the term “wages” would include salaries, commissions, compensation for services rendered, vacation pay, and any other amounts that may be prescribed by regulation, but would not include severance or termination pay. However, severance and termination pay could still be claimed through the regular bankruptcy process and would be treated as an unsecured claim.

The payments would be made out of the Consolidated Revenue Fund. Consequently, a worker would be required to sign over his/her claim against the employer under the *Bankruptcy and Insolvency Act* to the Crown, up to the amount of payment. The Government would then seek to recover the amounts paid under the WEPP, up to a maximum of \$2,000, as a creditor to the former employer in the bankruptcy proceeding.

This Bill would also amend the *Bankruptcy and Insolvency Act* to provide for a limited “super priority” (above secured creditors) for unpaid wage claims over bankrupt employers’ “current assets” (including cash on hand, accounts receivable, and inventory), up to a maximum of \$2,000. This “super priority” would either be acted upon by the government in exercising the rights of the employee in the bankruptcy proceeding or by individuals who do not qualify for payment under the WEPP and pursue wage claims directly in the bankruptcy process. If there are insufficient “current assets” to satisfy the wage claims under the limited “super priority”, any amount outstanding, up to the maximum of \$2,000, could be claimed through the existing preferred creditor status.

Finally, for any wage claim in excess of \$3,000 or other employee’s claim (e.g., severance and termination pay) due, the worker could continue to submit an unsecured claim under the bankruptcy proceedings.

If passed, these amendments would come into force on a date to be fixed by the government.

B. Reciprocal Enforcement of Orders

Newfoundland and Labrador adopted on September 13, 2004, the *Labour Standards Reciprocating Jurisdictions Regulations* under the *Labour Standards Act* which declares Yukon, North West Territories, Nunavut, British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Prince Edward Island and Nova Scotia as reciprocating jurisdictions with respect to the enforcement of orders, including judgments and orders for the payment of money under labour standards legislation.

In **Manitoba**, on June 2, 2005, the *Minimum Wages and Working Conditions Regulation (amendment)* under the *Employment Standards Code* has designated the province of Newfoundland and Labrador as a reciprocating jurisdiction for the purpose of enforcing in Manitoba an order, certificate or judgment made under the law of Newfoundland and Labrador that is the equivalent of an order made or issued under the *Employment Standards Code* of Manitoba for the payment of wages.

C. Compassionate Care Leave

In Newfoundland and Labrador, effective December 16, 2004, the *Act to Amend the Labour Standards Act* (Bill 38) has amended the *Labour Standards Act* by introducing a right to compassionate care leave along with job protection for employees who avail themselves of such leave.

The amendments give the employees covered by that Act the right to take up to 8 weeks of unpaid leave to provide care or support to a family member, as defined, if a legally qualified medical practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within a period of 26 weeks. It is possible for two or more employees to share the 8 weeks of leave where they wish to avail themselves of the Act's provisions to provide care or support to the same person.

Compassionate care leave has to be taken within a specified period of 26 weeks. However, should the family member die before the end of this period, the leave is not extended beyond the last day of the week in which the death occurs. Under exceptional circumstances, an additional period of 3 days, to be taken immediately after the end of the week during which the death occurred, may be provided by order of the Director of Labour Standards. Although it is possible to break up the 8 weeks leave, each period has to be at least one week in duration.

To be eligible for the compassionate care leave, an employee must have a period of service of at least 30 days with the same employer. The Act requires employees to notify their employer in writing 2 weeks prior to taking a compassionate care leave. The notice must mention the intended length of the leave and should that length change during the leave, the employee must provide a new notice, 2 weeks before the change occurs. A valid reason for not providing a notice may exempt an employee from these requirements. An employee must also provide his/her employer with a copy of the medical practitioner's certificate if, within 15 days of returning to work, he/she is requested in writing to do so.

The Act includes job protection provisions which prohibit an employer to dismiss an employee, or give a notice of dismissal to an employee, because he/she intends to take, applies for or takes compassionate care leave. When an employee is dismissed, the Act places the onus on the employer to prove that there is no relation between the leave and the dismissal. Upon return to work an employee must be reinstated under terms and conditions that are not less beneficial than those that existed prior to the leave. For the purpose of the Act, employment before and after the leave is deemed to be continuous. The period of leave is not considered for the application of rights, benefits and privileges conferred by the Act, unless there is an agreement to the contrary between the employer and the employee.

In Nunavut, the *Miscellaneous Statutes Amendment Act, 2005* (Bill 14) was assented to on March 22, 2005.

This Bill, among other things, broadened the remedial powers of labour standards officers appointed under the *Labour Standards Act* (LSA) in relation to the compassionate care leave provisions in that Act.

The compassionate care leave provisions of the LSA came into force on January 4, 2004. One of these provisions specifically prohibits employers from dismissing, suspending, laying off, demoting or disciplining an employee who has applied for compassionate care leave under the LSA, or from taking into account the intention of an employee to take such leave in any decision to promote or train the employee. Bill 14 has amended the LSA to allow labour standards officers to make certain orders (as outlined in the LSA) against an employer who has contravened this provision.

Under Bill 14, where a labour standards officer is satisfied that an employer has contravened this provision, he/she may order the employer:

- to cease doing any act;
- to comply with certain leave provisions of the LSA; and/or
- to reinstate or hire a person and pay that person any wages and benefits lost as a result of the contravention, or pay that person wages and benefits to which the person would have been entitled had he/she been reinstated or hired for a period determined by the labour standards officer.

This amendment came into force on March 22, 2005.

D. Administration and Enforcement

In **British Columbia**, the *Administrative Tribunals Act* (Bill 56) was assented to on May 20, 2004 (proclamation of sections 88 to 93).

The Act sets out the powers, rules and procedures applying to numerous administrative tribunals in British Columbia, including the Employment Standards Tribunal³ (the Tribunal). It repeals and replaces the *Administrative Tribunals Appointment and Administration Act*, which was adopted in 2003. It codifies within a single act most rules governing the administration of administrative tribunals.⁴

Effective October 15, 2004, the Act makes a number of amendments to the *Employment Standards Act*. It specifies:

- that the Director of Employment Standards may not make a decision on a constitutional question relating to the *Canadian Charter of Rights and Freedoms*;
- that a decision of the Tribunal on a matter for which it has an exclusive jurisdiction (i.e., inquiring, hearing or determining matters and questions of fact or law in relation with Parts 12 and 13 of the *Employment Standards Act* and making orders thereunder) may not be questioned or reviewed by a court;
- the new grounds on the basis of which the Tribunal may dismiss an appeal, partially or wholly, are as follows: the appeal was filed outside the time limit or for an improper purpose or motive, it would cause an abuse of process, the appellants did not assiduously act on their appeal or failed to comply with an order of the tribunal, the appeal will most likely be unsuccessful or the appeal has been dealt with in another proceeding.

³ Many provisions of the *Administrative Tribunals Act* will also apply to the Human Rights Tribunal, by means of amendments to the *Human Rights Code*.

⁴ This Act is the outcome of a review process (the Administrative Justice Project) started in 2001.

When an appeal is partially or wholly dismissed, the Tribunal must inform the parties in writing and provide them with the reasons to do so.

Most provisions of the Act apply to the 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 standards of review in judicial review proceedings (notably, patent unreasonableness in the care of matters falling under the tribunal's exclusive jurisdiction). The chair of the tribunal also has the power to appoint a person to conduct a dispute resolution process.

E. Mechanics' Liens

In **Nova Scotia**, *An Act to Amend Chapter 277 of the Revised Statutes, 1989, the Mechanics' Liens Act* (Bill 58) received Royal Assent on May 20, 2004.

Effective January 1, 2005, amendments were made to the *Mechanics' Liens Act*. The title of the latter has been changed to the *Builders' Liens Act*. The amendments expanded the definition of "wages" by including the money earned by a "person" as opposed to, as mentioned in the previous version of the Act, the money earned by a mechanic or a labourer. Although the Act is binding upon Her Majesty in right of the Province, the amendments expanded the exemptions from the Act to province-owned property.

Where a person, other than a manager, an officer or a foreman, agrees to the non application of the *Builders' Liens Act*, such agreement is null and void. The scope of this section was expanded to apply to "any person" as opposed to being limited to "any worker, servant, labourer, mechanic or other".

As a result of the amendments, no lien may arise, for the application of the Act, for the price of work done on a ship or a vessel, as those two words were removed from the list of properties to which lien applies.

The time limit to register a claim for lien was increased from 45 to 60 days from the event giving rise to the lien (e.g., completion of a contract). New provisions mention that the person who has registered a lien has to notify the owner of the property on which it is being claimed. Failing to do so is only an irregularity and does not result in nullity of the lien. The expiry of a registered lien was increased from 90 to 105 days after the period or event applicable to each particular case.

Provision regarding a lien holder's right to information from the owner, his/her agent, the contractor or subcontractor was replaced by a new one specifying that the request has to be in writing and that information has to be provided within a reasonable time not exceeding 21 days. There is also a list of mandatory information to be provided by the person responding to the request for information (e.g., the names of the parties to the contract, the contract price).

*Arbitration*⁵

Stay of proceedings granted to assist the conduct of an arbitration does not apply when it relates to:

- registering a claim of liens;
- preventing the expiry of a lien; and,
- preserving the land or personal property to which a lien attaches or any estate or interest in land or personal property to which a lien attaches.

The taking of any steps with regards to the previously mentioned actions does not constitute a waiver to an arbitration clause provided for under a contract/subcontract.

No order may be made directing a stay of an action if:

- a claimant has commenced an action to enforce a lien;
- arbitration proceedings have been commenced or continued and are related to the subject-matter for which the claimant has commenced his/her action; and,
- the claimant is not part of the arbitration proceedings as his/her contract or subcontract did not include an arbitration clause.

As before, there is a presumption regarding an action brought by a lien holder, where a number of lien holders have claims on the same property, that it is to be taken as to be brought on behalf of the other ones as well. The amendments clarify that only the lien holders who have complied with the Act may benefit from the presumption.

Trust provisions

New provisions were added to create trusts and specify their administration. Provisions regarding liability, with regards to breach of trust, of the persons (including director and officer) in control of a corporation were also added.

F. Minimum Wages

In **New Brunswick**, the *Minimum Wage Regulation* under the *Employment Standards Act* repealed and replaced the previous *Minimum Wage Regulation* issued in 2003. The minimum hourly wage rate in New Brunswick has been increased from \$6.20 to \$6.30 on January 1, 2005. It will be increased to \$6.40 on January 1, 2006 and to \$6.60 on January 1, 2007. This is for the first 44 hours worked in a week. For each additional hour worked in the same week, the minimum hourly wage has been increased from \$9.30 to \$9.45 on January 1, 2005, and will be further increased to \$9.60 on January 1, 2006 and to \$9.90 on January 1, 2007 (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 has also been raised from \$272.80 to \$277.20 per week on January 1, 2005, and will be raised again to \$281.60 per week on January 1, 2006 and to \$290.40 per week on January 1, 2007.

⁵ The part of the Act dealing with "arbitration" applies despite the *Arbitration Act*, the *Commercial Arbitration Act*, the *International Commercial Arbitration Act* or equivalent legislation of any other jurisdiction.

An employer may decide to pay his/her employees at a higher wage rate than the minimum established under this Regulation. As was the case in the previous regulation, an employer is prohibited from deducting, from the minimum wage, an amount for board or lodging where the employee has not received the service.

