



Highlights

of

Major Developments

in

Labour Legislation

2005-2006

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the Canadian Association
of Administrators of
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HIGHLIGHTS OF MAJOR DEVELOPMENTS IN LABOUR LEGISLATION

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INTRODUCTION

Many important changes to employment standards laws were made during the period under review. In British Columbia, the *Employment Standards Act* was amended to provide for the right to compassionate care leave for qualifying employees. In the federal jurisdiction, a regulation under the *Employment Insurance Act* has expanded the list of persons in respect of whom an employee can claim compassionate care benefits. In addition, the legislative assembly of Ontario amended the *Employment Standards Act, 2000* in order to provide employees with the right to take unpaid leave during a declared state of emergency.

Other significant developments include: the adoption of regulations in five jurisdictions (Manitoba, New Brunswick, Prince Edward Island, Quebec and Yukon) to increase minimum wage rates; changes to administration and enforcement provisions in Saskatchewan, British Columbia and Ontario; and the enactment of legislation in the federal jurisdiction intended to guarantee workers quick payment of unpaid wages where their employer has become bankrupt or subject to a receivership. It should also be mentioned that Nova Scotia made numerous amendments to provisions concerning workers who are employed in retail businesses.

With respect to human rights, two provinces (Ontario and Newfoundland and Labrador) adopted legislation with a view to eliminating mandatory retirement at the age of 65 years. In the field of pay equity, Quebec made changes to its legislation in order to facilitate its application to the public sector. Finally, legislation was introduced in both the federal jurisdiction and Manitoba to protect whistleblowers.

There were several developments in the area of labour relations legislation. Nova Scotia passed legislation to amend the *Trade Union Act*, in order to establish an expedited grievance arbitration procedure (that will also be applicable under other collective bargaining laws in the province) and to add new provisions regarding unions' duty of fair representation. In the broader public sector, the federal *Public Service Labour Relations Act* was proclaimed into force and Ontario made changes to the scope of the *Public Sector Labour Relations Transition Act, 1997*. The Parliament of Canada passed legislation to amend the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*, in order to provide procedures to facilitate the renegotiation of collective agreements under defined circumstances. Moreover, two emergency legislative measures were adopted in the past year: in British Columbia, to settle a dispute in the education sector and, in Quebec, to forestall a potential labour dispute in the public service. Quebec also amended the *Act respecting labour relations, vocational training and manpower management in the construction industry*, primarily to help prevent the use of intimidation, discrimination and coercion by certain elements in the construction sector. Also worth mentioning is the signing of an agreement on labour mobility in the construction industry by the Quebec and Ontario governments, which has led to regulatory adjustments in each province. Finally, Newfoundland and Labrador made significant amendments to the *Fishing Industry Collective Bargaining Act* to establish new collective bargaining procedures for fishers and processors.

In addition, several jurisdictions made legislative and regulatory amendments to their occupational health and safety legislation during the past year, including Newfoundland and Labrador (extending certain legislative provisions to health and safety designates, changing the limitation period for prosecutions); the federal jurisdiction (requiring the development, implementation and monitoring of a hazards prevention program in the workplace); Ontario (adopting a new *Confined Spaces Regulation*, providing for the publication of the name of convicted offenders); Prince Edward Island (setting new safety requirements, increasing the maximum amount of fines); and British Columbia (making various changes to health and safety requirements).

Other legislative changes in the area of occupational health and safety have dealt with more specific issues. Three jurisdictions—Alberta, Nova Scotia and the Northwest Territories—have proclaimed or enacted new legislation to prohibit smoking in indoor workplaces and public places. Prince Edward Island adopted new regulatory provisions to deal with violence in the workplace and to improve the safety of persons working alone. Ontario also adopted new or revised occupational exposure limits for 23 workplace hazardous substances. In addition, to deal with certain biological risks, legislation regarding the mandatory testing of bodily substances in defined circumstances was proclaimed in Saskatchewan. Similar legislation was passed (but not yet proclaimed) in Alberta and introduced in Ontario's legislature. Saskatchewan also revised provisions of the *Occupational Health and Safety Regulations, 1996* dealing with exposure to infectious materials or organisms. This includes new requirements to use safe needles in health care and other defined workplaces. Nova Scotia also enacted legislation to reduce the risk of needlestick injuries.

Lastly, amendments were also made to regulations pertaining to pressure equipment safety (in Alberta), first aid (in Newfoundland and Labrador), hours of service for commercial vehicle drivers (in the federal jurisdiction), mine safety (in Quebec, Newfoundland and Labrador and the federal jurisdiction), construction safety (in Ontario), and safety in diving operations (in Nova Scotia and Newfoundland and Labrador).

I. EMPLOYMENT STANDARDS

A. *Compassionate Care Leave and Benefits*

British Columbia has amended the *Employment Standards Act* to provide for the right to compassionate care leave for qualifying employees. The *Employment Standards (Compassionate Care Leave) Amendment Act, 2006* (Bill 8) was assented to on April 8, 2006. Under this Act, an employee has the right to take up to eight weeks of unpaid leave to provide care or support to a family member if a medical practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks (or another period prescribed by regulation). A “family member” is defined as a member of the employee’s immediate family and any other prescribed individual. The “immediate family” of an employee has the same definition as that which applies to family responsibility and bereavement leave (i.e., the spouse, child, parent, guardian, brother, sister, grandchild and grandparent of the employee or a person who lives with the employee as a member of his/her family).

There are no length-of-service or other eligibility conditions under this Act in order to qualify for compassionate care leave. However, an employee is required to provide a copy of the medical certificate to his/her employer as soon as practicable. Where two or more employees provide care or support to the same person, they are not required to share the leave.

Although the eight weeks of leave can be broken up, each period of leave must have a minimum duration of one week. Moreover, an employee can only exercise his/her right to leave during the period that begins on the first day of the week in which the medical certificate is issued (or the first day of the week in which the employee begins leave) and ends on the last day of the week in which a period of 26 weeks (or another period prescribed by regulation) has elapsed since the date that the employee began his/her leave. However, if the family member dies before the end of this period, the right to leave ends on the last day of the week in which the death occurs.

It should be noted that if the family member survives beyond the end of the period referred to in the medical certificate, the employee has the right to take further compassionate care leave, provided he/she gives his/her employer a new medical certificate.

The job protection measures (including the protection of seniority and benefits) that apply with respect to maternity, parental, family responsibility, bereavement and jury duty leave also apply to an employee taking compassionate care leave. Moreover, the periods of employment preceding and following the leave are deemed to be continuous for the purposes of pensions, medical plans and other benefits, as well as for vacation entitlement and length of service when calculating notice of termination. Finally, the employee can opt to continue to contribute his or her share of any benefit plan during

the leave, in which case the employer must also continue to contribute. If the employer pays the total cost of a plan, he/she must continue to make the payments as if the employee were not on leave.

The Act was proclaimed into force on April 27, 2006.

It is worth mentioning that legislative provisions for compassionate care leave now exist in all Canadian jurisdictions, with the exception of Alberta and the Northwest Territories. Such provisions first came into force in Saskatchewan in 1995, in Quebec and Prince Edward Island in 2003, and the federal jurisdiction, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Nunavut, Ontario and Yukon in 2004. However, there are noticeable differences across the country with respect to the maximum duration of leave, eligibility requirements (i.e., required length of service and minimum notice periods), the definition of “family member” (i.e., the persons in respect of whom an employee may take leave) and the manner in which leave may be taken (i.e., sharing and/or fractioning of leave), as well as the protection of benefits and seniority during leave. Comparative information regarding compassionate care leave is available on the Human Resources and Social Development Canada website.¹

Finally, in the **federal jurisdiction**, a new regulation adopted under the *Employment Insurance Act* has expanded the list of persons in respect of whom an employee can claim compassionate care benefits. Note that eligibility to take compassionate care leave under employment standards legislation is distinct from eligibility to claim compassionate care benefits under Employment Insurance (EI).

Under the *Employment Insurance Act* and Regulations, claimants who meet eligibility requirements² can take up to six weeks of compassionate care benefits within a 26-week period (or such shorter period as may be prescribed) to provide care or support to a “family member”, as defined, where the latter, as attested by a medical certificate, has a serious medical condition with a significant risk of death within that period. When these provisions were first enacted, a “family member” included only the claimant’s spouse or common-law partner, child (including the child of a spouse or common-law partner), or parent (including the spouse or common-law partner of the claimant’s parent). Under the *Regulations Amending the Employment Insurance Regulations* (SOR/2006-135), the definition of “family member” has been amended to also include siblings, grandparents, grandchildren, in-laws, aunts, uncles, nieces, nephews, foster parents, guardians, wards and gravely ill persons who consider the claimant to be like a close relative.

This Regulation came into force on July 14, 2006.

¹<http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/lp/spila/cli/eslc/01Employment_Standards_Legislation_in_Canada.shtml&hs=lz>

² To be eligible for compassionate care benefits, a claimant must have contributed to the EI fund and worked at least 600 insurable hours in the previous 52 weeks or since the start of the last claim, whichever is shorter. In addition, he/she must demonstrate that his/her regular weekly earnings from work have decreased by more than 40%.

B. Parental Insurance

In **Quebec**, Order-in-Council 984-2005 of October 19, 2005 fixed January 1, 2006 as the date of coming into force of any section not yet in force of the *Act respecting parental insurance* and of the *Act to amend the Act respecting parental insurance and other legislative provisions*.

A summary of the *Act respecting parental insurance* is available in pp. 14-16 of the *Highlights of Major Developments of Labour Legislation, 2000-2001*. The *Act to amend the Act respecting parental insurance and other legislative provisions* is described in p. 4 of the *Highlights of Major Developments of Labour Legislation, 2004-2005*.³

It should also be mentioned that the *Regulation under the Act respecting parental insurance* (O.C. 986-2005) took effect on January 1, 2006.

To determine eligibility under the parental insurance plan established under the *Act respecting parental insurance*, this Regulation specifies, among other things, the extent to which a person must contribute under the plan established under the *Employment Insurance Act*, defines an interruption in earnings and determines the work that comes within the scope of the Act and the work that is excluded.

In addition, this Regulation determines the rules for allocating benefit weeks if both parents take the weeks concurrently, do not agree on how they should be allocated, or do not reside in the same province.

This Regulation provides for the cases in which a person's qualifying period may be extended or differed from the period set out in the *Act respecting parental insurance*. This Regulation also specifies, in relation to the benefit period, the time when the qualifying period ends and the reasons that may justify an extension of the qualifying period.