In **Manitoba**, effective April 1, 2005, the *Minimum Wages and Working Conditions Regulation (amendment)* under the *Employment Standards Code* increased the province's minimum wage from \$7.00 per hour to \$7.25 per hour. Generally, this rate applies to the work done during standard hours of work (i.e., 40 hours per week and 8 hours per day).

In **Newfoundland and Labrador**, the *Labour Standards Regulations (Amendment)*, under the *Labour Standards Act* provided for progressive increases to the minimum wage and to the overtime wage rate.

Effective June 1, 2005, the minimum wage rate increased from \$6.00 an hour to \$6.25 an hour. Additional increases to the minimum wage rate will take effect on the following dates: January 1, 2006 (to \$6.50 an hour); June 1, 2006 (to \$6.75 an hour); and January 1, 2007 (to \$7.00 an hour).

Effective June 1, 2005, the minimum overtime wage rate increased from \$9.00 an hour to \$9.38 an hour. Additional increases to the overtime wage rate will take effect on the following dates: January 1, 2006 (to \$9.75 an hour); June 1, 2006 (to \$10.13 an hour); and January 1, 2007 (to \$10.50 an hour).

These overtime wage rates do not apply to an employee who is subject to a collective agreement negotiated after December 6, 2001, where the collective agreement refers to the overtime pay changes originally scheduled to take effect on April 1, 2003. Such an employee is entitled to overtime wage rates of at least one and a half times his/her regular rate of pay.

In **Quebec**, effective May 1, 2005, the *Regulation to amend the Regulation respecting labour standards specific to certain sectors of the clothing industry* under *An Act respecting labour standards* increased the minimum wage from \$8.00 per hour to \$8.10 per hour for employees covered by the *Regulation respecting labour standards specific to certain sectors of the clothing industry*.

The hourly wage of \$8.10 per hour is \$0.50 higher than the general minimum wage fixed by the *Regulation respecting labour standards*.

In **Alberta**, the *Employment Standards Amendment Regulation* under the *Employment Standards Code* came into effect on September 1, 2005. As a result, the general minimum wage rate was increased from \$5.90 to \$7.00 per hour. In addition, the minimum wage rate for certain sales persons and professional employees was increased from \$236 to \$280 a week. Finally, the minimum wage rate for domestic employees residing in the employer's home was increased from \$1,125 to \$1,335 per month.

The maximum deductions for board and lodging were also raised on the same date. The maximum amounts by which the minimum wage received by an employee may be reduced are \$2.30 for a single meal (an increase of \$0.35) and \$3.05 per day for lodging (an increase of \$0.45).

In **Nova Scotia**, the *Minimum Wage Order (General)*, *Minimum Wage Order (Construction and Property Maintenance)* and *Minimum Wage Order (Logging and Forest Operations)* made under the *Labour Standards Code* amended the *Minimum Wage Order (General)* as well as minimum wage orders applying to construction and property maintenance as well as logging and forest operations, to continue the minimum wage set for April 1, 2004, and add minimum wages set for October 1, 2005, and April 1, 2006, in the following manner:

- The general minimum wage will rise from \$6.50 to \$6.80 an hour on October 1, 2005, and to \$7.15 on April 1, 2006, while the rate for inexperienced employees will increase from \$6.05 to \$6.35 to \$6.70 an hour on the same dates.
- The minimum wage rate for employees engaged in construction, property maintenance work and related activities, and for “time workers” employed in a logging or forest operation, will rise from \$6.50 to \$6.80 an hour on October 1, 2005, and to \$7.15 on April 1, 2006.
- Other workers employed in a logging or forest operation who have no fixed work week or whose hours of work are unverifiable (e.g., camp guardians, cooks, stable hands) will be entitled to at least \$1,332.00 per month as of October 1, 2005, and \$1,400.00 per month as of April 1, 2006.

Finally, in **Saskatchewan**, effective September 1, 2005, the *Minimum Wage Regulations* under the *Labour Standards Act* repealed and replaced the *Minimum Wage Board Order, 1997*.

By way of this new regulation, the provincial general minimum wage rate was increased from \$6.65 to \$7.05 an hour on September 1, 2005, and will rise to \$7.55 an hour on March 1, 2006, and to \$7.95 an hour on March 1, 2007. In addition, the minimum sum that is paid to employees required to report for duty, other than for overtime, whether or not they are required to be on duty for three hours, was increased from \$19.05 to \$21.15 commencing on September 1, 2005, and will rise to \$22.65 effective March 1, 2006, and to \$23.85 commencing on March 1, 2007.

This Regulation also imposes new obligations on the employer to:

- provide, upon request of an employee being hired, a copy or abstract of this regulation; and
- keep a copy or abstract of this regulation posted in a conspicuous position in the place where employees are engaged in their duties.

G. Retail Establishments

In **New Brunswick**, *An Act Respecting Sunday Shopping* (Bill 38) was proclaimed in force on December 1, 2004.

This Bill has amended 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 previous permit system, under which the Municipal Capital Borrowing Board could grant an exemption from Sunday closing requirements to certain small retail businesses

and to areas of New Brunswick that it designated as tourist areas, has been eliminated. The provision dealing with ministerial exemption permits related to festivals has also been repealed.

Municipalities are 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 may issue a permit authorizing the operation of retail businesses on Sunday in a local service district or rural community.

Other amendments to the DRA 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 applies to businesses and industries that are by necessity engaged in a continuous operation (previously, such a business or industry needed to obtain a permit from the Municipal Capital Borrowing Board to be exempted from the application of the DRA). Moreover, a person is 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 was made to section 17.1 of the ESA. As a result, the right to refuse to work on Sunday applies 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 remains 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.

Also on December 1, 2004, amendments to New Brunswick's *Exemptions Regulation under the Days of Rest Act* came into force.

This Regulation repealed the definition of "tourist attraction" as well as the sections setting out:

- the procedures and requirements pertaining to requests to exempt from the application of the *Days of Rest Act* the operation of all retail businesses located in a tourist area or in an area in conjunction with a festival or other special event;
- the elements to be taken into consideration when declaring an area a tourist area; and,
- the condition regarding the length of certain exemptions.

H. Modifications of Terms and Conditions of Employment for Certain Industries

In **British Columbia**, effective February 11, 2005, amendments have been made to the *Employment Standards Regulation* (ESR) under the *Employment Standards Act*.

Among other things, the amendments have broadened the application of special provisions relating to oil and gas field workers having a compensation system other than an hourly rate, to notably encompass employees who primarily work in activities such as drilling, evaluating, enhancing production or optimizing services of an oil or gas well, who perform remedial treatment of an oil or gas well, who provide services unrelated to the administration of the employer's business, and who transport oilfield equipment or who prepare oil or gas well sites.

In addition, the amendments have incorporated into the ESR, for the employees mentioned above, conditions of employment regarding the payment of wages and the entitlement to overtime wages, which vary somewhat from those in the *Employment Standards Act*. Moreover, the employer must now pay the employees in question any bonus earned, within the next three pay periods that follow the pay period in which it was earned.

Finally, the term "regular wage" as used in the ESR is replaced by the term "regular salary". However, for the purpose of calculating an employee's entitlement to overtime wages and pay for interruption in rest periods, "salary" will no longer include any bonus, allowance or remuneration based on the geographic location of the employee's residence.

In **Nova Scotia**, effective March 11, 2005, amendments to the *Regulations Respecting Labour Standards* under the *Labour Standards Code* have excluded information technology professionals from overtime pay requirements. Information technology professionals include employees who work primarily on information systems based on computer and related technologies and use specialized knowledge and professional judgement, but does not include employees who primarily provide basic support for computer and related technologies.

Ontario adopted on March 31, 2005, the following three regulations under the *Employment Standards Act, 2000: Terms and Conditions of Employment in Defined Industries – Mineral Exploration and Mining, Terms and Conditions of Employment in Defined Industries – Live Performances, Trade Shows and Conventions, Terms and Conditions of Employment in Defined Industries – Production of Recorded Visual or Audio-visual Entertainment*.

These Regulations modify certain terms and conditions of employment provided by the Act, with respect to certain employers and employees in the following industries: mineral exploration and mining; live performances, trade shows and conventions; and production of recorded visual or audio-visual entertainment. Under the terms and conditions of employment set out in the Regulations, an employer and an employee can agree to modify the requirements of the Act pertaining to, in the first case, weekly periods of rest and in the other two cases, hourly periods of rest, provided certain conditions are met.

Also under the *Employment Standards Act, 2000*, the Government of Ontario adopted on June 24, 2005, a regulation entitled *Terms and Conditions of Employment in Defined Industries – Public Transit Services*.

This new Regulation sets out the following special hours of work rules for employees working as operators or collectors in public transit services:

- If the employer and the employee agree, the employee may be given at least eight consecutive hours free from performing work in each day, as opposed to the general daily requirement of 11 consecutive work-free hours.
- The general requirement that an employee be given an eating break of at least 30 minutes so that the employee never works more than five consecutive hours without an eating period does not apply to employees who chose to work either a straight shift or a split shift for which no meal break that complies with the Act is provided.

Under this Regulation, “public transit service” is defined as any service for which a fare is charged for transporting the public by vehicles operated by or on behalf of a municipality or a local board, or under an agreement with a municipality or a local board.

I. Pay Equity

In Quebec, two legislative changes having an impact on pay equity were passed.

The *Act to amend the Pay Equity Act as regards the establishment of separate programs* (Bill 79) was assented to and came into force on December 14, 2004. This Act follows a Superior Court of Québec’s decision which invalidated Chapter IX of the *Pay Equity Act*. In the future, employers may agree to establish one or more separate pay equity plans with more than one certified association (i.e., a certified union). The previous version of the Act indicated that the employer could come to an agreement with one certified association but did not specify whether it could agree to establish a separate plan with a grouping of certified associations. The employer may still establish a separate pay equity plan for other employees not represented by a certified association with whom it could have come to an agreement.

Effective May 5, 2005, Quebec also adopted a *Regulation respecting pay equity in enterprises where there are no predominantly male job classes* under the *Pay Equity Act*. This Regulation stipulates that in an enterprise subject to the Act where there are no predominantly male job classes, the pay equity committee, or the employer in the absence of a pay equity committee, for as long as there are no predominantly male job classes, must for the purpose of identifying predominantly male job classes use the typical job classes of foreman and maintenance worker whose functions are described in the schedules of the Regulation. In addition, the Regulation contains provisions relating to the assignment of the hourly rate of pay of each of the typical job classes.

J. Employment Equity

In Quebec, *An Act to amend the Act to secure the handicapped in the exercise of their rights and other legislative provisions* (Bill 56) was assented to on December 17, 2004.

Bill 56 has brought, among other things, amendments to the *Act to secure the handicapped in the exercise of their rights*, including a change in the title, which is now the *Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration*. Some of these amendments are mentioned below.

Most of the provisions of Bill 56 came into force on December 17, 2004. However, Bill 56 will also bring amendments to the *Act respecting equal access to employment in public bodies*, which will come into force on December 17, 2005.

“Handicapped persons” will be added to the list of “target groups” in this Act (target groups are those subject to discrimination in employment). As a result of these amendments, every public-sector employer subject to the Act will be required to conduct a workforce analysis in order to determine the number of handicapped persons in its employ in each type of occupation in which it is involved, draft a workforce analysis report concerning handicapped persons, and submit it to the Human Rights and Youth’s Rights Commission. If the Commission determines that the representation of handicapped persons in a given occupational group within the public body’s workforce generally does not reflect the representation of handicapped persons among qualified persons in the applicable recruitment area, the public body will be required to establish an equal access to employment program for handicapped persons.

Under Bill 56, a public body that is required to submit a workforce analysis report to the Commission must do so within one year from December 17, 2005 (or by the deadline fixed by the Commission for workforce analysis reports on other target groups, if this date is later).

K. Mandatory Retirement

Two provinces have proposed new legislation to end mandatory retirement.

In **New Brunswick**, *An Act to Amend the Human Rights Act* (Bill 62) received second reading on June 3, 2005. This Bill would amend and repeal certain provisions of the *Human Rights Act* (HRA), in view of ending mandatory retirement.

It would, among other things, repeal specific exceptions in the HRA that currently allow *bona fide* retirement and pension plans to discriminate based on age. This repeal would come into force on a date fixed by proclamation. However, the amendments would not prohibit employers from offering *bona fide* voluntary early retirement plans under which age is a factor.

In addition, the proposed amendments would replace the *bona fide* qualification requirement and *bona fide* qualification occupational requirement exceptions in the HRA, with a single exception that lists all grounds of discrimination and applies to all activities covered by the HRA.

If passed, these amendments would come into force on Royal Assent, unless otherwise indicated.

In **Ontario**, the *Ending Mandatory Retirement Statute Law Amendment Act, 2005* (Bill 211) received first reading on June 7, 2005. This Bill would amend the *Human Rights Code* (HRC), as well as a number of other Acts, in view of ending mandatory retirement.

Among other things, this Bill would amend the definition of “age” provided in the HRC, to remove the age 65 limit on discrimination in employment. The current definition permits discrimination in employment because of age, including mandatory retirement, where the age is 65 years or more. However, the mandatory retirement ages for judges, masters, case management masters and justices of the peace would not be affected.

Moreover, this Bill would amend or repeal provisions of other Acts, requiring persons to retire at a certain age. These are the *Coroners Act*, the *Election Act*, the *Health Protection and Promotion Act*, the *Ombudsman Act*, and the *Public Service Act*. However, a distinction because of age that is required or authorized under the *Workplace Safety and Insurance Act, 1997* and its regulations would continue to apply.

If passed, this Bill would come into force one year after Royal Assent, with the exception of the amendments brought to the *Workplace Safety and Insurance Act, 1997*, which would take effect on Royal Assent.

L. **Whistleblower Protection**

Effective September 16, 2004, **Nova Scotia** adopted *Regulations Respecting Civil Service Disclosure of Wrongdoing* under the *Civil Service Act*. These new Regulations provide a procedure for the disclosure of wrongdoings in the civil service. The Regulations also protect employees from reprisals.

Disclosure of wrongdoings

The Regulations apply to the disclosure of specified wrongdoings: a contravention to a federal or Nova Scotia Act, or of any regulations thereunder, which is related to the official activities of employees or public funds or assets; a gross mismanagement; and an act or omission causing a considerable and specific danger to the life, health or safety of a person. Lastly, the taking of a reprisal against an employee is also considered to be a wrongdoing.

A reprisal occurs when any unfavourable measure affecting the employment of a person is taken for the sole reason that the employee disclosed or expressed an intention to disclose a wrongdoing under these Regulations. This includes demotion, termination of employment and a disciplinary measure. A threat to take any of these measures is also considered to be a reprisal.

Before making a disclosure, an employee may seek advice from the Conflict of Interest Commissioner⁶ who must protect the identity of the employee, unless otherwise required by law.

An employee may disclose a wrongdoing (this covers an employee who reasonably believes that he/she was asked to commit a wrongdoing, or that a wrongdoing has been committed or is about to be committed) to his/her immediate supervisor. After he/she has received a response from his/her supervisor and reasonably believes that the matter will not be correctly addressed, an employee may disclose it to his/her deputy head. The disclosure may also be made directly to the deputy head where an employee believes that it would be inappropriate to disclose the matter to his/her immediate supervisor.

Lastly, a disclosure of a wrongdoing may be made to the Ombudsman after an employee has received a response from the deputy head and reasonably believes that the matter will not be correctly addressed. A deputy head may also refer a disclosure of a wrongdoing or a related report to the Ombudsman. Furthermore, a wrongdoing may be

⁶ The Commissioner is designated under section 26 of the *Members and Public Employees Disclosure Act*.

disclosed directly to the Ombudsman where an employee believes that it would be inappropriate to disclose the matter to his/her supervisor or the deputy head.

The disclosure must be in writing and include, among others, the nature, the date and a description of the wrongdoing and the name of the person(s) allegedly involved.

Exception

However, when there is not enough time to make the disclosure under the prescribed procedures and it is necessary to prevent an imminent and serious danger to the life, health or safety of a person, an employee may disclose the wrongdoing to the police department or policy agency that can address the matter.

Response to a disclosure of wrongdoing

A supervisor who receives a disclosure must:

- investigate the matter; and,
- within 30 days of receiving the disclosure:
 - respond in writing to the disclosing employee;
 - report in writing the disclosure, the results of the investigation to date, along with the response to the employee, to the deputy head.

A deputy head who receives a disclosure must:

- investigate the matter; and,
- within 30 days of receiving the disclosure:
 - respond in writing to the disclosing employee;
 - report in writing the disclosure, the results of the investigation to date, along with the response to the employee, to the Commissioner⁷.

Investigation by the Ombudsman

The Ombudsman who receives a disclosure must investigate the matter. However, he/she may decide not to investigate the matter for one of the reasons set out in the Regulations (e.g. the matter could more appropriately be dealt with according to an alternate procedure provided for under a Nova Scotia Act, regulation or policy).

Following an investigation, the Ombudsman must report his/her findings in writing and where a wrongdoing was found, he/she must make recommendations to the appropriate deputy head, and send copies to the disclosing employee and the Commissioner. He may also request notification, within a specified time, of any steps taken to give effect to the recommendations.

The deputy head who receives recommendations must respond in writing within 30 days and provide a copy of the response to the Commissioner. The deputy head must also respond to a notification request, as mentioned above, made by the Ombudsman.

⁷ For the purpose of these Regulations, Commissioner means the Commissioner of the Public Service Commission.

Time limitation

The disclosure of a wrongdoing must be made within 12 months of the employee becoming aware of it.

Confidentiality Obligation

Unless required by law and, in the case of the deputy head, unless he/she considers it advisable under the circumstances, a person who receives a disclosure or a report related to a disclosure under these Regulations must:

- not publicly disclose its content; and,
- to the extent possible, protect the identity of the persons involved in the disclosure process from publication.

Disciplinary Action against employee

Disciplinary action, including termination of employment, may be taken against an employee who commits a wrongdoing or makes a disclosure of a wrongdoing that is frivolous, vexatious or is made in bad faith. An employee may also be the subject of disciplinary action where he/she discloses a wrongdoing outside a procedure established under the Regulations, any Nova Scotia Act or when otherwise lawfully required to do so.

Prohibitions

In relation with these Regulations, a person may not:

- conceal, destroy, mutilate or alter a document or a thing relevant to an investigation;
- falsify a document or make a false document;
- direct, counsel or cause any person to take any of the above-mentioned actions;
- intentionally make a false or misleading oral or written statement;
- prevent a person from performing his/her duties under these Regulations.

In addition, the Regulations do not authorize an employee to disclose information covered by the lawyer-client privilege or revealing the content of deliberations of the Executive Council or any of its committees.

Annual Reports

The Ombudsman will submit an annual report to the Commissioner after each fiscal year. The report will include information regarding inquiries, disclosures, investigations, recommendations and any systemic problems giving rise to wrongdoings. The Ombudsman may also include additional matters considered necessary.

On an annual basis, the Commissioner will report to the Minister responsible for the Public Service Commission. The latter will table this report in the House of Assembly.

In **Saskatchewan**, *The Labour Standards Amendment Act, 2004 (No. 2)* (Bill 86) received Royal Assent and came into force on May 27, 2005. The purpose of the

amendments to *The Labour Standards Act* is to increase the protection afforded to workers reporting illegal acts from retribution or retaliation.

The amendments to *The Labour Standards Act* specify that an employer is prohibited from taking any reprisal against an employee who reported, or proposed to report, an illegal activity to a lawful authority or, who testified or could testify in an investigation or proceeding conducted under a Saskatchewan or federal Act. The terms "lawful authority" includes persons, police and law enforcement agencies having investigative powers with respect to the offence that was disclosed, as well as the direct or indirect supervisor of the employee.

The changes allow the director of the Labour Standards Branch to decide whether or not an employer has discriminated or taken any reprisal against an employee because he/she has provided or may provide information as mentioned above, concerning an illegal activity. When the director makes a finding of non-compliance, the Act enables him/her to remedy the situation by ordering the employer to:

- comply with the "anti-discrimination" and "anti-reprisal" provisions applying in cases of whistleblowing; and/or,
- reinstate the employee in his/her previous position; and/or,
- pay any wages lost by the employee as a result of the non-compliance.

It is possible to file this decision with a local registrar of the Court of Queen's Bench in which case the decision has the same effect as if it were a judgment of that Court.

The Act includes procedural provisions relating to the filing of an appeal of the director's decisions with an adjudicator. In addition to the current duties that adjudicators have, they have to, within 30 days of the hearing, either confirm or revoke the decision of the director. The existing requirement to provide the registrar of appeals with written reasons for the decision applies to these decisions.

An adjudicator's decision cannot be questioned in Court, except on a question of law or of jurisdiction.

In the **federal jurisdiction**, *An Act to amend the Criminal Code (capital markets fraud and evidence-gathering)* (Bill C-13) was assented to March 29, 2004, and a new section 425.1 of the *Criminal Code* was proclaimed into force effective September 15, 2004.

Among other amendments to the *Criminal Code*, this Bill created 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.

The new section of the *Criminal Code* (section 425.1) prohibits 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 also constitutes an offence. The maximum punishment for anyone found guilty of an offence under section 425.1 is five years of imprisonment.

Also at the federal level, the *Public Servants Disclosure Protection Act* (Bill C-11) received first reading on October 8, 2004.

The purpose of this Bill is to create a mechanism for the disclosure of wrongdoings in the public sector. It also includes provisions to protect “whistleblowers”.

Scope of the Act

Provisions of the *Public Servants Disclosure Protection Act* would apply to the federal public sector including agencies, Crown corporations and other public bodies. However, the Canadian Forces, the Canadian Security Intelligence Service, the Communications Security Establishment and members and special constables of the Royal Canadian Mounted Police (as well as persons employed under terms and conditions substantially the same as those of RCMP members)⁸ would be excluded from the definition of “public sector” for the purpose of this Act.

The Act would apply with respect to the disclosure of specified wrongdoings: a contravention of a federal or provincial Act or regulation related to the official activities of public servants or any public funds or assets; a misuse of public funds or assets; a gross mismanagement in the public sector; an act or omission that creates a substantial and specific danger to the environment or to the life, health or safety of persons; a serious breach of a code of conduct established under the Act; or the taking of a reprisal against a public servant.

Obligation to Establish a Code of Conduct

The Treasury Board would be required to establish a code of conduct applicable to the public sector covered by the Act. Chief executives could also establish a code of conduct applicable to the portion of the public service for which they are responsible, as long as it is consistent with the code established by the Treasury Board.