C. Emergency Leave and Related Matters

In **Ontario**, the *Emergency Management Statute Law Amendment Act, 2006* (Bill 56) brought significant amendments to the *Emergency Management Act*, including a change in the title of the Act to the *Emergency Management and Civil Protection Act*. In addition, the Act has been amended to include a "disease or other health risk" as a recognized cause of an emergency for which a state of emergency can be declared in the province (the other recognized causes of an emergency are the forces of nature, an accident, or an act that is intentional or otherwise).

Notably, Bill 56 allows emergency orders to be made during a declared state of emergency, including an order authorizing any person, or class of persons, to render

³ The *Highlights of Major Developments of Labour Legislation* (1990-1991 to 2004-2005 issues) are available online on the Human Resources and Social Development Canada website at http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/lp/spila/cli/dllc/01Developments_in_Labour_Legislation_in_Canada.shtml&hs=lz.

services that they are reasonably qualified to provide. Such an order can also stipulate the terms and conditions of service of those providing and receiving services, including the payment of compensation to those providing services. Bill 56 further prohibits the termination of employment of a person for the reason that he/she is providing services under an emergency order.

The contravention of an emergency order can be restrained by the order of a judge of the Superior Court of Justice. Moreover, Bill 56 makes it an offence to fail to comply with an emergency order or to interfere with or obstruct any person in the exercise of a power or the performance of a duty conferred by an emergency order. Unless specifically provided otherwise, an emergency order prevails over any other order, statute, regulation rule or bylaw in case of conflict; however, the *Occupational Health and Safety Act*, or any regulation made under that Act, prevails over an emergency order and the *Emergency Management and Civil Protection Act*.

In addition, Bill 56 has amended the *Employment Standards Act, 2000* (ESA) to provide for the right to an unpaid leave of absence from work due to a declared state of emergency (referred to as “emergency leave”). Accompanying this change, the unpaid emergency leave of 10 days per year that is also provided under the ESA has been renamed “personal emergency leave”.

An employee is entitled to take emergency leave for as long as he/she is not performing the duties of his/her position because of the declared state of emergency and

- an emergency order that applies to him/her;⁴
- an order made under the *Health Protection and Promotion Act* that applies to him/her;
- he/she is needed to provide care or assistance to one of the following individuals: his/her spouse;⁵ a parent,⁶ step-parent or foster parent of the employee or his/her spouse; a child, step-child or foster child of the employee or his/her spouse; a grandparent, step-grandparent, grandchild or step-grandchild of the employee or of his/her spouse; the spouse of a child of the employee; the employee’s brother or sister; or a relative of the employee who is dependent on him/her for care and assistance; or
- another prescribed reason.

The entitlement to leave ends on the day that the declared state of emergency is terminated or disallowed by the Legislative Assembly—unless the employee is absent due to an emergency order that has been extended under the *Emergency Management*

⁴ It should be noted that where the order is made retroactive pursuant to the *Emergency Management and Civil Protection Act*, the employee is deemed to have been on leave beginning on the first day he/she did not perform the duties of his/her position on or after the date to which the order is made retroactive.

⁵ “Spouse” includes either of two persons who live together in a conjugal relationship outside of marriage.

⁶ “Parent” includes a person with whom a child is placed for adoption and a person who is in a relationship of some permanence with a parent of a child and who intends to treat the child as his/her own. The term “child” has a corresponding meaning.

and *Civil Protection Act*, in which case the entitlement to leave continues during the period of extension.

An employee who takes such leave is required to advise his/her employer. Furthermore, the employer can require the employee to provide reasonable evidence of his/her entitlement to take leave. The job protection measures that apply with respect to maternity leave, parental leave, family medical leave, and personal emergency leave also apply to an employee taking emergency leave during a declared state of emergency.

Finally, an employer must retain all notices, certificates, correspondence and other documents given to or produced by him/her that relate to an employee taking emergency leave or family medical leave until three years after the date on which the leave expires. As was the case before, this provision also applies with respect to an employee taking personal emergency leave, pregnancy leave or parental leave under the ESA.

Bill 56 was assented to on June 20, 2006. The amendments mentioned above came into force by proclamation on June 30, 2006.

D. Minimum Wages

Since September 2005, five Canadian jurisdictions have issued regulations to amend minimum wage rates.

In **Manitoba**, the *Minimum Wages and Working Conditions Regulation (amendment)* (Reg. 80/2006) under the *Employment Standards Code* increased the general minimum wage rate from \$7.25 an hour to \$7.60 an hour, effective April 1, 2006. This rate will increase to \$8.00 an hour on April 1, 2007.

In **New Brunswick**, the *Minimum Wage Regulation* (Reg. 2005-154) under the *Employment Standards Act* repealed and replaced the previous *Minimum Wage Regulation*, which was issued in 2004.⁷ This Regulation increased New Brunswick's minimum wage rate, which applies for the first 44 hours worked in a week, from \$6.30 to \$6.50 an hour. In addition, for each additional hour worked in the same week, the minimum rate was increased from \$9.45 to \$9.75 an hour (reflecting the overtime rate). Furthermore, the minimum wage for employees whose hours of work are unverifiable and who are not strictly employed on a commission basis was also raised from \$277.20 to \$286.00 per week. These rates came into effect on January 1, 2006.

⁷ It should be noted that the previous regulation (Reg. 2004-136) would have increased the minimum wage rate (applying for the first 44 hours in a week) from \$6.30 to \$6.40 an hour on January 1, 2006 and to \$6.60 on January 1, 2007. For each additional hour worked in the same week, the minimum hourly wage would have been increased from \$9.45 to \$9.60 on January 1, 2006 and to \$9.90 on January 1, 2007. The minimum wage for employees whose hours of work are unverifiable and who are not strictly employed on a commission basis would also have been raised from \$277.20 per week to \$281.60 per week on January 1, 2006 and to \$290.40 per week on January 1, 2007.

Additional increases took effect on July 1, 2006, under the *Minimum Wage Regulation – Employment Standards Act* (Reg. 2006-40). This Regulation repealed and replaced Regulation 2005-154. Under the new Regulation, the general minimum wage rate increased from \$6.50 to \$6.70 an hour (applying for the first 44 hours worked in a week). Moreover, for each additional hour worked in the same week, the minimum hourly wage was increased from \$9.75 to \$10.05. In addition, the minimum wage for employees whose hours of work are unverifiable and who are not strictly employed on a commission basis was also raised from \$286 to \$294.80 per week.

As was the case before, an employer is prohibited from deducting, from the minimum wage, an amount for board or lodging where the employee has not received this service.

Moreover, in **Prince Edward Island**, the *Minimum Wage Order Amendment* (EC2005-518) under the *Employment Standards Act* increased the minimum wage rate from \$6.80 an hour to \$7.15 an hour, effective April 1, 2006. This rate will increase to \$7.50 an hour on April 1, 2007, pursuant to the *Minimum Wage Order Amendment* (EC2006-361).

Effective May 1, 2006, under **Quebec's** *Regulation to amend the Regulation respecting labour standards* (O.C. 306-2006), the general minimum wage rate increased from \$7.60 an hour to \$7.75 an hour, while the rate for employees who receive gratuities or tips increased from \$6.85 an hour to \$7.00 an hour. In addition, this Regulation increased the rates for employees assigned mainly to non-mechanized operations relating to the picking of raspberries, strawberries or apples. As was the case before, these rates are established on the basis of yield (for example, the rate for an employee assigned to the picking of raspberries increased from \$0.467 to \$0.476 per 250 ml container).

Finally, in **Yukon**, the general minimum wage rate increased from \$7.20 an hour to \$8.25 an hour on May 1, 2006, pursuant to a decision of the Employment Standards Board under the *Employment Standards Act*. Furthermore, effective April 1, 2007, and on April 1 of each subsequent year, this rate will increase by an amount corresponding to the annual increase for the preceding year in the Consumer Price Index (CPI) for the city of Whitehorse. To date, Yukon is the only jurisdiction in Canada to tie wage increases to the CPI.

E. Prohibited Wage Deductions

Under the *Employment Standards Act Regulations* of **Prince Edward Island**, an employer is prohibited from making deductions from an employee's pay, except for the reasons specified by the *Regulations* (e.g. where the deduction is required or authorized by statute or it is mutually agreed upon by the employer and employee). Effective March 25, 2006, Regulation EC2006-137 has amended the *Employment Standards Act Regulations* to specify that tips and gratuities are the property of the employee for whom they are intended.

Under this Regulation, where an employee's tips or gratuities are based on the employer's bills in respect of banquets, bus tours or other similar events, the employer

must pay the tips and gratuities to the employee within 60 days of the date of the event. In addition, where an employer imposes a surcharge or other charge on a customer in lieu of the payment of tips or gratuities to an employee, all of the amounts collected in this respect are deemed to be the property of the employee and must be distributed to him/her no later than the time of the next pay period. An employer cannot pass on any of its administrative charges, including credit card or debit card charges, to an employee.

Furthermore, an employer is prohibited from withholding, or treating as the wages or partial wages of an employee, the tips or gratuities intended for the latter (or the amounts collected as a surcharge or other charge on a customer in lieu of such tips or gratuities), unless the employee agrees that they are to be calculated as additional wages. Moreover, an employee cannot be required to share a tip or gratuity with the employer or owner of a work establishment.

Finally, an employer can pool tips and gratuities for the benefit of all or some of its employees; however, this does not give the employer a proprietary interest in the tips and gratuities that are pooled. Moreover, an employer must advise an employee in writing of any policy of pooling tips and gratuities that is in effect at the workplace at the time that the latter is hired.

F. Banking Industry

In the **federal jurisdiction**, the *Banking Industry Commission-paid Salespeople Hours of Work Regulations* (SOR/2006-92) under the *Canada Labour Code* came into force on May 11, 2006. Under this Regulation, employees who work as commission-paid salespeople in the banking industry in Canada are exempt from the application of the provisions of the *Code* concerning standard and maximum hours of work and the overtime rate.

G. Construction Industry

During the period of time covered by this document, three Canadian jurisdictions amended regulations that apply to workers in the construction industry.

First, in **Manitoba**, the *Construction Industry Minimum Wage Regulation* (119/2006) under the *Construction Industry Wages Act* came into force on June 1, 2006. This Regulation repealed and replaced the *Heavy Construction Minimum Wage Regulation*, the *Building Construction (Rural) Minimum Wage Regulation* and the *Building Construction (Winnipeg) Minimum Wage Regulation* under the *Construction Industry Wages Act*.

Employees who work in the heavy construction sector

Under this Regulation, the occupational classifications for employees working in the heavy construction sector have been amended, and their number increased from seven to ten, to reflect changes in this sector. Accompanying these amendments, new minimum wage rates apply to all classifications as of June 1, 2006. Furthermore, these rates will increase on January 1, 2007 (e.g. the minimum rate for a mobile crane

operator is \$16.75 an hour as of June 1, 2006 and will increase to \$17.70 an hour on January 1, 2007).