The Minister responsible for the Act would also be required to promote ethical practices in the public sector and a positive environment for the disclosure of wrongdoings. This would be done through the dissemination of information about the Act and other means the Minister considers appropriate.

Disclosure of Wrongdoings

The Act would stipulate that each chief executive must establish internal disclosure procedures for the portion of the public sector for which he/she is responsible, and designate a senior officer to be responsible for receiving and acting on disclosures of wrongdoings. A chief executive could be exempted from these requirements if he/she declared, after notifying the Public Service Human Resources Management Agency of Canada, that they are not practical due to the size of the portion of the public service for which he/she is responsible.

⁸ However, as explained later, the persons responsible for these organizations would also have certain obligations under the Act.

A public servant could disclose a wrongdoing to his/her supervisor or to the designated senior officer. A disclosure could also be made to the President of the Public Service Commission (hereafter the President), where:

- the public servant has already disclosed the matter to his/her supervisor or the appropriate senior officer but believes it has not been appropriately addressed;
- the public servant believes on reasonable grounds that disclosing the matter to his/her supervisor or the appropriate senior officer would be inappropriate due to its subject-matter or due to the person alleged to have committed the wrongdoing; or
- the portion of the public sector in which the public servant is employed has been declared by its chief executive to be exempt from the obligation to establish internal disclosure procedures.

A public servant would nevertheless not be authorized from disclosing to the President a confidence of the Queen's Privy Council of Canada or lawyer-client privileged information.

Moreover, a public servant would be allowed to make a disclosure to the public without following the above procedures if he/she believes, on reasonable grounds, that there is not enough time to make the disclosure under the Act and that another public servant, in the purported performance of his/her duties, is committing or is about to commit a serious offence under federal or provincial legislation or is doing or omitting to do anything that "constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment".

Disclosure provisions would not apply to a person permanently bound to secrecy under the *Security of Information Act* if it involves special operational information.

Procedure for the Investigation of Disclosures by the President

The President would be responsible for:

- providing advice to potential whistleblowers;
- receiving, recording and reviewing disclosures of wrongdoing to establish whether further action is warranted;
- investigating disclosures of wrongdoing received by the President from a public servant, reviewing the results of the investigations, reporting findings to the whistleblower and the appropriate chief executives and making recommendations regarding corrective measures to the chief executives;
- reviewing reports on corrective measures taken by chief executives in response to the President's recommendations; and
- ensuring respect for the right to procedural fairness and natural justice of all persons involved in investigations.

The President would have the right to refuse to deal with a disclosure if he/she is satisfied that the public servant who makes the disclosure has not exhausted all other reasonably available procedures, that the subject-matter of the disclosure could be more appropriately dealt with under another federal Act, that the subject-matter of the disclosure is trivial, frivolous or vexatious or the disclosure is made in bad faith, or that there is another valid reason not to deal with the disclosure. Furthermore, the President would be restricted from dealing with a disclosure if its subject matter were already

being dealt with by a person or body acting under another federal Act, other than as a law-enforcement authority.

Chief executives and public servants would be required to provide any facilities, assistance, information and access to offices under their control requested by the President to perform his/her duties. A public servant could not be excused from cooperating with the President out of a concern that this may lead to self-incrimination. Information given by a public servant, or evidence derived from that information, could not be used or received to incriminate him or her in any criminal proceeding other than under sections 132 or 136 of the *Criminal Code* (committing perjury or being a witness and giving contradictory evidence in a judicial proceeding). The only information which the President could not require from a public servant would be a confidence of the Queen's Privy Council for Canada, lawyer-client privileged information or, in the case of a person permanently bound to secrecy under the *Security of Information Act*, information classified as special operational information.

Subject to certain conditions, the President would have the power to investigate other wrongdoings found in the course of investigating a disclosure. Where he/she believes that a matter under investigation involves obtaining information outside the public sector, the President would be required to cease that part of the investigation and could refer the matter to any authority he/she deems competent to deal with it.

Information obtained in the course of an investigation that could be used in the investigation or prosecution of an alleged contravention of any federal or provincial Act could be remitted to a peace officer or the Attorney General of Canada. However, to maintain the separation of investigations, the President could not remit any further information obtained afterwards in the course of his/her investigation of the matter.

Finally, the President could report a matter to the appropriate Minister or, in the case of a Crown corporation, to the appropriate board or governing council, if he is of the opinion that action has not been taken within a reasonable time with respect to one of his/her recommendations or if a situation constituting an imminent risk of a substantial and specific danger to the health and safety of the public, or to the environment, has come to his/her attention while carrying out his/her duties.

Disciplinary Action against Public Servant

The Act would provide that disciplinary action, including dismissal, could be taken against a public servant who commits a wrongdoing.

Prohibition against Reprisal

The Act would prohibit the taking of any reprisal against a public servant who has made a disclosure or who has, in good faith, cooperated in an investigation under the Act. "Reprisal" would mean a disciplinary measure, a demotion, a termination of employment, a measure having an adverse effect on employment or working conditions, or a threat to take any of these measures.

A public servant or a former public servant, or its representative, who alleges to have been the victim of a reprisal, could make a complaint in writing to the Board⁹. The complaint would have to be made within 60 days after the complainant knew, or in the Board's view should have known, that a reprisal was taken. Where a disclosure has been made to the President regarding a reprisal and the latter has decided to deal with it, the deadline for making a complaint would be 60 days after the President reports his/her findings to the complainant and the appropriate chief executive. A complaint regarding a reprisal made under these provisions could not be referred to arbitration or adjudication by a public servant.

Retroactivity

A public servant or a former public servant who alleges that a reprisal was taken against him or her following a disclosure made in good faith during a parliamentary proceeding or an inquiry under Part I of the *Inquiries Act* could also make a complaint to the Board. The complaint would have to be made within 60 days at the later of either the coming into force of section 20 (setting out the procedure for filing a complaint under the Act) or the day on which the person knew or should have known that the reprisal was taken.

Once a complaint is received, the applicable Board could assist the parties to the complaint to settle the matter. If no settlement is reached within a reasonable period of time, as determined by the Board, the latter would be required to hear and determine the complaint. Where it determines that the complainant was the subject of a reprisal prohibited by the Act, the Board could order the employer or the appropriate chief executive (or a person acting on their behalf) to:

- allow the complainant to return to his/her duties;
- reinstate the complainant;
- pay compensation to the complainant equivalent to what the latter would have received, in the Board's opinion, if no reprisal had occurred;
- rescind any measure or action, including any disciplinary action, taken against the complainant and compensate the latter for any financial or other penalty imposed him/her; and
- compensate the complainant for any other financial losses incurred as a direct result of the reprisal.

Protection of Identity and Confidentiality

All chief executives as well as the President would be required, subject to any other federal Act and to the principles of procedural fairness and natural justice, to protect the identity of persons involved in the disclosure process, including whistleblowers, witnesses and alleged wrongdoers. They would also have to establish procedures to ensure the confidentiality of information collected with respect to disclosures.

A separate section would prohibit the President and every person acting on his/her behalf or under his/her direction from disclosing any information that comes to their

⁹ Board means, for a person employed in a portion of the public sector covered by the *Public Service Labour Relations Act* or whose complaint relates to a reprisal taken while he or she was so employed, the Public Service Labour Relations Board. In other cases, Board means the Canada Industrial Relations Board.

knowledge in the performance of their duties, unless required by law or permitted by the Act to do so.

Prohibitions

The Act would specifically prohibit a person from doing any of the following:

- knowingly make a false or misleading statement in the disclosure or in the course of the investigation of a wrongdoing;
- wilfully obstruct a senior officer, the President or any other person acting on their behalf or under their direction, in the performance of their duties under the Act; and
- destroy, mutilate, falsify or conceal a document or thing that is likely to be relevant for an investigation under the Act, or in any manner direct, counsel or cause another person to do so.

Annual Report

The President would be responsible for submitting an annual report to the Minister setting out the number of inquiries and disclosures received, disclosures acted on, investigations commenced and recommendations made. The report would also identify any systemic problems giving rise to wrongdoings and recommendations for improvements.

The annual report would have to be tabled by the Minister in the House of Commons and the Senate within a specified period.

The President could also submit at any time to the Minister a special report if in his/her opinion a matter needs to be brought to the Minister's attention before the submission of the next annual report.

Obligations of Excluded Organizations

The Act would provide that the person responsible for each organization excluded from the definition of "public sector" (i.e., the Canadian Forces, the Canadian Security Intelligence Service, the Communications Security Establishment and a portion of the Royal Canadian Mounted Police) would have to establish procedures for the disclosure of wrongdoings and the protection of whistleblowers. These procedures would have to be similar to those set out in the Act in the opinion of the Treasury Board.

Coming into Force

If passed, provisions of the Act would come into force by proclamation, with the exception of certain coordinating amendments.

II. INDUSTRIAL RELATIONS

A. Legislation of General Application

In **British Columbia**, the *Administrative Tribunals Act*, assented to May 19, 2004, sets rules regarding the appointment and reappointment of individuals to administrative tribunals under various Acts. Effective October 15, 2004, 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 concerning consultations with the chair before the appointment of members. The initial term of appointment is 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.

In **Ontario**, the *Labour Relations Statute Law Amendment Act, 2005* (Bill 144) made amendments to the *Labour Relations Act, 1995*. The most important of these amendments are described below, except for those dealing with construction, which are described later in this report under the heading "Construction Industry".

Union Decertification Information

Bill 144 repealed provisions which required the Ministry of Labour to prepare and publish information outlining the procedures for union decertification and required employers that have unionized employees to post that information and provide it to these employees.

Salary Disclosure for Certain Union Officials

Bill 144 removed the requirement for parent and local trade unions to disclose to the Minister of Labour or to any represented individual, who requested that information, the names and remuneration of all directors, officers and employees earning \$100,000 or more in salary and taxable benefits per year. The *Labour Relations Act, 1995* continues to require unions to provide, without charge, a copy of an audited financial statement for the previous fiscal year to any member who requests it. Also, unions that administer vacation pay, health or pension funds for union members must file an audited annual financial statement with the Minister of Labour that discloses, among other matters, salaries, fees, and commissions charged to the fund. A member may, upon request, obtain, without charge, a copy of that financial statement from the administrator of the fund.

Powers of the Ontario Labour Relations Board (OLRB)

The remedial powers of the OLRB are also expanded. First, the Board now has the power to certify a trade union as a remedy where an employer has contravened the Act

and, as a result of the contravention, a representation vote would not likely reflect the true wishes of the employees. The Board has also been given the power to dismiss an application for certification where a trade union has contravened the Act. A trade union whose application is dismissed under these provisions must wait one year before it may make another application for certification. These remedies are only available where no other remedy is sufficient to address the impact of the contravention.

In dealing with union and employer contraventions in the certification context, the Board's pre-existing powers remain (i.e. the Board may order a representation vote (or an additional representation vote) and "do anything" to ensure that the vote reflects the true wishes of the employees).

In addition, during a campaign to establish bargaining rights, the OLRB may make, on application, interim orders to reinstate employees in employment and interim orders respecting terms and conditions of employment that have been altered or measures of reprisal, penalty or discipline that have been taken by employers. The exercise of this authority is subject to specified conditions and restrictions, and the applicant has the burden of proof when seeking an interim order. However, the OLRB may not issue such interim orders when it appears to the Board that an employer's action was not related to the exercise of a right under the Act by an employee.