As was the case before, standard working hours for employees in this sector working in Winnipeg are 48 per week, from November 1 of each year to March 31 of the following year. This Regulation specifies that the standard working hours from April 1 to October 31 of each year are 50 per week. Moreover, with respect to employees in this sector working outside of Winnipeg, standard working hours are 50 per week, regardless of the time of year.

Employees who work in the industrial, commercial or institutional (ICI) sector of the construction industry

Minimum wage rates for employees working in the industrial, commercial or institutional (ICI) sectors of the construction industry are established in accordance with occupational classification and location of employment. Previously, four different rates could apply to one classification, depending on the location of employment (i.e., one rate for Winnipeg and one for each of three areas outside of Winnipeg). Under this Regulation, only two rates now apply to each occupational classification, depending on the location of employment (inside or outside of Winnipeg). Moreover, the occupational classifications for employees in these sectors have been amended to reflect changes to the apprenticeship system in the province. Accompanying these amendments, new minimum wage rates apply to all classifications as of June 1, 2006. Furthermore, these rates will increase on October 1, 2006.

As was the case before, a person who works on a “major building construction project” (as defined), regardless of the place of his/her employment, must be paid the minimum wage rate that applies to an employee in the same occupational classification who is employed in Winnipeg. However, the definition of a “major construction project” has been amended to include a project of at least 25,000 square feet (rather than 50,000 square feet, as was previously the case).

Finally, all employees in the ICI sectors have the same standard hours of work (i.e. ten hours a day and 40 hours a week). Previously, standard hours of work were based on occupational classification and location of employment.

The *Employment Standards Act* of **Yukon** provides that an employer who has a contract with the government of Yukon, even indirectly, for heavy construction or for the construction of buildings, roads, sewers or water mains, must pay an employee hired to fulfil the contract at least the applicable minimum rate set by the *Fair Wage Schedule (Schedule)* under the Act. Under the *Order Amending the Fair Wage Schedule (2005)* (O.I.C. 2005/193), the wage rates provided in the *Schedule* for these employees have increased, effective December 1, 2005, as follows:

- from \$23.50 per hour to \$26.06 per hour, for an employee whose position is included in category “A” of the *Schedule* (e.g. an electrician or a heavy equipment mechanic);
- from \$21.06 per hour to \$23.36 per hour, for an employee whose position is included in category “B” (e.g. a blaster or a driller);

- from \$18.68 per hour to \$20.72 per hour, for an employee whose position is included in category “C” (e.g. a surveyor’s helper or a blaster’s helper); and
- from \$16.95 per hour to \$18.80 per hour, for an employee whose position is included in category “D” (e.g. a driller’s helper or a flagperson).

Furthermore, this Order provides for an annual increase to the rates in the Schedule, effective April 1, 2006, and again on April 1 of each subsequent year, by an amount corresponding to the annual increase for the preceding year in the Consumer Price Index for the city of Whitehorse.

It should be mentioned that in **Nova Scotia**, Regulation 172/2005 brought amendments to the *Minimum Wage Order (Construction and Property Maintenance)* under the *Labour Standards Code*.

Among other things, the *Minimum Wage Order (Construction and Property Maintenance)* provides the minimum wage and overtime rates that are applicable to persons employed in construction, property maintenance work and related activities.⁸ Under Regulation 172/2005, the following persons are excluded from the application of this Order: duly qualified practitioners or students of specified professions;⁹ supervisors and managers; and employees who hold confidential positions. The other exclusions provided under the Order remain in force (e.g. apprentices subject to an apprenticeship agreement in accordance with the *Apprenticeship and Trades Qualifications Act*).

Regulation 172/2005 came into force on August 26, 2005.

H. Garment Industry

Under **Quebec’s** *Regulation to amend the Regulation respecting labour standards specific to certain sectors of the clothing industry* (O.C. 307-2006), the minimum wage payable to employees who are subject to the *Regulation respecting labour standards specific to the clothing industry* increased from \$8.10 an hour to \$8.25 an hour, effective May 1, 2006.

I. Recorded Visual and Audio-visual Entertainment Production Industry

Two regulations issued under the *Employment Standards Act, 2000* of **Ontario** (O. Regs. 550/05 and 552/05) have amended certain provisions applicable to workers in the recorded visual and audio-visual entertainment production industry.

⁸ Under the Order, “related activities” includes: the construction, restoration or maintenance of roads, streets, sidewalks, structures or bridges, water and sewer installations and paving of all sorts; earth and rock-moving or related works; snow removal; primary production of raw construction materials, including in a saw mill; work in a machine shop; and metal fabrication.

⁹ Students and duly qualified practitioners of the following professions are excluded: architecture, dentistry, law, medicine, chiropractic, professional engineering, public or chartered accounting, psychology, surveying and veterinary science. Information technology professionals are also exempted.

Under these Regulations, the *Exemptions, Special Rules and Establishment of Minimum Wage Regulation* was amended to provide that an employee in the recorded visual and audio-visual entertainment production industry is exempted from Part VII of the Act, which governs hours of work and eating periods. The “recorded visual and audio-visual entertainment production industry” includes the industry of producing visual or audio-visual recorded entertainment intended to be replayed in cinemas or on the Internet, as part of a television broadcast, or on a VCR or DVD player or similar device, but does not include the industry of producing commercials (other than trailers), video games or educational materials.

Accompanying these changes, the *Terms and Conditions in Defined Industries – Production of Recorded Visual or Audio-Visual Entertainment Regulation* was revoked. This Regulation provided that an employer and employee in this industry could agree to substitute an eight-hour daily “hours free from work” period for the 11-hour daily period that is required under the Act.

Regulations 550/05 and 552/05 came into force on October 28, 2005.

J. Apprentices of Defined Trades

In **Manitoba**, Regulations 106/2006 and 107/2006 under the *Apprenticeship and Trades Qualification Act* provide for increases to the minimum wage rates applicable to apprentices who are subject to the *Trade of Ironworker Regulation* or the *Trade of Agricultural Equipment Technician Regulation*.

Effective May 1, 2007, the increases will apply to apprentices whose apprenticeship agreements were registered by the Director of Apprenticeship and Trades Qualifications appointed under the Act (hereafter the Director) on or before May 1, 2006. In addition, as of May 2, 2006, the increased rates apply to apprentices whose apprenticeship agreements are registered by the Director after May 1, 2006.

The minimum wage rates for apprentices in the above-mentioned trades are expressed as percentages of the provincial minimum wage and apply based on the level of apprenticeship, as follows:

Apprentice of the trade of ironworker	1st Level	2nd Level	3rd Level
<i>Contract registered on or before May 1, 2006</i>	100%	150%	210%
<i>Above-mentioned contract, as of May 1, 2007</i>	200%	225%	275%
<i>Contract registered after May 1, 2006</i>	200%	225%	275%

Apprentice of the trade of agricultural equipment technician	1st Level	2nd Level	3rd Level	4th Level
<i>Contract registered on or before May 1, 2006</i>	120%	140%	160%	180%
<i>Above-mentioned contract, as of May 1, 2007</i>	150%	170%	190%	200%
<i>Contract registered after May 1, 2006</i>	150%	170%	190%	200%

K. Retail Establishments

In **Nova Scotia**, retail business establishments must generally be closed to the public on a uniform closing day. Uniform closing days are defined in the *Retail Business Uniform Closing Day Act* as Sundays,¹⁰ Christmas Day, Boxing Day, New Year's Day, Good Friday, Canada Day, Labour Day and Thanksgiving Day.¹¹ However, many retail businesses are exempted from the obligation to close on a uniform closing day.¹²

¹⁰The closing of retail establishments on Sundays constitutes a special case. Indeed, temporary experiments with deregulation from October 1 to December 31, 1993 and from November 16 to December 21, 2003 had allowed all retail business to open on Sundays. However, the majority of Nova Scotians voted against allowing Sunday shopping in a plebiscite held in October 2004. As a consequence, Sunday has remained a uniform closing day with limited exemptions. For more information, please see the *Highlights of Major Developments in Labour Legislation, 2003-2004* under the heading "Retail Establishments."

¹¹ And any other day the Governor in Council orders and declares by proclamation to be a uniform closing day (s. 2(e) of the *Retail business Uniform Closing Day Act*).

¹² Including the following establishments: drug stores (except if located in a department store); motor vehicle service stations; restaurants and facilities providing accommodation, camping,

The *Retail Business Uniform Closing Day Regulations* (N.S. Reg. 98/2006) came into force on June 28, 2006. This Regulation repealed and replaced the *Retail Business Uniform Closing Day Regulations 301/86* and the *Definitions Regulations 271/92*. Among other things, this Regulation repeats the list of retail businesses that was in the *Retail Business Uniform Closing Day Regulations 301/86*, but also adds vegetable stands whose principal business is selling local produce and retail establishments offering the rental of video cassettes, video discs or similar media and related devices. These businesses are exempt from the requirement to close on a uniform closing day.

Secondly, under a new rule, an establishment that is subdivided into several parts or departments will be considered as one entity. This Regulation provides that where two or more stores are owned, occupied or operated by related persons, they are deemed to be one store if they are in the same building or adjacent or in close proximity to each other. This new rule aims to remove a loophole that allowed grocery stores operating a retail sales area greater than 4,000 square feet to avoid the obligation to close on uniform closing days. However this rule does not apply to a store that was regularly open to the public on Sunday before June 1, 2006. The definition of "related persons" can be found in paragraph 251(2)(b)¹³ of the *Income Tax Act* (Canada).¹⁴

In addition to these amendments, Nova Scotia also made important changes to its *Labour Standards Code* under Bill 45, the *Labour Standards Code (amendment)*. Among other things, this new Act provides employees working in retail establishments with the right to refuse to work on a uniform closing day. However, a new regulation adopted on the same day Bill 45 came into force has severely curtailed this right. These recent developments are summarized below.

food, beverage, recreation, related services or tourist information; broadcasting and telecommunication services; the provision of goods and services on an emergency basis; stores in which the principal business is the sale of handcrafts, souvenirs and similar articles, principally to tourists or travelers; and stores primarily selling books, newspapers and magazines (s. 3(2) of the *Retail Business Uniform Closing Day Act*).

¹³ The Regulations adopted on June 28, 2006 actually stated that the definition of "related person" was found in paragraph 25(2)(b) of the Act but this error was corrected on June 30, 2006 with the adoption of the *Retail Business Uniform Closing Day Regulations 100/2006*.