These amendments came into force on June 13, 2005.

In **Saskatchewan**, *The Trade Union Amendment Act, 2005* (Bill 87) was assented to May 27, 2005. The amendments it brought to *The Trade Union Act* came into force on June 17, 2005.

The purpose of some of these amendments is to accelerate the settlement of first collective agreements by:

- Requiring the trade union and the employer to commence bargaining within 20 days after certification was granted with respect to a bargaining unit, unless the parties agree otherwise.
- Permitting the Labour Relations Board, upon the application of one of the parties, to assist in the settlement of a first collective agreement if the parties have bargained collectively but have not reached an agreement within 90 days of the certification of the trade union.

The purpose of other amendments is to improve case management of applications before the Labour Relations Board by:

- Allowing members of the Board to complete their active cases even though their appointments have expired. They may not, however, begin to hear any additional matters before the Board.
- Allowing the chairperson or vice-chairperson to sit alone to hear applications respecting a trade union's duty of fair representation or employee-trade union disputes.

In addition, amendments clarify the procedural powers of the Board when a matter is before it. These now include, among others, the following:

- the power to determine the form in which and the time within which any party to a proceeding before the Board must file or present any thing, document or information and to refuse to accept any thing, document or information that is not filed or presented in that form or by that time;
- the power to defer deciding any matter if the Board considers that the issue could be resolved by arbitration or other method of resolution;
- the power to bar from making a similar application, for any period not exceeding one year from the date an unsuccessful application is dismissed, an unsuccessful applicant, any of the employees affected by an unsuccessful application, any person or trade union representing such employees, or any person or organization representing the employer affected by an unsuccessful application;
- the power to summarily refuse to hear a matter that is not within the jurisdiction of the Board;
- the power to summarily dismiss a matter if there is a lack of evidence or no arguable case;
- the power to decide any matter before it without holding an oral hearing;
- the power to require any person, trade union or employer to post and keep posted in a place determined by the Board any notice that it considers necessary to bring to the attention of any employee or to send such a notice by any means that the Board determines;
- the power to order, at any time before a proceeding has been finally disposed of by the Board, that a vote or an additional vote be taken among the employees affected, and that the ballots cast in any such vote be sealed in ballot boxes and not counted except as directed by the Board.

Lastly, the Bill establishes consistency of language used in labour relations legislation respecting related employers by adopting the language of *The Construction Industry Labour Relations Act, 1992*, to continue to empower the Board, on the application of an affected trade union or employer, to declare more than one corporation, partnership, individual or association to be one employer for the purposes of *The Trade Union Act* if, in the opinion of the Board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations.

In the **federal jurisdiction**, *An Act to establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act and to make consequential amendments to other Acts* (Bill C-55) received first reading on June 3, 2005.

Proposed amendments to *the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* would state, among other things, that an insolvent person or

a debtor company can seek a Court order authorizing it to serve a notice to bargain to the bargaining agent representing its employees, which would trigger a renegotiation of the collective agreement under the laws of the jurisdiction governing collective bargaining between the parties. In these circumstances, the insolvent person or debtor company would have to satisfy the Court that such an order is necessary for the making of a viable proposal, compromise or arrangement, as the case may be, taking into account the terms of the collective agreement, that it has made legitimate efforts to renegotiate the collective agreement with the bargaining agent, and that a failure to issue an order is likely to result in irreparable damage to the employer. The insolvent person or debtor company would have to provide the bargaining agent with at least five business days notice before it applies to the Court for such an order. The existing collective agreement would remain in force unless it is changed by agreement between the parties. Where a collective agreement is revised, the bargaining agent could make a claim, as an unsecured creditor, for an amount equal to the value of the concessions granted with respect to the remaining term of the agreement. If there is no agreement to change the collective agreement, the judge would not be authorized to impose a new collective agreement.

These amendments would come into force on a date to be fixed by the government.

B. Public and Parapublic Sectors

In Quebec, certain sections (i.e., sections 12 to 51) of *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* (assented to December 18, 2003) came into force on August 24, 2005.

These sections provide 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. They also provide that, 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, these sections 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*.

Also In Quebec, effective November 10, 2004, Bill 46 has amended the *Act respecting Attorney General's prosecutors* and the *Labour Code* with a view to completing the setting up of the Attorney General's prosecutors' collective bargaining system. The prosecutors are represented by an association, and it is specified that this association may not enter into a service agreement with a union organization or be affiliated with such an organization.

The main characteristics of the collective bargaining system include the following: the optional recourse by either party to conciliation during negotiations; the recognition of the right to strike and to declare a lockout, which is subject to the maintenance of essential services provided in an agreement or list approved by the Essential Services Council (among other things, the latter must ensure that the agreement or list complies with essential services requirements laid down in the Act); and the prohibition from hiring replacement prosecutors during a legal strike or lockout. If an agreement or a list determining essential services approved by the Council is violated by the association or the prosecutors it represents, the employer may, despite what is mentioned above, use replacement prosecutors to ensure compliance with the agreement or the list.

Other amendments to the *Act respecting Attorney General's prosecutors* provide for penal provisions applying in cases of violation of the Act (e.g. declaring or continuing an illegal strike or lockout) by the association of prosecutors, the employer or an individual.

Lastly, this Act has amended the *Labour Code* definition of "employee" in order to exclude all prosecutors from the application of the *Code*.

In the **federal jurisdiction**, the *Public Service Modernization Act*, assented to on November 7, 2003, provides, among other things, for a new *Public Service Labour Relations Act*, which was described in the *Highlights of Major Developments in Labour Legislation (2003-2004)*. The *Public Service Labour Relations Act* was proclaimed into force on April 1, 2005, except for a few provisions dealing with the adjudication of individual grievances related to deployment without the employee's consent under the *Public Service Employment Act*; these provisions will come into force at a later date. The previous *Public Service Staff Relations Act* was repealed on March 31, 2005.

Among other things, the legislative provisions dealing with the composition, mandate and operations of the Public Service Staff Relations Board, whose name was changed to Public Service Labour Relations Board, were modified. As a result, the **Yukon Territory** brought adjustments to its *Education Staff Relations Act* and to the *Public Service Staff Relations Act* so that the Yukon government and public sector bargaining agents certified under these Acts can continue to use the services of a federal labour relations board (i.e. the Public Service Labour Relations Board) following the coming into force of the new federal *Public Service Labour Relations Act* on April 1, 2005.

Also, Yukon's *Education Staff Relations Act* and *Public Service Staff Relations Act* were renamed; they are now known as the *Education Labour Relations Act* and the *Public Service Labour Relations Act*.

The amendments to these Yukon statutes came into force on April 1, 2005.

In **Nova Scotia**, amendments have been made to the *Trade Union Act* to replace the right to strike of police constables or officers and members of a police bargaining unit and the right to lock out of their employers with an interest arbitration procedure.

Where a conciliation officer has made a report to the Minister of Environment and Labour that he/she was unsuccessful in bringing about an agreement between the parties, the employer or the union must notify the other party in writing of its desire to submit the collective agreement to an interest-arbitration board composed of one person jointly selected by the parties or, if they cannot agree, appointed by the Minister. Alternatively, the parties may agree to a board of three persons composed of a representative from each party and a chair selected by them. If there is a failure to appoint a representative to the board or agree on a chair, the Minister will, on the application of one of the parties, make the appointment. The award of an interest-arbitration board is binding on all parties involved.

These amendments came into force on March 17, 2005.

In **Saskatchewan**, *The Health Labour Relations Reorganization Amendment Act, 2005* (Bill 88) has extended to January 1, 2006 the moratorium preventing the Labour Relations Board from modifying or rescinding certification orders designating specific unions as representing certain bargaining units in the health sector, except where it is authorized to do so under *The Health Labour Relations Reorganization Act* or the regulations. It has also given the government additional regulation-making authority, including giving the Board the power to make orders creating multi-employer appropriate units.

These amendments came into force on May 27, 2005.

In **Prince Edward Island**, the *Health Authorities' Employees Act* (Bill 44) came into force on June 28, 2005. This Act has two purposes. The first objective is to provide for the orderly transfer of all employees of the health authorities that employed them immediately prior to the coming into force of the Act into the Department of Health and Social Services, which is the new employer. The second objective is to temporarily continue terms and conditions of employment and collective bargaining relationships in respect of these employees. All unionized employees of health authorities who are transferred to the Department continue to be covered by the *Labour Act*, and, as was previously the case, do not have the right to strike.

The transfer of the employees of the health authorities does not cause a break in the service of those employees. The Act also provides for the continuation of the terms and conditions of employment, until they are changed (e.g., through labour relations, or by agreement or arbitration), and of union representation, which may however be changed in accordance with the process contained in this new legislation.

The Treasury Board must constitute one or more negotiation committees to conduct bargaining, and enter into agreements, on behalf of the Department. The negotiation committee must enter into negotiations with unions regarding the terms and conditions of agreements to facilitate the transfer of unionized employees of health authorities to the Department (notably issues related to the restructuring of existing bargaining units and jurisdiction over work issues). A negotiating committee may not make any offer having financial implications without the prior approval of the Treasury Board, or enter

into an agreement unless the terms are approved by the Minister of Health and Social Services and the Treasury Board.

Any dispute between the negotiation committee and one or more of the unions arising out of, or incidental to, the process and implementation of the transfer of employees must be referred to a mediator-arbitrator selected by the parties, or if they cannot agree, appointed by the Minister responsible for labour. The mediator-arbitrator may issue any award, decision, interim order, order, direction or declaration that he/she considers appropriate, and those are final and binding on the parties.

In **Ontario**, effective March 9, 2005, Bill 167 has amended the *Education Act* with respect to the terms of collective agreements.

A collective agreement between a district school board or a school authority and a designated bargaining agent for a teachers' bargaining unit that is entered into on or after September 1, 2004 must provide for a term of operation of either two years or four years, and commence on September 1 of the year in which the previous collective agreement expired.

A collective agreement that does not provide for a term of operation of two or four years is deemed to provide for a term of operation of two years. If the term of operation is less than two years or for a term of operation of four years if the term of operation is more than two years.

Despite provisions of the *Labour Relations Act, 1995*, which permit the parties to agree to extend the term of a collective agreement, no agreement may be entered into to continue the operation of a collective agreement, in whole or in part, beyond its term of operation, and any renewal provision in a collective agreement intended to do so is deemed to be void.

Also in Ontario, Bill 144, which was mentioned earlier in this report, made an amendment to the *Ambulance Services Collective Bargaining Act, 2001 (ASCBA)* as it relates to the Minister of Labour's power to appoint interest arbitrators. The amendment contained in the Bill stipulates that, in appointing an arbitrator, the Minister must appoint "a person who is, in the opinion of the Minister, qualified to act." This amendment makes the appointment provisions of ASCBA consistent with those in other arbitration regimes. It came into force on June 13, 2005.

C. Emergency Legislation

In **British Columbia**, effective March 3, 2005, the *Crown Counsel Agreement Continuation Act* has extended the Crown Counsel Agreement entered into by the government and the British Columbia Crown Counsel Association (BCCCA), which was to remain in force until March 31, 2005. The extension is until March 31, 2007, and the Act provides for a salary increase effective April 1, 2006. It is specified that the arbitration award issued on February 18, 2005 in relation to the Crown Counsel Agreement has no force or effect.