¹⁴ "Related persons", or persons related to each other, are

(a) individuals connected by blood relationship, marriage or common-law partnership or adoption;

(b) a corporation and (i) a person who controls the corporation, if it is controlled by one person, (ii) a person who is a member of a related group that controls the corporation, or (iii) any person related to a person described in subparagraph 251(2)(b)(i) or 251(2)(b)(ii); and

(c) any two corporations (i) if they are controlled by the same person or group of persons, (ii) if each of the corporations is controlled by one person and the person who controls one of the corporations is related to the person who controls the other corporation, (iii) if one of the corporations is controlled by one person and that person is related to any member of a related group that controls the other corporation, (iv) if one of the corporations is controlled by one person and that person is related to each member of an unrelated group that controls the other corporation, (v) if any member of a related group that controls one of the corporations is related to each member of an unrelated group that controls the other corporation, or (vi) if each member of an unrelated group that controls one of the corporations is related to at least one member of an unrelated group that controls the other corporation.

Bill 45, the *Labour Standards Code (amended)*

The *Labour Standards Code (amended)* was assented to on July 14, 2006. This Act has amended the *Code* to provide retail employees with the right to refuse to work on a uniform closing day and to refuse to sign a contract of employment or agreement that requires them to work on a uniform closing day. Moreover, where an employee has agreed to work on uniform closing days, the amended legislation provides that the employee has the right to refuse to work on one of those days if he/she gives the employer at least seven days' notice or, where the employee receives his/her schedule less than seven days before that day, within two days of receiving the schedule.

In addition, this Act gives to the Governor in Council the power to make regulations listing classes of retail businesses in which employees do not have the right to refuse to work on a uniform closing day.¹⁵

Finally, an employer cannot discharge, lay off, suspend, intimidate, penalize or discipline an employee, or discriminate in any other manner against him/her, because the latter has refused to work on a uniform closing day or has refused to sign a contract or agreement that would require him/her to work on one of those days.

This Act also amends the *Summary Proceedings Act* to allow the Governor in Council to make regulations adding enactments to or deleting enactments from Schedule B of that Act. Schedule B provides a list of provincial statutes under which it is possible to obtain investigative warrants when an offence against one of those statutes has been, is being or will be committed. The *Retail Business Uniform Closing Day Act* has been included in that list with the coming into force of the *Investigative Warrant Enactment Regulations 118/2006* on July 19, 2006.

In addition, this Act amends the *Tenancies and Distress for Rent Act* (TDRA) to protect businesses from being forced to operate on a uniform closing day by the terms of their lease or other agreement. Moreover, the TDRA now prohibits discrimination or retaliation (e.g., by refusing to renew a lease) against a person who refuses to operate a retail establishment on a Sunday.

The amendments described above came into force by proclamation on July 19, 2006.

General Labour Standards Code Regulations (N.S. Reg. 117/2006)

As has already been mentioned, the *Labour Standards Code* was amended to provide that an employee cannot be required to work in a retail business on a uniform closing day or to sign a contract of employment or agreement that requires him/her to do so. However, *General Labour Standards Code Regulations (N.S. Reg. 117/2006)* creates two exceptions to that general principle.

First, employees who are subject to a collective agreement are excluded from the right to refuse to work on a uniform closing day. In addition, this Regulation specifies classes

¹⁵ Please refer to the *General Labour Standards Code Regulations 117/2006*, summarized below.

of retail businesses in which employees also do not have the statutory right to refuse to work.

It is important to note that the classes of retail businesses listed in this Regulation are the same as the classes of retail businesses exempted from the obligation to close on a uniform closing day.¹⁶ Therefore, employees who could have exercised the right to refuse pursuant to the *Labour Standards Code* (because they work in an establishment that is allowed to open on a uniform closing day) are, in effect, excluded from this right under the *General Labour Standards Code Regulations*.

This Regulation came into force on July 19, 2006.

L. Administration and Enforcement

In **British Columbia**, some changes were made to the *Employment Standards Regulation* (ESR) under the *Employment Standards Act*.

Among other things, the *Employment Standards Regulation* (ESR) fixes the administrative penalties that an employer is required to pay where the Director of Employment Standards ("Director") determines that he/she contravened a requirement under the Act. The minimum administrative penalties are presently \$500 for a first contravention, \$2,500 for a second contravention and \$10,000 for a third contravention. The higher penalties (i.e., \$2,500 and \$10,000) only apply where an employer contravenes the same requirement under the Act, at the same location, within three years after the first or second contravention (whichever is applicable).

Regulation 64/2006 has amended the ESR to further specify that the higher penalties do not apply unless: the Director has *previously made a determination* that the employer contravened the requirement in question for the first (or second) time; and the second (or third) contravention occurred after the date of that determination.

In addition, the ESR has been amended to provide that, with respect to the provisions regarding administrative penalties, an employer's contravention of a requirement under the Act is deemed to be a single contravention, regardless of the number of employees affected.

As was the case before, the provisions concerning administrative penalties are subject to any right to appeal a determination of the Director under the Act. The Director is also required to give appropriate notice of his/her determination in accordance with the Act.

Regulation 64/2006 came into force on March 31, 2006.

In **Ontario**, the *Good Government Act, 2006* (Bill 190) received Royal Assent on June 22, 2006. Among other things, this Act has amended the *Employment Standards Act, 2000* (ESA) to allow the Director of Employment Standards to terminate the

¹⁶ See section 3(2) of the *Retail Business Uniform Closing Day Act* and the *Retail Business Uniform Closing Day Regulations*.

assignment of an employment standards officer (“officer”) to the investigation of a complaint filed under the Act and assign the investigation to another officer. An officer whose assignment is so terminated does not have any powers or duties with respect to the investigation of the complaint or the discovery during the investigation of any similar potential entitlement of another employee of the employer related to the complaint. The new officer assigned to the investigation can rely on evidence collected by the first officer and any findings of fact made by him/her.

It should be noted that the amendments described above also apply where an officer conducts an inspection of an employer under the ESA.

Finally, this Act has amended the section of the ESA which provides that an officer conducting an investigation or inspection has the power to examine a record or other thing that is relevant to the investigation or inspection. This section now specifies that an officer has the power to examine a record or other thing which he/she *thinks may be* relevant to his/her investigation or inspection.

These amendments came into force on June 22, 2006.

Furthermore, in **Saskatchewan**, the *Labour Standards Amendment Regulations, 2005* (Reg. 134/2005) under the *Labour Standards Act* came into force on December 7, 2005.

This Regulation amends the *Labour Standards Regulations, 1995* to prescribe the amount of the deposit that an employer is required to make in order to appeal a decision of the Director of Labour Standards regarding the employer’s compliance with the “whistleblower protection” provisions of the Act. Prior to this Regulation, the amount was not prescribed. It is now set at \$500.

As was the case before, an employer or corporate director who wishes to appeal a wage assessment must make a deposit equivalent to the amount set out in the wage assessment, up to a maximum of \$500.

Finally, in **Yukon**, pursuant to Order in Council 2005/116 under the *Employment Standards Act*, the Province of Newfoundland and Labrador was declared a reciprocating jurisdiction and the Director of Labour Standards was designated as the enforcement authority, effective July 11, 2005.¹⁷

M. Wage-Earner Protection Program (WEPP)

On November 25, 2005, the **federal government’s** *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 Royal Assent.

¹⁷ Information about Order in Council 2005/116 is included in this issue (2005-2006) of the *Highlights of Major Developments of Labour Legislation* since it was not received in time for publication in the 2004-2005 issue.

Once it comes into force, this Act will, among other things, create the legislative basis for a Wage Earner Protection Program (WEPP) that will guarantee workers quick payment of unpaid wages where their employer has become bankrupt or subject to a receivership.

To be eligible to make a claim, a worker will have to be employed by the former employer for more than three months. Wages recoverable will 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 or four times the maximum weekly insurable earnings under the *Employment Insurance Act*.

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

The payments will be made out of the Consolidated Revenue Fund. Consequently, a worker will 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 will 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 Act will 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” will 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 can 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, can 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 can continue to submit an unsecured claim under the bankruptcy proceedings.

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

(The summary of this Act is also available on page 5 in *Highlights of Major Developments in Labour Legislation 2004-2005*).¹⁸

¹⁸ The *Highlights of Major Developments of Labour Legislation* (1990-1991 to 2004-2005 issues) are available online on the Human Resources and Social Development Canada website at http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/lp/spila/cli/dllc/01Developments_in_Labour_Legislation_in_Canada.shtml&hs=lz.

N. Human Rights in the Workplace

Following a 2005 decision of the Ontario Court of Appeal concerning the equality rights of disabled persons under the *Canadian Charter of Rights and Freedoms*,¹⁹ Regulation 549/05 was issued under the *Employment Standards Act, 2000* of **Ontario**. This Regulation, which came into force on October 28, 2005, made amendments to the *Termination and Severance of Employment Regulation* (TSER) under the Act.

Subject to certain exceptions, the TSER excludes workers from the sections of the Act regarding minimum notice of termination, termination pay and severance pay if their contract of employment has become impossible to perform or has been frustrated by a fortuitous event or circumstance.

Prior to Regulation 549/05, the exclusion of these workers from the notice of termination and termination pay provisions of the Act was subject to the application of the *Human Rights Code*. This reference to the *Code* has been deleted. In addition, the TSER has been amended to provide that the exclusion does not apply where the frustration or impossibility results from the worker's illness or injury.

This Regulation has also amended the provisions of the TESR excluding such workers from the severance pay provisions of the Act. Before the amendments, the exclusion did not apply where in a case where

1. The frustration or impossibility resulted from the worker's illness or injury; *and*
2. The *Human Rights Code* did not prohibit the severance of employment.

The second requirement has been deleted. Therefore, the TESR now provides that the exclusion does not apply where the frustration or impossibility results from the worker's illness or injury.

As a result of the amendments described above, where the frustration of or impossibility to perform the contract is due to the employee's illness or injury, the employee is entitled to notice of termination (and/or termination pay) as well as severance pay in accordance with the Act (provided that he/she otherwise meets the eligibility conditions).

Finally, in **Newfoundland and Labrador**, *An Act to amend the Human Rights Code* was assented to on May 26, 2006. Among other things, this Act has amended the *Code* to add "family status" as a prohibited ground of discrimination with respect to employment. "Family status" is defined as the status of being in a parent and child relationship, including that of an adoptive parent and child.

In addition, the time limit to file a complaint under the *Code* has been extended from six to 12 months.

¹⁹ *Ontario Nurses' Association v. Mount Sinai Hospital*, 2005 CanLII 14437 (ON C.A.).

These amendments came into force on May 26, 2006. (Note: this Act will also bring other changes to the *Code* in view of ending mandatory retirement; these changes are summarized below).

O. Mandatory Retirement

In the period covered by this report, two provinces (Ontario and Newfoundland and Labrador) enacted legislation with a view to ending mandatory retirement at the age of 65 years.

In **Ontario**, the *Ending Mandatory Retirement Statute Law Amendment Act, 2005* (Bill 211) was assented to on December 12, 2005.

Among other things, this Act will amend the definition of “age” provided in the *Human Rights Code*, to remove the age limit on the prohibition of discrimination in employment. The current definition does not prohibit discrimination in employment because of age, including mandatory retirement, where an individual’s age is 65 years or more. However, the mandatory retirement ages for judges, masters, case management masters and justices of the peace will not be affected by the changes.

Moreover, this Act will amend or repeal provisions of other Acts that require 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 continues to apply.

This Act will come into force one year after Royal Assent (i.e., on December 12, 2006), with the exception of the amendments brought to the *Workplace Safety and Insurance Act, 1997*, which took effect on Royal Assent.

In **Newfoundland and Labrador**, *An Act to Amend the Human Rights Code* (Bill 25) was assented to on May 26, 2006. This Act will amend certain provisions of the *Human Rights Code*, notably in view of ending mandatory retirement at the age of 65 years.

Currently, the *Code* prohibits an employer, or person acting on behalf of him/her, from refusing to employ, continuing to employ, or otherwise discriminating against a person because of his/her age, unless he/she is aged 65 or older (among other exemptions). Effective May 26, 2007, this exemption will be repealed. As is presently the case, discrimination in employment on the basis of age will not be prohibited where the person is under the age of 19 years. Moreover, other exceptions in the *Code* that currently allow discrimination in employment on the basis of age will continue to apply (e.g. where a limitation, specification or preference is based on a *bona fide* occupational qualification or where termination of employment is due to the terms or conditions of a good-faith retirement or pension plan).

In addition, this Act introduced a number of other amendments to the *Code* that came into force on May 26, 2006. Among other things, this Act has amended the provision that prohibits an employer, or person acting on its behalf, from using, in hiring or recruitment,

an employment agency that discriminates against persons seeking employment on the basis of a prohibited ground (e.g. race, religion or sex). Age (where the person has reached the age of 19 years) and family status have been added to the list of prohibited grounds in this provision.

Finally, the *Workplace Health, Safety and Compensation Act* has been amended to provide that a distinction on the basis of age that is required or authorized under that Act or its regulations continues to apply, despite the provisions of the *Code* that prohibit age-based discrimination.

P. Pay Equity

In **Quebec**, *An Act to amend the Pay Equity Act* (Bill 28) was assented to on May 25, 2006. This Act has brought a number of changes to the *Pay Equity Act* (PEA) to facilitate its application to the public sector. The most important of these changes are described below.

This Act has replaced the single governmental entity covered by the PEA with two entities: the public service enterprise and the parapublic sector enterprise. The public service enterprise includes government departments and bodies and persons whose employees are appointed in accordance with the *Public Service Act* (other than the National Assembly). The parapublic sector enterprise includes colleges, school boards and institutions to which the *Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors* applies.

The PEA also provides that an employer and a certified association representing employees of the enterprise can agree to establish one or more separate pay equity plans applicable to those employees in one or more establishments of the enterprise. However, this Act stipulates that in the parapublic sector enterprise there can only be one pay equity plan for all employees represented by certified associations. As was the case before, an employer can apply to the *Commission de l'équité salariale* established under the PEA (hereafter the Commission) for authorization to establish a separate plan applicable to one or more establishments, if warranted by regional disparities.

In addition, this Act establishes special rules for the representation of employees on pay equity committees where they are not represented by a certified association. Under the PEA, an employer whose enterprise employs 100 or more employees must, in order to enable his/her employees to take part in the establishment of a pay equity plan, set up a pay equity committee on which they are represented. The PEA allows employees who are not represented by a certified association to designate members of the committee (in accordance with the provisions of the PEA). However, with respect to the enterprises mentioned above, a new provision now stipulates that a certified association (or a group of employees' associations) that represents employees in a job class to which a pay equity plan applies also represents, for the purposes of that plan and until it has been completed, all the employees in that job class who are not covered by a certification. It further provides that the adjustments in compensation and the terms and conditions of payment of compensation adjustments set out in the plan are the only ones applicable to all such employees.

It should be noted that this Act empowers the Commission to authorize another mode of designation of the representatives of employees who are not represented by a certified association.

Accompanying these changes, where a pay equity committee in the public service enterprise has made the postings concerning the results of its pay equity plan, as required under the PEA, prior to May 25, 2006, it must again make the postings. This provision is intended to allow employees who are not covered by a certified association, but who are in a job class to which a pay equity plan applies, to request additional information from, and make observations to, the committee in accordance with the PEA.

This Act came into force on May 25, 2006.

Q. Whistleblower Protection

New legislation to protect “whistleblowers” in the public service was introduced in the federal jurisdiction and Manitoba.

In the **federal jurisdiction**, the *Public Servants Disclosure Protection Act* (Bill C-11) was assented to by the previous Parliament on November 25, 2005. However, this Act has not been proclaimed into force. After the new Parliament was formed in April 2006, the government tabled Bill C-2, the *Federal Accountability Act*. This Act, which received third reading on June 21, 2006, will bring a number of significant changes to the *Public Servants Disclosure Protection Act*. The two Acts are summarized below. (Note: in the summary, the Public Servants Disclosure Protection Act is referred to as “the Act” and the *Federal Accountability Act* as “Bill C-2”).

Purpose of the Act

The purpose of the *Public Servants Disclosure Protection Act* 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

When it comes into effect, the Act will apply to the federal public sector including agencies, Crown corporations and other public bodies. However, the Canadian Forces, the Canadian Security Intelligence Service and the Communications Security Establishment²⁰ will be excluded from the definition of “public sector” for the purpose of this Act. “Public servant” will be defined as every person employed in the public sector, every member of the Royal Canadian Mounted Police and every chief executive.

²⁰ However, as explained later, the persons responsible for these organizations will also have certain obligations under the Act.

The Act will apply with respect to the disclosure of the following wrongdoings in or relating to the public sector: a contravention of a federal or provincial Act or regulation;²¹ 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 other than a danger that is inherent in the performance of the duties or functions of a public servant; a serious breach of a code of conduct established under the Act; or knowingly directing or counselling a person to commit any of the above mentioned wrongdoings.

Obligation to Establish a Code of Conduct

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

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

Disclosure of Wrongdoings

The Act provides 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. It will be possible for a chief executive to be exempted from these requirements if he/she declares, after notifying the Public Service Human Resources Management Agency of Canada, that it is not practical to apply them due to the size of the portion of the public sector for which he/she is responsible.

A public servant will be able to disclose to his/her supervisor or to the designated senior officer any information that he/she believes could show that a wrongdoing has been or is about to be committed or that he/she was asked to commit a wrongdoing.

The Act provides that a public servant can only make such a disclosure to the Public Sector Integrity Commissioner appointed under the Act (hereafter the Commissioner) if certain conditions are met.²² However, Bill C-2 will repeal these conditions. Therefore, a

²¹ Under Bill C-2, the Act does not apply to a disclosure that one of the prohibitions on taking reprisals against whistleblowers has been contravened.

²² The Act provides that a public servant can only make a disclosure to the Commissioner in the following circumstances: the public servant has already disclosed the information 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 information to his/her supervisor or the appropriate senior officer would be inappropriate due to the subject-matter of the wrongdoing or due to the person alleged to have committed it; 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.

public servant will be authorized to make a disclosure to his/her supervisor, the designated senior officer, or the Commissioner.

A public servant will not be authorized to disclose to the Commissioner a confidence of the Queen's Privy Council of Canada or information protected under solicitor-client privilege. Moreover, when making a disclosure under the Act, a public servant will be required to provide no more information than is reasonably necessary to make the disclosure and follow established procedures or practices for the secure handling, storage, transportation and transmission of information or documents.

Finally, a public servant will 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". A public servant will not, however, be permitted to make such a disclosure if it is subject to restrictions created by or under any federal Act.

Disclosure provisions will not apply in respect of special operational information within the meaning of the *Security of Information Act*.

Procedure for the Investigation of Disclosures by the Commissioner

The Commissioner will have the following duties with respect to the investigation of disclosures:

- receiving, recording and reviewing disclosures of wrongdoing to establish whether further action is warranted;
- investigating disclosures of wrongdoing received by the Commissioner 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 Commissioner's recommendations;
- ensuring respect for the right to procedural fairness and natural justice of all persons involved in investigations;
- protecting, to the extent possible in accordance with the law, the identity of persons involved in the disclosure process (subject to any other federal Act); and
- establishing procedures for processing disclosures and ensuring the confidentiality of information collected in relation to disclosures and investigations.

In addition, under Bill C-2, the Commissioner will also be responsible for providing information and advice regarding disclosures under the Act as well as his/her conduct of investigations.

The Act provides that the Commissioner can refuse to deal with a disclosure or cease an investigation if he/she is of the opinion that the subject-matter of the disclosure can be more appropriately dealt with under another federal Act, that the subject-matter of the disclosure is not made in good faith or is not sufficiently important, that dealing with the disclosure would serve no useful purpose due to the time that has elapsed between the date when the subject-matter arose and the date when the disclosure was made, that the disclosure relates to a matter that results from a balanced and informed decision-making process on a public policy issue, or that there is another valid reason not to deal with the disclosure. Furthermore, the Commissioner will not be allowed to deal with a disclosure or commence an investigation if its subject-matter is already being dealt with by a person or body acting under another federal Act, other than as a law-enforcement authority.²³

Chief executives and public servants will be required to provide any facilities, assistance, information and access to offices under their control requested by the Commissioner to perform his/her duties. No public servant will be excused from cooperating with the Commissioner out of a concern that this may lead to self-incrimination.²⁴ The only information which the Commissioner will not be authorized to require from a public servant are a confidence of the Queen's Privy Council for Canada or information protected by solicitor-client privilege. The Commissioner will not be allowed to use the confidence or information if it is nevertheless received.

Subject to certain conditions, the Commissioner will be empowered to investigate other wrongdoings found in the course of investigating a disclosure or as a result of any information provided to him/her by a person who is not a public servant.²⁵ Where the Commissioner believes that a matter under investigation involves obtaining information outside the public sector, he/she will be required to cease that part of the investigation, although he/she may refer the matter to any authority he/she deems competent to deal with it. Except in some specified situations, the Commissioner will be prohibited from disclosing any information that the Government of Canada or any portion of the public sector is taking measures to protect, including the following: a confidence of the Queen's Privy Council of Canada; solicitor-client privileged information; special operational information under the *Security of Information Act*; information subject to any restriction on disclosure created by or under any other federal Act; or information that could reasonably be expected to cause injury to international relations, national defence or security, to the detection, prevention or suppression of criminal, subversive or hostile activities, to commercial interests or to the privacy interests of an individual.