The government and the BCCCA may agree to modify the Crown Counsel Agreement, but no change may be made to a provision that creates a financial obligation for the government unless it is approved by the Minister of Finance.

The Minister responsible for the Act has the power to appoint a commission to review the structures, practices and procedures for bargaining by the government and the BCCCA and other matters he/she specifies, and to make recommendations.

D. Construction Industry

In **Alberta**, effective December 6, 2004, the project known as the "Horizon Oil Sands Project" has been designated as a project under Division 8 (Collective Agreements Relating to Major Construction Projects) of Part 3 (Construction Industry Labour Relations) of the *Labour Relations Code*. Horizon Construction Management Ltd. (the principal contractor) has been authorized to bargain collectively with respect to this project, and the scope of construction for this project, to which a collective agreement under Division 8 of Part 3 of the Code will apply, is all construction work until completion of phases 1, 2 and 3 of the project.

No strike or lockout is permitted with respect to the negotiation of a collective agreement under Division 8 of Part 3 of the Code.

For the purpose of ensuring that this designation is reviewed for ongoing relevancy and necessity, it is scheduled to expire on September 30, 2014.

In **Newfoundland and Labrador**, the application of the *Voisey's Bay Special Project Order* issued in 2003 under the *Labour Relations Act* was extended to the construction of a demonstration facility at Argentina.

In **Ontario**, Bill 144, which was mentioned earlier in this report, has made permanent the special bargaining and dispute resolution regime for the residential construction sector in the City of Toronto, the regional municipalities of Halton, Peel, York, Durham, and Simcoe County. The special bargaining regime in Toronto and the surrounding area had been in place on a temporary basis for the 2001 and 2004 rounds of collective bargaining.

Effective May 1, 2005, the regime requires the Toronto and surrounding area residential construction sector collective agreements to expire on April 30, 2007 and every third year thereafter. There is a 46-day window from May 1 to June 15 when strikes and lockouts are permitted to occur. After that, the right to strike or lock out ends, but either party may require that the matters in dispute be decided by arbitration¹⁰. If the parties do not agree on an arbitration method or procedure, it is as prescribed by regulation.

In addition, effective June 13, 2005, Bill 144 allows a trade union applying for certification with respect to a bargaining unit in the construction industry to elect to have the application dealt with on the basis of a "card-based certification" model instead of using the general certification procedure contained in the *Labour Relations Act, 1995*, which requires a mandatory representation vote before any certification is granted. When the "card-based certification" model is chosen, if the Ontario Labour Relations Board (OLRB) is satisfied that more than 55% of the employees in the bargaining unit are members of the trade union on the date of the application, it may certify the trade union or direct a representation vote. If the OLRB is satisfied that the level is 40% or

¹⁰ A notice that a dispute will be settled by arbitration may be given at any time after April 30 of the relevant year if both parties agree that such notice may be given and notice to bargain has been given.

more, but not more than 55%, it must direct a representation vote. If the level is below 40%, the OLRB must dismiss the application. On the application of an interested party, the OLRB may also dismiss the application if, as a result of a contravention of the Act by the trade union, the membership evidence it has provided does not likely reflect the true wishes of the employees in the bargaining unit. A dismissal of this nature can only occur where no other remedy is sufficient to counter the effects of the union's misconduct.

III. OCCUPATIONAL HEALTH AND SAFETY

A. Legislation of General Application

In **Newfoundland and Labrador**, *An Act to amend the Occupational Health and Safety Act* (Bill 64) came into force on December 16, 2004. This Bill brought a number of amendments to the *Occupational Health and Safety Act* concerning the appointment, in certain circumstances, of a workplace health and safety designate as described below.

Despite the provisions of the Act that require the designation of a worker health and safety representative not connected with management when less than 10 workers are employed at a workplace, where there are fewer than six workers at a workplace and the designation of a worker health and safety representative is impracticable, the employer may appoint a workplace health and safety designate to monitor the health, safety and welfare of workers employed at the workplace. The workplace health and safety designate may be either a worker connected with the management of the workplace or, if the designation of such a worker is not practicable, the employer. The designated person has the same duties as a worker health and safety representative. Where the workplace health and safety designate is the employer, he/she must consult with the workers while performing his/her duties.

The workplace health and safety designate must be appointed by the employer, and the latter is required to provide and pay for training for that person. The training must meet any requirements set by the Workplace Health and Safety Compensation Commission. The employer must compensate a worker who participates in such training as if this was regular work.

In spite of what is mentioned above, the assistant deputy minister or an occupational health and safety officer must order that a worker health and safety representative be designated under the Act if he/she is of the opinion that a workplace health and safety designate cannot adequately monitor the health, safety and welfare of workers employed at a workplace. Such an order may be appealed to the assistant deputy minister or the Labour Relations Board, as the case may be, under the Act.

Management has the same obligations vis-à-vis a workplace health and safety designate, who is not the employer, that it has with respect to an occupational health and safety committee or a worker health and safety representative to consult and cooperate about occupational health and safety matters, including workplace inspections, to respond in writing to their recommendations within 30 days and to provide periodic written updates on the implementation of the recommendations that have been accepted.

In **Manitoba**, assented to June 9, 2005, Bill 23 will amend the *Workplace Safety and Health Act* to lay down requirements for employers in medical workplaces where hollow-bore or intravenous needles are used. An employer will have to protect workers by ensuring that only safety-engineered needles — such as shielded needle devices, retractable needle systems and needleless devices — are used whenever possible, in accordance with safe work procedures and practices. If it is not reasonably practicable to use safety-engineered needles, the employer will have to ensure that safe work

procedures and practices relating to the use of hollow-bore or intravenous needles are implemented in the medical workplace. In addition, an employer will have to develop procedures to be followed in a medical workplace when a worker suffers a needlestick injury, including instructions for the worker suffering the injury, and will have to investigate and prepare a report on every such injury.

This amendment will come into force on January 1, 2006.

In **British Columbia**, a series of amendments have been made to the *Occupational Health and Safety Regulation* (OHSR) under the *Workers Compensation Act*. These amendments took effect on January 1, 2005.

Amendments have modified the definition of “confined space” to give the Workers’ Compensation Board a specific discretion to exclude certain locations from being inappropriately defined as confined spaces. They also provide for a revision of safety standards for marine craft used to transport workers, and clarify the requirements regarding the qualifications of operators of these vessels. In addition, changes have been made to other provisions such as those dealing with gas shut-down devices, earth moving equipment and seismic blasting.

Also, an amended Part 7 of the OHSR was put into place to streamline and clarify existing requirements, to update editions of existing referenced standards, as well as to introduce new standards based on current scientific knowledge and best practices. The main elements of this revision are as follows:

- Changing the peak exposure limit for noise from 135 dBA to 140 dBC peak sound level.
- Adopting the American Conference of Governmental Industrial Hygienists (ACGIH) publication, *Threshold Limit Values and Biological Exposure Indices*, as a standard for addressing exposure to hand-arm vibration. The ACGIH standard provides vibration exposure limits, which are new requirements.
- Changing the requirement for a radiation survey¹¹ concerning ionizing radiation to be conducted every two years to when it is required by a Health Canada Safety Code or regulations under the *Nuclear Safety and Control Act* (Canada), as referenced in the OHSR, when equipment is modified or damaged or when there is an indication of an unusually high exposure of a worker to ionizing radiation, except as otherwise directed by the Workers' Compensation Board.
- Replacing Tables 7-2, 7-3 and 7-4 in the OHSR, which provide technical information about exposure levels for heat and cold stress, with a reference to the ACGIH publication, *Threshold Limit Values and Biological Exposure Indices*. The heat and cold stress sections of the ACGIH publication provide instructions for calculating heat and cold exposure levels, as well as information on addressing matters such as workload, work-rest cycles and the state of acclimatization of the worker for heat stress, and work-warm-up schedules and wind chill for cold stress.
- Maintaining the approach to referencing external third party standards in the regulations, with the addition of the phrase "as amended from time to time" to allow flexibility to adopt updated editions of certain standards.
- Retaining the retention period requirements for records relating to radiation surveys and a worker's exposure to radiation.

¹¹ A radiation survey measures radiation levels in occupied work areas influenced by radiation-producing equipment or material.

- Keeping the requirement for an employer to provide and maintain an adequate supply of cool potable water for a heat-exposed worker.

Lastly, a series of amendments have been made to the OHSR with respect to various topics, including the temporary removal of guardrails, fall protection, eating areas, washroom facilities, change areas, notice of unsafe water, ladders, work platforms, scaffolds and movable work platforms.

In the **Yukon Territory**, a new *Occupational Health and Safety (Oil and Gas Industry) Regulation* was issued on September 14, 2004 under the *Occupational Health and Safety Act*. This Regulation lays down various duties for employers regarding the development and implementation of a contingency plan for any abnormal or emergency situation, the prevention of explosions (workers also have obligations in this regard) and other safety matters. It also prescribes safety requirements for drilling and servicing rigs, certain operations (i.e. geophysical operations; drill stem testing, swabbing, cementing, well servicing and stimulation; production and plant operations; and cleaning and repairing tanks or vessels) and with respect to some apparatus (i.e. pipe racks and gas sample containers).

In **Prince Edward Island**, amendments have been made to the *Occupational Health and Safety Act Regulations* effective November 13, 2004. These amendments have changed the title of the *Occupational Health and Safety Act Regulations* to "*Occupational Health and Safety Act General Regulations*". They have also extended the application of the Regulations to workplaces where fewer than three persons are employed (these workplaces were previously excluded).

Also on November 13, 2004, new *Fall Protection Regulations* were adopted under the Prince Edward Island *Occupational Health and Safety Act*. They specify when means of fall protection must be provided by employers and when a fall arrest system or other means of fall protection must be worn by workers. In addition, the Regulations lay down requirements regarding fall arrest systems, guardrails, personnel safety nets, safety belts and temporary flooring, and specify measures required when there is a risk of drowning.

In **New Brunswick**, a comprehensive *First Aid Regulation* was issued under the *Occupational Health and Safety Act*. It applies to places of employment under the jurisdiction of the province with a few exceptions, such as a place of employment that is a ferry, train or vehicle used or likely to be used by an employee. The Regulation deals with employer responsibilities, an emergency communication procedure, emergency transportation, first aid providers, first aid training, report of injury or illness and record of treatment, first aid kits and their location, and requirements for first aid rooms when one must be provided by the employer.

The new Regulation came into force on January 1, 2005. It then repealed and replaced the provisions previously contained in the *General Regulation* under the *Occupational Health and Safety Act* dealing with first aid kits, first aid rooms and first aid training.

In **Ontario**, the *Regulation respecting Control of Exposure to Biological or Chemical Agents* under the *Occupational Health and Safety Act* was amended in order to update occupational exposure limits (OELs) for workplace hazardous substances. More protective OELs have been set for a number of substances, and occupational exposure limits have been added regarding other hazardous substances. Most of the

amendments to the Regulation came into force on February 3, 2005, while changes to the OELs of some hazardous substances are scheduled to come into force on December 31, 2005 and a few others on March 1, 2006.

Also in Ontario, several amendments were made to the *Training Requirements for Certain Skill Sets and Trades Regulation* under the *Occupational Health and Safety Act* notably to indicate that a worker may not carry out work in a trade mentioned in a schedule of the Regulation unless he/she is authorized to carry out work in that trade under the *Trades Qualification and Apprenticeship Act*. This amendment took effect on April 1, 2005.