²³ A person or body dealing with a matter in the course of an investigation or proceeding under Part IV (discipline) and Part V (discharge and demotion) of the *Royal Canadian Mounted Police Act* is deemed not to be dealing with the matter as a law enforcement authority.

²⁴ However, the Act provides that information given by a public servant, or evidence derived from that information, cannot be used or received to incriminate him/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).

²⁵ However, the Commissioner will not be permitted to use, in the course of this investigation, a confidence of the Queen's Privy Council of Canada or solicitor-client privileged information, if the confidence or information is disclosed to him/her.

The Act also provides that information obtained in the course of an investigation which may be used in the investigation or prosecution of an alleged contravention of any federal or provincial Act can be remitted to a peace officer or the Attorney General of Canada. If the information relates to the Royal Canadian Mounted Police, the Act provides that it may be remitted only to the Attorney General of Canada. However, to maintain the separation of investigations, the Commissioner will not be allowed to remit any further information obtained afterwards in the course of his/her investigation of the matter.

Finally, the Commissioner will be permitted to report a matter to the appropriate Minister or, in the case of a Crown corporation, to the appropriate board or governing council, if he/she is of the opinion that, among other things, 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 life, health or safety of the public, or to the environment, has come to his/her attention while carrying out his/her duties.

Reports to Parliament

The Commissioner will be responsible for submitting an annual report to Parliament. This report must include certain information required under the Act, including the following: the number of inquiries and disclosures received, disclosures acted on, investigations commenced and recommendations made; any systemic problems giving rise to wrongdoings; and any recommendations for improvements. The Commissioner will also be allowed to submit at any time a special report to Parliament if, in his/her opinion, a matter needs to be brought to its attention before the submission of the next annual report.²⁶

Under Bill C-2, the Commissioner will also be required to submit a case report to Parliament if he/she concludes in a report to a chief executive that a wrongdoing has been committed. The Commissioner will be required to submit a case report within 60 days of the date of the report to the chief executive, and to provide certain information in the case report, including the following: the finding of wrongdoing; the recommendations, if any, that the Commissioner made in the report to the chief executive; and the Commissioner's opinion as to whether the chief executive's response to the report was satisfactory.

Furthermore, Bill C-2 will require each chief executive to prepare and submit an annual report to the Public Service Human Resources Management Agency of Canada (hereafter the Agency). The annual report will cover the activities (in the portion of the

²⁶ However, except in some specified situations, the Commissioner will not be allowed to disclose in any annual or special report any information that the Government of Canada or any portion of the public sector is taking measures to protect, including information that: is a confidence of the Queen's Privy Council of Canada; is lawyer-client privileged information; is special operational information under the *Security of Information Act*; is subject to any restriction on disclosure created by or under any other federal Act; could reasonably be expected to cause injury to international relations, national defence or security, to the detection, prevention or suppression of criminal, subversive or hostile activities, to commercial interests or to the privacy interests of an individual.

public sector for which the chief executive is responsible) concerning disclosures made by public servants in accordance with the Act. Finally, the President of the Agency will also be required to submit an annual report to Parliament, containing the information required under Bill C-2.

Public Information

Where wrongdoing is found as a result of a public servant's disclosure under the Act, Bill C-2 will require each chief executive to promptly provide the public with access to the following information: a description of the wrongdoing (including information that could identify the person found to have committed it if it is necessary to identify the person in order to adequately describe the wrongdoing); the recommendations contained in any report to the chief executive (such as a report of the Commissioner); and the corrective action taken by the chief executive or the reasons why no action was taken.

Subject to the provisions mentioned above, any other federal act and the principles of procedural fairness and natural justice, chief executives will be required to protect the identity of persons involved in the disclosure process. They will also be required to establish procedures to ensure the confidentiality of information collected with respect to disclosures. Moreover, a chief executive will not be obliged to provide public access to information in a case where such disclosure is restricted under an Act of Parliament.²⁷

Disciplinary Action against Public Servant

The Act provides that apart from any penalty provided by law, disciplinary action, including termination, can be taken against a public servant who commits a wrongdoing.

Prohibition against Reprisal

The Act will prohibit the taking of any reprisal against a public servant who has made a protected disclosure or who has, in good faith, cooperated in an investigation under the Act. "Reprisal" will mean a disciplinary measure, a demotion, a termination of employment, including a discharge or dismissal in the case of a member of the Royal Canadian Mounted Police, a measure having an adverse effect on employment or working conditions, or a threat to take any of these measures. Moreover, Bill C-2 will amend the Act to further prohibit a person from *directing* that a reprisal be taken against a public servant.

²⁷ It should be mentioned that Bill C-2 will also amend the *Access to Information Act* to provide that the head of a government institution and the Commissioner must refuse to disclose any record containing information created for the purpose of making a disclosure or obtained in the course of an investigation into a disclosure under the *Public Servants Disclosure Protection Act*. The Commissioner will also be required to refuse to disclose any record containing information received by a conciliator in the course of attempting to reach a settlement of a complaint filed by a public servant or former public servant alleging that he/she was the victim of a reprisal as defined by the Act. Finally, Bill C-2 will also bring similar amendments to the *Privacy Act*.

*Complaints regarding reprisals*²⁸

The Act provides that a public servant or a former public servant (or their representative) who alleges to have been the victim of a reprisal, may make a complaint in writing to the Board.²⁹ The Act also contains detailed provisions regarding complaints to the Board. However, Bill C-2 will repeal and replace these provisions.

Under Bill C-2, a public servant or former public servant who has reasonable grounds to believe that a reprisal has been taken against him/her will be allowed to file a complaint with the Commissioner.³⁰ This Bill also provides that a complaint must be filed within 60 days after the day on which the complainant knew, or in the Commissioner's opinion, ought to have known, that the reprisal was taken. However, an extension of time will be possible if the Commissioner feels it is appropriate considering the circumstances of the complaint.

The Commissioner will be allowed to refuse to deal with a complaint for one of the reasons specified in this Bill (e.g. the complaint was not made in good faith). Moreover, he/she will not have the authority to deal with a complaint where, among other things, a person or body³¹ acting under another Act of Parliament or a collective agreement is dealing with the subject matter of the complaint.³²

If the Commissioner decides to deal with a complaint, he/she will be required to send a written notice of his/her decision to the complainant and to the person or entity that has the authority to take disciplinary action against each person who participated in the taking of a measure alleged by the complainant to constitute the taking of a reprisal. In general, it will be prohibited to take disciplinary action against the latter person(s) during the period beginning with the day on which the Commissioner sends his/her decision and ending on the day on which one of the following occurs: the complaint is withdrawn or dismissed; the Commissioner makes an application to the Public Servants Disclosure Protection Tribunal (hereafter the Tribunal), which will be established under this Bill, for

²⁸ In general, these provisions of Bill C-2 will apply retroactively to a public servant who alleges that a reprisal was taken against him/her because of a disclosure that he/she made in good faith after February 10, 2004, but before the date that s. 19.1 comes into force (which sets out the procedure to file a complaint), in the course of a parliamentary proceeding or an inquiry under Part I of the *Inquiries Act*. However, the Commissioner will not be allowed to apply to the Public Servants Disclosure Protection Tribunal for an order respecting disciplinary action against the person(s) who took the reprisal against the public servant.

²⁹ "Board" means, for a public servant employed in the Public Service Labour Relations Board, the Canadian Industrial Relations Board; for any other public servant employed in any portion of the public sector covered by the *Public Service Labour Relations Act*, the Public Service Labour Relations Board; and for any other public servant, the Canada Industrial Relations Board.

³⁰ It should be noted that a number of exceptions will apply with respect to members and former members of the Royal Canadian Mounted Police.

³¹ With the exception of a law enforcement authority.

³² It should be noted that a public servant or former public servant who files a complaint in accordance with Bill C-2 will be precluded from commencing any procedure under an Act of Parliament or collective agreement in respect of the measure alleged to constitute a reprisal (unless the Commissioner decides not to deal with the complaint for a reason other than that it was not made in good faith).

an order respecting a remedy in favour of the complainant; or, where the Commissioner applies for such an order and an order respecting the taking of disciplinary measures, the Tribunal makes a determination that the complainant was not subject to a reprisal taken by the person(s) in question. Moreover, where disciplinary action has already been taken against a person,³³ its implementation will be suspended during this period or until the date on which disciplinary action is taken as a result of a settlement approved by the Commissioner or an order of the Tribunal.

The Commissioner will be allowed to designate a person as an investigator to investigate the complaint. Chief executives and public servants will be required to provide the investigator, upon his/her request, with any facilities, assistance, information and access to their respective offices that he/she may require for the purpose of the investigation. Moreover, at any time during the course of an investigation, the investigator will be allowed to recommend to the Commissioner that a conciliator be appointed to attempt to bring about a settlement of the complaint. It should be noted that the terms of any such settlement will be subject to the approval of the Commissioner.

The investigator will be required to submit a report of his/her findings to the Commissioner as soon as possible after the conclusion of his/her investigation. If the Commissioner is of the opinion that an application to the Tribunal is warranted,³⁴ he/she will be allowed to apply to the Tribunal for a determination of whether a reprisal was taken against the complainant and, if so, for an order respecting a remedy in favour of the complainant and, in certain cases, an order respecting disciplinary action against any person(s) identified in the application as being those who took the reprisal.

If the Tribunal determines that the complainant was subject to a reprisal, it will be empowered to make an order for a remedy in favour of the complainant. In this respect, the Tribunal will be allowed to require the employer, the appropriate chief executive or any person acting on their behalf to take all the necessary measures to

- Permit the complainant to return to his/her duties;
- Reinstatement the complainant or pay compensation to him/her in lieu of reinstatement if, in the Tribunal's opinion, the relationship of trust between the parties cannot be restored;
- Pay to the complainant compensation in an amount not greater than the amount that, in the Tribunal's opinion, is equivalent to the remuneration that would, but for the reprisal, have been paid to the complainant;
- Rescind any measure or action taken, including disciplinary action, and pay compensation to the complainant in an amount not greater than the amount that, in the Tribunal's opinion, is equivalent to any financial or other penalty imposed on the complainant;
- Pay to the complainant an amount equal to any expenses and any other financial losses he/she incurred as a direct result of the reprisal; or

³³ With the exception of disciplinary action that has been the subject of a decision of a court, tribunal or arbitrator dealing with it on the merits. (In such a case, the Commissioner and the Tribunal will not have the authority to deal with the issue of disciplinary action).

³⁴ If it is not warranted, he/she will be required to dismiss the complaint.

- Compensate the complainant, up to a maximum of \$10,000, for any pain and suffering he/she experienced as a result of the reprisal.

If so requested by the Commissioner in his/her application, the Tribunal will also be empowered to make an order requiring that any disciplinary action it specifies—including termination of employment or revocation of appointment—be taken against any person named in the application who is determined by the Tribunal to have taken the reprisal. A person against whom disciplinary action is taken as a result of an order will not be permitted to initiate a grievance or other similar procedure in respect of it under an Act of Parliament or a collective agreement.

Temporary Assignment

The Act provides that a chief executive may, with written consent³⁵, temporarily assign the public servant to other comparable duties, if the executive believes (on reasonable grounds) that a public servant's involvement in a disclosure or a complaint in respect of a reprisal has become known in his/her workplace and that a temporary assignment is necessary to maintain the effective operation of the workplace. The assignment may be for a period of up to three months, but may be renewed one or more times if the chief executive believes that the conditions giving rise to it continue to exist.

Legal Advice

Subject to certain conditions, under Bill C-2 the Commissioner will be allowed to provide access to legal advice to the following persons:

- A public servant who is considering making a disclosure of wrongdoing (or a person who is not a public servant who is considering providing information to the Commissioner in relation to any act or omission that may constitute a wrongdoing), provided that the Commissioner is of the opinion that the act or omission to which the disclosure (or the information) relates likely constitutes a wrongdoing and is likely to lead to an investigation under the Act;
- A public servant who has made a disclosure;
- A person who is or has been involved in an investigation conducted under the Act;
- A public servant who is considering making a complaint regarding an alleged reprisal taken against him/her; or
- Any person who is or has been involved in a proceeding under the Act regarding an alleged reprisal.

However, the Commissioner will not be allowed to provide legal advice to a person unless convinced that the person did not otherwise have access to legal advice without cost to him/her. Bill C-2 further stipulates that no more than \$1,500 can be expended for legal advice provided to a person in relation to a particular act or omission that may constitute a wrongdoing, unless the Commissioner is of the opinion that exceptional circumstances exist (in which case the maximum amount will be deemed to be \$3,000).

³⁵ The assignment cannot be deemed to be a reprisal if the public servant's consent is given.

Prohibitions

The Act will 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 Commissioner or any other person acting on their behalf or under their direction, in the performance of their duties under the Act; and
- destroy, mutilate, alter, 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.

In addition to these prohibitions, Bill C-2 will prohibit an employer that is not part of the public sector from taking disciplinary measures³⁶ against an employee for the sole reason that the latter has, in good faith and on the basis of reasonable belief, provided information concerning an alleged wrongdoing in the public sector (or for the sole reason that the employer believes that the employee will do so).

Offences

Bill C-2 provides that a person who knowingly contravenes one of the prohibitions created by the Act, including those described above, or the provision which prohibits the taking of reprisals against a public servant, commits an offence and is liable to a fine of up to \$10,000 and/or up to two years' imprisonment.³⁷

Obligations of Excluded Organizations

The Act provides that the person responsible for each organization excluded from the definition of "public sector" (i.e., the Canadian Forces, the Canadian Security Intelligence Service and the Communications Security Establishment) must establish procedures for the disclosure of wrongdoings and the protection of whistleblowers. It also provides that these procedures must be, in the opinion of the Treasury Board, similar to those set out in the Act.

Coming into Force

The provisions of the Act will, with the exception of certain coordinating amendments, come into force on a date or dates to be fixed by a government order. The amendments that will be made by Bill C-2 will come into force on the date that the Bill receives Royal Assent.

Finally, in **Manitoba**, the *Public Interest Disclosure (Whistleblower Protection) Act* (Bill 34) received second reading on June 7, 2006. The purpose of this Bill is to create a

³⁶ "Disciplinary measures" would be defined as taking, or threatening to take, any of the following measures against the employee: disciplinary action; demotion; termination of employment; or any measure that adversely affects the employment or working conditions of the employee.

³⁷ On summary conviction, the person will liable to a maximum fine of \$5,000 and/or a maximum of six months' imprisonment.

mechanism for the disclosure of wrongdoings in the public service. It also includes provisions to protect “whistleblowers”.

Scope of the Act

This Act would cover the public service of Manitoba, including departments, government bodies³⁸ and certain specified offices.³⁹ It would apply to the disclosure of the following wrongdoings in or relating to the public service:

- An act or omission constituting an offence under a Manitoba or federal Act or regulation;
- An act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of an employee;
- Gross mismanagement, including of public funds or a public asset; and
- Knowingly directing or counselling a person to commit any of the above-mentioned wrongdoings.

Although this Act would establish procedures allowing an individual outside of the public service to communicate information relating to one of the wrongdoings described above, it would apply primarily to disclosures made by employees and officers of the public service.

Obligation to establish procedures to manage disclosures

Each chief executive⁴⁰ would be required to establish procedures to manage disclosures by employees of the portion of the public service for which he/she is responsible, including procedures concerning the following matters:

- Receiving and reviewing disclosures, including setting time periods for action;
- Investigating disclosures in accordance with the principles of procedural fairness and natural justice;
- The confidentiality of information collected in relation to disclosures and investigations;
- Protecting the identity of persons involved in the disclosure process, subject to any other Act and to the principles of procedural fairness and natural justice;

³⁸ The term “government bodies” would include the following entities: a government agency as defined in the *Financial Administration Act*, a regional health authority subject to *The Regional Health Authorities Act*, a child and family services agency or authority established under the *Child and Family Services Act* or the *Child and Family Services Authorities Act*, and any other body so designated in the regulations.

³⁹ The term “office” would include the offices of the Auditor General, the Chief Electoral Officer, the Children’s Advocate and the Ombudsman.

⁴⁰ The term “chief executive” would include the following persons: the deputy minister of a department, the chief executive officer of a government body and the officer of the Legislative Assembly in charge of an office.

- Reporting the outcomes of investigations; and
- Respecting any other matter specified in the regulations.

Moreover, each chief executive would be required to designate a senior official to be the designated officer for the purposes of the Act. The designated officer would be responsible for receiving and dealing with disclosures by employees in the portion of the public service for which the chief executive is responsible.

A chief executive could be exempted from the requirements described above if he/she determines, in consultation with the Ombudsman appointed under the *Ombudsman Act*, that it is not practicable to apply them due to the size of the portion of the public service for which he/she is responsible.

Finally, each chief executive would be required to ensure that information about the proposed law and disclosure procedures is widely communicated to employees of the portion of the public service for which he/she is responsible.

Disclosure of Wrongdoings

Under this Act, an employee who reasonably believes that he/she has information that could show that a wrongdoing has been committed or is about to be committed could make a disclosure to his/her supervisor or designated officer or to the Ombudsman.⁴¹ A disclosure would have to be in writing and contain certain information required by the Act.

Moreover, an employee would be allowed to make a public disclosure without following the above procedures if he/she reasonably believes that a matter constitutes an imminent risk of a substantial and specific danger to the life, health or safety of persons, or to the environment and that there is insufficient time to make a disclosure in accordance with the requirements of this Act. However, he/she would be required to first make the disclosure to an appropriate law enforcement agency or, in the case of a health-related matter, to the chief medical officer of health. Immediately thereafter, he/she would also be required to make the disclosure to his/her supervisor or designated officer. Finally, the provisions allowing an employee to make a public disclosure would be subject to any direction that the appropriate law enforcement agency or chief medical officer (as applicable) considers necessary in the public interest, if any.

Restrictions on Disclosure

In making a disclosure under this Act, an employee could not relate any Cabinet confidences protected under the *Freedom of Information and Protection of Privacy Act* or any information protected by solicitor-client privilege. Moreover, if the disclosure involves personal or confidential information, he/she would be required to take

⁴¹ It should be noted that an employee of the office of the Ombudsman could seek advice or make a disclosure regarding that office to the Auditor General. If disclosures are made, the Auditor General would be required to carry out the responsibilities that this Act would confer on the Ombudsman with respect to disclosures.

reasonable precautions to ensure that no more information is communicated than is necessary to make the disclosure.

In addition to these restrictions on the communication of information, a public disclosure concerning an urgent matter could not take place when prevented by or under a Manitoba or federal Act or regulation.

Request for Advice

An employee who is considering making a disclosure could request advice from the designated officer or the Ombudsman. If they required it, the request would have to be in writing.

Procedure for the investigation of disclosures by the Ombudsman

The Ombudsman would be responsible for investigating disclosures that he/she receives under this Act.⁴² However, he/she would not be required to investigate a disclosure—and could cease an investigation—in the circumstances specified by this Act (e.g. he/she is of the opinion that the disclosure is frivolous or vexatious, has not been made in good faith or does not deal with a sufficiently serious subject matter).

Upon completing an investigation, the Ombudsman would be required to prepare a report containing his/her findings and any recommendations about the disclosure and the wrongdoing. He/she would have to give a copy of the report to the employee and the appropriate chief executive.⁴³ When making any recommendations, the Ombudsman could request the department, government body or office to notify him/her, within a specified period of time, of the steps it has taken or proposes to take to give effect to them. Furthermore, if he/she believes that the part of the public service in question has not appropriately followed up on his/her recommendations or did not cooperate in his/her investigation, he/she could make a report on the matter to the responsible minister (in the case of a department), to the board of directors and the responsible minister (in the case of a government body), or to the Speaker of the Legislative Assembly (in the case of an office).

Finally, where the Ombudsman, in the course of an investigation, has reason to believe that another wrongdoing has been committed, he/she could investigate the wrongdoing in question.

It should be noted that this Act would provide that when an employee makes a disclosure to the Ombudsman, the latter can take any steps he/she considers

⁴² However, if he/she believes that a disclosure made to him/her would be dealt with more appropriately by the Auditor General, he/she could refer the matter to the latter to be dealt with in accordance with the *Auditor General Act*.

⁴³ When the matter being investigated involves the chief executive, the Ombudsman would also be required to give a copy of the report to the responsible minister (in the case of a department), to the board of directors and the responsible minister (in the case of a government body), or to the Speaker of the Legislative Assembly (in the case of an office).

appropriate to help resolve the matter within the department, government body or office concerned.

Disciplinary action against an employee

This Act would stipulate that an employee who commits a wrongdoing is subject to appropriate disciplinary action, including termination of employment, in addition to and apart from any penalty provided for by law.

Protection from Reprisal

A person would be prohibited from taking a reprisal against an employee, or directing that one be taken, because the employee has, in good faith, sought advice about making a disclosure in accordance with the proposed law, made a protected disclosure or cooperated in an investigation under the proposed law. "Reprisal" would be defined as any of the following measures taken against an employee: a disciplinary measure; a demotion; termination of employment; or any measure that adversely affects the employment or working conditions of the employee. A threat to take any of these measures would also constitute a reprisal.