Lastly in **New Brunswick**, Bill 61, *An Act to Amend the Occupational Health and Safety Act*, received second reading on June 3, 2005.

This Bill would bring a number of amendments to the *Occupational Health and Safety Act*, the most significant of which are outlined below.

New Duties for Employers

Every employer would have to ensure that the place of employment is inspected at least once a month to identify any risks to the health and safety of his/her employees. For this purpose, an employer would have to develop an inspection program with any joint health and safety committee or health and safety representative, and share the results of each inspection with the committee or health and safety representative.

Joint Health and Safety Committees in Industries other than Construction

An employer would have to ensure that each person who is designated to serve on a joint health and safety committee has attended an educational program as prescribed by the regulations or, unless he/she has already done so, attends such an educational program within twelve months after being designated. This would not apply to a person who, immediately before the commencement of this requirement, was a member of the committee at a place of employment, but only for so long as that person continues to be a member of that committee. Such a person could attend a prescribed educational program if the committee makes a recommendation to that effect to the employer, and the latter grants leave to that person. If the employer does not grant such leave, the Workplace Health, Safety and Compensation Commission could order the employer to grant the person leave to attend the educational program. A member of a committee would continue to receive regular pay and benefits for the periods during which he/she is taking any educational program required under the Act that relates to his/her service on the committee or during which the member is attending any committee meetings.

Joint Health and Safety Committees on Construction Sites

Special provisions would be introduced regarding the establishment of joint health and safety committees on construction sites. They state, among other things, that a committee continues until work on a construction site is completed, regardless of the number of employees working on the site at any time, unless it is dissolved because there are more than 499 employees working at the site and another committee is established by the contractor as mentioned later in this report.

A contractor who is responsible for a construction site for which a committee is established would have to ensure that the names of the members of the committee and the minutes of the most recent committee meeting are promptly posted in a prominent place or places at the project site.

A contractor who is responsible for a construction site would have to ensure that a joint health and safety committee is established within two weeks after work has continued for more than 90 days and 30 or more employees, but fewer than 500 employees, work at the site. Different provisions would apply if the number of employees working at the site at any time is 500 or more. In such a case, the committee would be dissolved, and the contractor would be required to establish a new committee within two weeks. The applicable provisions would notably provide for an employee representative on the committee designated by the employees working in the same trade at the site.

No person could be elected to be an employer or employee co-chairman of a joint health and safety committee, unless that person has attended an educational program prescribed by the regulations. This would take effect one year after the coming into force of this new provision. Also, no person could be designated to serve on a committee unless the person has attended a prescribed educational program. This would take effect two years after the coming into force of this new provision. These requirements would not apply if the person designated to serve on a committee was a member of a committee or a health and safety representative on a construction site at any time within the twelve months previous to the coming into force of these provisions. Such a person could attend a prescribed educational program if the committee makes a recommendation to that effect to the employer, and the latter grants leave to that person. If the employer does not grant such leave, the Commission could order the employer to grant the person leave to attend the educational program.

Members of joint health and safety committees on construction sites would continue to receive their regular pay and benefits, in the same way as members of other joint health and safety committees, while they are taking any educational program required under the Act that relates to their service on committees or while they are attending any committee meetings.

Health and Safety Representatives on Construction Sites

Special provisions would be introduced regarding the designation of health and safety representatives on construction sites. They would apply to construction sites with more than five but fewer than 30 employees, regardless of the length of time work is carried out on the site, or where work carried out on the site has not exceeded 90 days, and 30 or more but fewer than 500 employees work on the site.

One year after the coming into force of these provisions, no person could be designated as a health and safety representative, unless that person has attended an educational program prescribed by the regulations or has served as a health and safety representative or as a member of a joint health and safety committee on a construction site within the twelve months preceding the coming into force of these provisions. Such a person could attend a prescribed educational program if he/she requests the training and the employer grants leave to that person. If the employer does not grant such leave, the Commission may order the employer to grant the person leave to attend the educational program.

The contractor and the employees working on a construction site would have to jointly designate a health and safety representative when there are from five to 50 employees working at a construction site as well as an additional representative for every 50 employees after that or any residual portion of that number. This designation would have to be done within two weeks after work on the construction site has commenced, or a person previously designated is no longer fulfilling the duties of a health and safety representative or after any increase in the number of employees working on the site warrants another designation.

If the contractor and the employees working at the site are unable to agree on a joint designation, the employees would designate a health and safety representative within one week after one of the applicable periods mentioned above, and the contractor could designate a health and safety representative within the same period. Subsequent representatives would be designated by the employees and could be designated by the contractor when there are more than 50 employees, as mentioned above.

Health and safety representatives would continue to receive their regular pay and benefits, in the same way as members of joint health and safety committees, while they are taking any educational program required under the Act that relates to their duties as representatives

The contractor would have to post the name of the health and safety representatives in a prominent place or places at the construction site.

Coming into Force

These new provisions would come into force on a date or dates to be announced by proclamation.

B. Protection from Second-hand Smoke in the Workplace

In **New Brunswick**, the *Smoke-free Places Act*, which was described in the *Highlights of Major Developments in Labour Legislation, 2003-2004*, was proclaimed into force on October 1, 2004.

In **Prince Edward Island**, the proclamation of subsection 2(3) of the *Smoke-Free Places Act*, which was passed in 2002, has made the Act applicable to correctional centers effective September 29, 2004.

In **Manitoba**, a new *Non-Smokers Health Protection Regulation* was issued under the *Non-Smokers Health Protection Act*. Effective October 1, 2004, this Regulation defines the term "mine" contained in the definition of "indoor workplace" in the Act, and clarifies when an outdoor eating or drinking area is an enclosed public place or an indoor workplace for the purposes of the Act. It also specifies that the terms "group living facility" in the Act include an accommodation facility provided by the employer as a residence for workers at a construction, industrial or other work camp, but does not include a separate bedroom used by only one person in such a facility. Other provisions deal, among other things, with requirements regarding the posting of no smoking signs.

In **Saskatchewan**, provisions of *The Tobacco Control Amendment Act, 2004* prohibiting smoking in enclosed public places, except in limited situations, took effect on January 1, 2005. The ban is being enforced by public health inspectors. In workplaces where the

public does not have access, the provisions of *The Occupational Health and Safety Regulations, 1996* continue to apply. They prohibit smoking in enclosed workplaces, except in designated areas. However, this ban does not apply to a self-employed person working alone at a place of employment.

In **Alberta**, the *Smoke-Free Places Act* (Bill 201) was assented to May 10, 2005 and will come into force on proclamation. This Act will prohibit smoking in public places, workplaces and public vehicles. However, smoking will be allowed in a public place or workplace if the manager designates the public place or workplace or a part of it as a place where smoking is permitted; ensures that signs are posted and conspicuously displayed indicating that minors (i.e., persons who are under 18 years of age) are not permitted to enter or be in that place; and takes reasonable steps to ensure that smoke does not enter any place where smoking is prohibited under the Act, including complying with any requirements to that effect prescribed by regulations.

The manager of a group living facility will be authorized to designate a smoking room in the facility for in-patients or residents. The smoking room will have to be separate from any adjacent area in which smoking is prohibited under the Act, have a separate ventilation system, and meet any requirements prescribed by the regulations.

It will be the duty of managers of places where smoking is prohibited not to permit smoking in those places and to ensure that signs indicating that smoking is prohibited are posted and continuously displayed in accordance with the regulations.

It is specified that the Act will not affect a municipality's power to make bylaws with respect to smoking. If there is a conflict between a provision of the Act and a provision of a municipal bylaw that regulates, restricts or prohibits smoking, the more restrictive provision will prevail.

The Act will bind the Crown, and the *Protection from Second-hand Smoke in Public Buildings Act* will be repealed.

In **Newfoundland and Labrador**, on July 1, 2005, a new *Smoke-free Environment Act, 2005* (SFEA 2005) (Bill 20) replaced and repealed the previous *Smoke-free Environment Act*.

The new legislation continues to prohibit smoking in workplaces and it prohibits smoking in all enclosed public places. This includes establishments where there was a partial smoking ban under the previous *Smoke-free Environment Act*, such as food establishments licensed under the *Food and Drug Act*, premises licensed under the *Liquor Control Act*, health care facilities, educational institutions, child care centres, retail stores and shopping malls as well as other public places not covered by the previous Act such as cinemas, theatres, video arcades, bingo halls and private clubs to which members or invited persons have access.

However, the operator of a long term care facility or a psychiatric facility or unit is authorized to permit residents to smoke in one or more designated smoking rooms. In addition, an employer may designate, in accordance with the regulations, one or more enclosed rooms that are under his/her control as designated smoking rooms for employees. Such an employer or operator and any person acting on their behalf must ensure that persons refrain from smoking in the workplace or long term care facility other than in a designated smoking room.

The minister responsible for the *Occupational Health and Safety Act* has the power to appoint inspectors to inspect workplaces to ensure compliance with the SFEA 2005, and the minister responsible for the SFEA 2005 has the power to do the same with respect to public places and facilities.

The new legislation reaffirms penalties ranging from \$50 to \$500 for individuals convicted of smoking in prohibited areas and fines ranging from \$500 to \$5,000 for owners, employers or operators who contravene the Act or fail to comply with an order of an inspector. In addition, a licence issued under the *Liquor Control Act* may be cancelled if the licensee is found guilty of an offence under the SFEA 2005.

Also effective July 1, 2005, the *Smoke-free Environment Regulations, 2005* state that an employer or owner responsible for an enclosed workplace or public place must ensure that signs and independent mechanical ventilation systems required under these Regulations are posted or installed.

In **Ontario**, the *Tobacco Control Statute Law Amendment Act, 2005* (Bill 164) was assented to June 13, 2005.

Bill 164 will amend the *Tobacco Control Act, 1994*, which will be renamed the *Smoke-Free Ontario Act*, and will repeal the *Smoking in the Workplace Act*.

Bill 164 provides for a definition of "enclosed public place" and broader definitions for the terms "enclosed workplace", "employee" and "employer".

Provisions dealing with controls relating to smoking tobacco will be completely revised. A broad prohibition against smoking in any enclosed public place or enclosed workplace¹² will replace a list of specific places where smoking is prohibited.

The new legislation will contain a series of obligations for employers and proprietors of enclosed public places to ensure that enclosed workplaces and public places over which they have control are smoke-free. These obligations include: ensuring compliance with the legislation; posting prescribed signs; notifying persons within the enclosed workplace, place or area that smoking is prohibited; ensuring that no ashtrays are available (except if one was installed in a vehicle by the manufacturer), and ensuring that anyone who is violating the smoking ban does not remain in the enclosed workplace, place or area. Employees will be protected by a list of employer prohibitions aimed at preventing any retaliation against them should they seek enforcement of the workplace smoking ban.

The smoking ban will not be mandatory in a residential care facility, in a supportive housing residence funded or administered through the Ministry of Health and Long-Term Care or the Ministry of Community and Social Services, or in facilities for psychiatric patients or veterans designated by regulation, if the operator designates an enclosed room as a controlled smoking area for residents or patients. This enclosed room will have to meet requirements laid down in the Act and any other requirements prescribed by regulation. An employee who does not desire to enter such a room may not be

¹² The *Smoking in the Workplace Act*, which will be repealed, contains a broad prohibition against smoking in an enclosed workplace, except for a number of exceptions, including smoking areas that may be designated by the employer.

required to do so. There will also be an exception to the ban on smoking within an enclosed workplace in scientific research and testing facilities that conduct research or testing on tobacco products.

Home health-care workers will have the right to request a person not to smoke in their presence while they are providing health care services, and will be permitted to leave if the person refuses to comply, unless to do so would present an immediate serious danger to the health of anyone. The right to leave will have to be exercised in accordance with regulations that may be adopted on that subject.

Inspectors designated under the Act will be given strengthened inspection powers to direct employers to comply with their obligations under the Act within a specified time. In addition, the general provisions dealing with offences will be revised to reflect the changes made to the Act, and the table of fines will be amended accordingly.

The amendments mentioned above will come into force on May 31, 2006.

Lastly, in **Quebec**, *An Act to amend the Tobacco Act and other legislative provisions* (Bill 112) brought changes to the *Tobacco Act*, among other things, to prohibit smoking in places not, until now, covered by the Act, and to further restrict smoking in the enclosed spaces currently covered by the Act.

More specifically, Bill 112 notably provides for smoking to be prohibited in enclosed spaces (except a dwelling) where the activities held are reserved for persons invited or authorized to attend by the host or those used by private clubs and reserved for members and their guests, as well as in tents, under big tops and other similar facilities that are open to the public. It will also prohibit smoking on school grounds and the grounds of childcare centres during the hours these institutions are open to students or children, and within 9 metres¹³ from any exterior door leading to a facility of a health and social services institution, to a building of a general and vocational college or a university or to a facility of a childcare centre. Smoking will no longer be permitted in pubs, taverns, bars and bingo halls, nor will it any longer be possible for smoking areas to be designated in such places as restaurants, the common areas of shopping centres, the gaming areas of state-owned casinos, amusement halls, marine passenger terminals, bus stations and railway passenger stations.

Under the *Tobacco Act*, the operator of a place or business covered by the provisions restricting smoking in certain areas must not tolerate smoking in an area where smoking is prohibited. In proceedings for a contravention of this duty, the operator of the place or business will, from now on, be deemed to have tolerated smoking in an area where smoking is prohibited if it is shown that a person smoked in that area. The onus will be on the operator to provide proof to the contrary.

These amendments will come into force on May 31, 2006, except the one that prohibits smoking on school grounds and the grounds of childcare centres, which will take effect on September 1, 2006.

¹³ If the 9-metre radius extends beyond the boundaries of the grounds on which the place is situated, smoking is prohibited only up to those boundaries.

C. Construction Safety

In **Ontario**, the Regulation entitled "Designated Substance - *Asbestos on Construction Projects and in Buildings and Repair Operations*" under the *Occupational Health and Safety Act* will, on November 1, 2005, replace the current Regulation on the same subject. Among other things, amendments will update safe working procedures and enhance respiratory protection for workers who may be exposed to asbestos in the course of their work on construction projects, and in demolition, repair, alteration and maintenance operations. In addition, effective November 1, 2007, amendments will strengthen training requirements by requiring that workers involved in operations presenting a higher risk of exposure to asbestos dust complete an asbestos abatement training program.

D. Farm Safety

In **British Columbia**, amendments made to the *Occupational Health and Safety Regulation* (OHSR) under the *Workers Compensation Act* were the result of a review of the occupational health and safety requirements applicable to the agriculture industry with a view to consolidate these requirements into the OHSR. This consolidation resulted in the repeal of the *Regulations for Agricultural Operations* (RAO) and the *Industrial Health and Safety Regulation* which was repealed in 1998 for all industries, except agriculture.

The RAO came into effect in 1993, and were not consolidated when the OHSR came into effect in 1998. Also, the previous regulations applicable to this sector were developed prior to the enactment of Part 3 of the *Workers Compensation Act*. Part 3 deals with occupational health and safety and is intended to ensure equivalent standards of protection for all workers in all sectors of industry under provincial jurisdiction.

Under the previous legislative framework, agricultural workers were not provided with regulatory protection on a wide range of occupational hazards that are specifically addressed in the OHSR (e.g., repetitive and related strain injuries, most fire and explosion hazards, vibration, radiation, heat and cold stress, lockout hazards, and hazards relating to most tools, equipment and machinery). Also, some requirements applicable to the agricultural sector provided a lower standard of protection than those contained in the OHSR.

The regulatory changes make pertinent requirements of the OHSR applicable to agriculture. In addition, many agriculture-specific requirements contained in the RAO are reproduced in Part 28 of the OHSR, which applies specifically to agricultural operations on farm land. Part 28 also provides for a number of modifications or exceptions for agriculture with respect to the application of certain requirements of the OHSR.

These amendments came into force on January 1, 2005. There is however a one year period of adjustment during which a consultative approach is taken on the requirements that are new or substantially new to the agricultural sector.

In **Prince Edward Island**, amendments to the *Occupational Health and Safety Act Regulations* came into force on November 13, 2004. Among other things, these amendments have clarified that the Act and the regulations do not apply to a workplace that is an agricultural operation conducted on farmland. However, effective

December 31, 2006, such workplaces will no longer be excluded from the application of the Act.

In **Ontario**, effective June 30, 2006, the *Regulation respecting Farming Operations* under the *Occupational Health and Safety Act* will bring farming operations under the *Occupational Health and Safety Act* (OHSA) subject to certain limitations and conditions. However, farms operated by self-employed individuals without paid workers will continue to be exempt from the OHSA.

A joint health and safety committee will be required in workplaces with 20 or more regularly employed workers in the following types of operations: mushroom farming, greenhouse farming, dairy farming, cattle farming, hog farming and poultry farming. Where 50 or more workers are regularly employed on these operations, a worker and employer member of the joint health and safety committee will have to receive special certification training.

Farms with 20 or more paid workers that are not operations mentioned above will be required to have a worker health and safety representative. A worker health and safety representative will also be required on all farm workplaces with six to 19 regularly employed workers.

The Regulations made under the OHSA will not apply to farming operations, except for the following Regulations: Regulation 834 of the Revised Regulations of Ontario, 1990 (Critical Injury—Defined); Ontario Regulation 780/94 (Training Programs) - this regulation clarifies that the employer is required to pay for the training of certified members of a joint health and safety committee; and Ontario Regulation 572/99 (Training Requirements for Certain Skill Sets and Trades) - this regulation gives Ministry of Labour inspectors the authority to enforce requirements established by the Ministry of Training, Colleges and Universities, that workers performing certain restricted trades (for example, an electrician or steamfitter) must be appropriately qualified/certified. Future consultations are planned between the government and stakeholders in the agricultural industry concerning hazards that are specific to farming operations.

E. Electrical Safety

In **Manitoba**, *The Electricians' Licence Amendment Act* (Bill 14) was assented to June 9, 2005. By repealing the term "helper" from the *Electricians' Licence Act*, this Act will eliminate helpers as a category of persons who may assist a licensee to perform electrical work. In place of the helper category, apprentices in a designated electrician trade and persons in training to obtain a limited specialized trade electrician's licence will be authorized to perform electrical work under supervision. In addition, these apprentices and persons in training as well as miners at underground mines and regular employees at commercial or industrial premises will be authorized to do restricted electrical work¹⁴ under supervision.

These amendments will come into force on January 1, 2006.

¹⁴ Restricted electrical work means electrical work on electrical equipment that is not connected to an energy source, fuse, breaker or disconnect.

F. Radiation Safety

In **Saskatchewan**, *The Radiation Health and Safety Regulations, 2005* under *The Radiation Health and Safety Act, 1985* took effect on March 10, 2005. The rules they contain have been harmonized with national and international standards, making it easier for owners and users of radiation equipment in the province to comply. For example, the formulae for calculating a dose from ionizing radiation are now the same as those in the uranium mine surface lease agreements and Regulations issued by the Canadian Nuclear Safety Commission, with the approval of the federal government, under the *Nuclear Safety and Control Act*. The new Regulations replaced *The Radiation Health and Safety Regulations* issued in 1993.

G. Biological Hazards

In **Nova Scotia**, the *Mandatory Testing and Disclosure Act* (Bill 125) was assented to October 18, 2004 and will come into force on a date to be announced by proclamation.

This Act will allow an individual to apply to the Supreme Court of Nova Scotia for a testing order in the following circumstances: he/she has come into contact with a bodily substance of another individual (called the "source individual") as a result of being a victim of crime, while providing emergency health care or first-aid services, or while performing the duties of a police officer, a fire fighter, a correctional officer, a peace officer or other functions specified by regulation in relation to that individual; and there is a risk that he/she may have become infected with a pathogen or micro-organism that causes a prescribed communicable disease.

An application for a testing order must set out the circumstances in which the applicant came into contact with a bodily substance of the source individual, be accompanied by a physician report, and meet any other prescribed requirements.

If the court issues a testing order, one or more qualified analysts designated by a medical officer will conduct tests on the sample obtained from the source individual. As soon as possible after receiving the results of an analysis, a medical officer will have to make reasonable efforts to provide a copy of the results to the applicant, his/her physician and, upon request, to the source individual, or a parent or guardian if he/she is a minor, and his/her physician. The results of an analysis will not be admissible in evidence in any criminal or civil proceeding other than in accordance with the Act.

Information concerning an applicant or a source individual that comes to a person's knowledge in the course of administering or using the Act or the regulations may not be disclosed, except in limited circumstances spelled out in the Act.

The Department of Health will pay the costs of such things as the medical reports necessary to obtain a testing order and the taking and analyzing of a sample.

Any person who contravenes the Act will be guilty of an offence and will be liable on summary conviction to the penalties set out in the *Summary Proceedings Act*.

In **Saskatchewan**, a similar law, *The Mandatory Testing and Disclosure (Bodily Substances) Act* (Bill 102) was assented to May 27, 2005 and will come into force on a date to be announced by proclamation.

This Act will allow an individual to apply to the Court of Queen's Bench for a testing order in the following circumstances: he/she has come into contact with a bodily substance of another individual (called the "source individual") as a result of being a victim of crime, while performing emergency health care or first-aid work or another prescribed function in relation to that individual; there is a risk that he/she may have become infected with a pathogen or micro-organism that causes a prescribed communicable disease; and the source individual refuses to be voluntarily tested.

An application for a testing order will have to set out the circumstances in which the applicant came into contact with a bodily substance of the source individual, be accompanied by a physician report, and meet any other prescribed requirements.

If the court issues a testing order, one or more qualified analysts designated by a medical health officer will conduct tests on the sample obtained from the source individual. As soon as possible after receiving the results of an analysis, a medical health officer will have to make reasonable efforts to provide a copy of the results to the applicant, his/her physician and the source individual or a parent or guardian if he/she is a minor. The results of an analysis will not be admissible in evidence in any criminal or civil proceeding other than in accordance with this Act.

Information concerning an applicant or a source individual that comes to a person's knowledge in the course of administering or using the Act or the regulations may not be disclosed, except in limited circumstances spelled out in the Act.

The applicant will have to defray the costs of such things as the application for a testing order, any appeal under the Act, the preparation of the physician's report, and the analysis required by a testing order.

Every person who contravenes any provision of this Act, an order made under it or the regulations will be guilty of an offence and will be liable on summary conviction to a fine not exceeding \$5,000 for a first offence or \$10,000 for a second or subsequent offence, and to an additional penalty equal to 10% of that fine for each day or part of a day during which the offence continues.