An employee or former employee who alleges that a reprisal has been taken against him/her could file a complaint with the Manitoba Labour Board appointed under the *Labour Relations Act*. If the Board determines that a reprisal has been taken against the complainant, it could make an order requiring a person to take all necessary measures to:

- Permit the complainant to return to his/her duties;
- Reinstatement of the complainant or, if in the Board's opinion the relationship of trust between the parties cannot be restored, pay damages to him/her;
- Pay compensation to the complainant equivalent to what he/she would have received if, in the Board's opinion, the reprisal had not occurred;
- Pay an amount to the complainant equal to any expenses and any other financial losses that he/she has incurred as direct result of the reprisal;
- Cease an activity that constitutes the reprisal;
- Rectify a situation resulting from the reprisal; and/or
- Do or refrain from doing anything in order to remedy any consequence of the reprisal.

Protection for private-sector employees who provide information

A person other than an employee of the public service could make a disclosure to the Ombudsman where he/she reasonably believes that he/she has information that could show that a wrongdoing has been or is about to be committed in the public service—provided that the information is in writing and contains certain details required by this Act (e.g. a description of the wrongdoing). If, as a result of the information, the Ombudsman has reason to believe that a wrongdoing has been or is about to be committed, he/she could investigate the wrongdoing.

A private-sector employer would be prohibited from taking one of the “prohibited measures” specified in the Act against an employee for the sole reason that the latter has, in good faith, provided information to the Ombudsman about an alleged wrongdoing. An employer would also be prohibited from taking such measures for the sole reason that he/she believes that an employee will provide information. Under the Act, “prohibited measures” would be defined as follows: any disciplinary measure; a demotion; termination of employment; any measure that adversely affects the employment or working conditions of an employee; or a threat to take any of these measures.

Legal Advice

If a designated officer or the Ombudsman is of the opinion that it is necessary to further the purposes of the Act, he/she could, subject to any conditions prescribed by regulation, arrange for legal advice to be provided to an employee or any other person involved in any process or proceeding under the proposed law.

Prohibitions

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

- Knowingly making a false or misleading statement while seeking advice about making a disclosure or making a disclosure or during an investigation;
- Wilfully obstructing a supervisor, designated officer or chief executive, or any person acting on their behalf or under their direction, in the performance of a duty under the Act; or
- Destroying, mutilating, altering, falsifying or concealing a document or thing that he/she knows is likely to be relevant to an investigation under the Act, or directing, counselling or causing another person to do so.

A person who contravenes one of the prohibitions mentioned above or the provisions that prohibit the taking of reprisals (or prohibited measures) against a public service employee (or private-sector employee) would be guilty of an offence and would be liable, on summary conviction, to a maximum fine of \$10,000.

Coming into force

If this Bill is passed, the provisions described above will come into force on a date to be announced by proclamation.

II. INDUSTRIAL RELATIONS

A. *Legislation of General Application*

Nova Scotia's legislature passed *An Act to Amend Chapter 475 of the Revised Statutes, 1989, the Trade Union Act* (Bill 219). Bill 219, which was assented to on December 8, 2005, will make a number of amendments to the *Trade Union Act*. Unless otherwise indicated, these amendments are slated to come into force on October 1, 2006.

The most important amendments include the following measures:

- To establish an expedited grievance arbitration procedure that will be applicable not only to disputes between the parties to collective agreements under the *Trade Union Act*, but also to rights disputes under the *Civil Service Collective Bargaining Act*, the *Corrections Act*, or the *Highway Workers Collective Bargaining Act*.
- To provide that an application for expedited arbitration with respect to a dispute arising out of a collective agreement may be made by either party when the grievance procedure under the collective agreement has been exhausted, five months or more have passed since the dispute was referred to arbitration, and no hearings have commenced.
- To add a provision respecting a duty of fair representation for trade unions and persons acting on their behalf, whose bargaining rights have been acquired under the *Trade Union Act*, the *Civil Service Collective Bargaining Act*, the *Corrections Act* or the *Highway Workers Collective Bargaining Act* with respect to an employee's rights under a collective agreement.
- To allow complaints to the Labour Relations Board respecting alleged breaches of the duty of fair representation and to make applicable certain conditions for presenting a complaint (e.g., using any available internal grievance/appeal procedure of the trade union and presenting the complaint within certain time limits).
- To provide that the Board may refuse to hear complaints about alleged breaches of the duty of fair representation if it considers them frivolous or otherwise not worthy of a hearing.
- To establish a procedure for appointing a review officer to inquire into a complaint concerning a trade union's duty of fair representation. The review officer will have the power to dismiss the complaint or attempt to effect a settlement. In the latter case, if a settlement is not possible, he/she will refer the complaint to the Board.
- To allow the Board to order a trade union to rectify a breach of the duty of fair representation.
- To provide that the sections of the Act dealing with the trade unions' duty of fair representation of employees and the expedited grievance arbitration procedure do not apply in the construction industry.
- To permit the appointment of more than one Vice-chairman of the Board.

- To authorize the Chairman of the Board or a Vice-chairman to sit alone to hear a matter with respect to an uncontested application or question, or a complaint concerning a trade union's duty of fair representation. When doing so, the Chairman or a Vice-chairman may exercise all the powers of the Board. (This amendment will come into force on October 1, 2007, upon proclamation by the government.)

B. Public and Parapublic Sectors

In the **federal jurisdiction**, the *Public Service Labour Relations Act* was proclaimed into force on April 1, 2005,⁴⁴ 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*. The latter provisions were brought into force by government order on December 31, 2005.

In **British Columbia**, the *Health Statutes Amendment Act, 2005* (Bill 15) came into force on November 24, 2005, the day it received Royal Assent. Among other things, it has amended the *Health Authorities Act* to specifically exclude "nurse practitioners" from the "nurses" bargaining unit established by the Act. It is worth noting that the Minister responsible for the administration of the *Labour Relations Code* continues to have the power to direct that the Labour Relations Board add a bargaining unit as an appropriate bargaining unit in the health sector and/or consolidate bargaining units.

In **Ontario**, the *Local Health System Integration Act, 2006* (Bill 36) has amended, among other things, the *Public Sector Labour Relations Transition Act, 1997*, effective March 28, 2006. The latter Act applies to integrations that occur in certain sectors and within a prescribed transitional period.

Bill 36 made the following amendments to the scope of the *Public Sector Labour Relations Transition Act, 1997*:

- The Act no longer applies only within the prescribed transitional period, but applies indefinitely to integrations in certain sectors, such as the municipal sector and the school sector.
- Upon the request of an employer that is or will be subject to a health services integration or a bargaining agent that represents employees of such an employer, the Ontario Labour Relations Board may issue an order declaring that the Act applies to the health services integration in question. However, this does not apply with respect to an employer that is the Crown.
- In cases of partial integration when a predecessor employer continues to operate on and after the changeover date, new sections clarify how provisions that govern issues such as the status of bargaining rights and collective agreements on the changeover date are to be modified to apply in such cases.

Another piece of legislation in Ontario—the *Good Government Act, 2006* (Bill 190)—has, among other things, amended the *Fire Protection and Prevention Act, 1997*. Under the

⁴⁴ This proclamation (SI/2005-123) was published in the Canada Gazette, Part II, of December 14, 2005.

amendments, the non-disclosure and non-compellability provisions that apply to conciliators under the *Labour Relations Act, 1995* also apply to conciliators who are appointed under the *Fire Protection and Prevention Act, 1997* to assist in the settlement of labour disputes involving firefighters employed in a fire department. This amendment took effect on June 22, 2006, on the day Bill 190 received Royal Assent.

C. Bankruptcy and Insolvency

As indicated in the previous chapter of this report, the **Parliament of Canada** passed Bill C-55, the *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*.

This legislation, in addition to creating the legislative basis for a Wage Earner Protection Program and providing for a limited "super priority" for unpaid wage claims in case of bankruptcy or insolvency, will further amend the *Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*, as regards collective bargaining issues.

These amendments, which will come into force on a date to be set by the government, stipulate 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. Such a notice will 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 will 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;
- it has made legitimate efforts to renegotiate the collective agreement with the bargaining agent; and
- a failure to issue an order is likely to result in irreparable damage to the employer.

The insolvent person or debtor company will 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 will remain in force unless it is changed by agreement between the parties. Where a collective agreement is revised under these provisions, the bargaining agent will have 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 Court will not be authorized to modify its terms.

D. Emergency Legislation

In the past year, emergency legislation was adopted in two provinces: in British Columbia, to settle a dispute in the education section; and in Quebec, to ensure continuity of services in public sector bodies.

British Columbia enacted the *Teachers' Collective Agreement Act* (Bill 12) on October 7, 2005. The purpose of this Act was to settle a labour dispute between the British Columbia Teachers' Federation and the British Columbia Public School Employers' Association.

The collective agreement between the parties that expired on June 30, 2004 was deemed to constitute a collective agreement between them expiring on June 30, 2006.

Subject to certain limits set out in the *School Act*, the parties could agree to modify the collective agreement constituted under the legislation. However, a provision of the collective agreement that created an obligation for the government could not be modified without the approval of the Minister of Finance.

In **Quebec**, *An Act respecting conditions of employment in the public sector* (Bill 142) was passed and was assented to on December 16, 2005.

The purpose of this Act is to ensure the continuity of public services and provide for the conditions of employment of employees of public sector bodies.⁴⁵ To that end, it provides for the general renewal of the latest collective agreements and specifies that they are binding on the parties until March 31, 2010. However, under the Act, the conditions of employment stipulated in those collective agreements are modified, in particular to increase wage rates and scales and to ensure the implementation of agreements reached with associations of employees.

The Act stipulates that employees must, as of 00:01 a.m. on December 16, 2005, report for work according to their regular work schedule and other applicable conditions of employment, and perform all the duties attached to their respective functions, without any stoppage, slowdown, reduction or degradation of their normal activities. However, this obligation does not apply to employees not reporting for work because they have tendered their resignation (unless they have done so as part of concerted action), or because they have been fired or suspended or have exercised their right to retire.

For the period of application of the provisions of the Act regarding the continuity of public services, no association of employees may declare a strike or participate in concerted action if the strike or concerted action involves a contravention of the provisions ensuring the delivery of normal services by employees. Similarly, no public sector body may declare a lockout if this involves such a contravention.

⁴⁵ For the purposes of the Act, public sector bodies include the Government, government departments and bodies whose personnel is appointed in accordance with the *Public Service Act*, school boards, general and vocational colleges, and institutions in the health and social services sector. There are, however, some exceptions to the application of the Act, such as the employees represented by the Professional Union of Government of Quebec Physicians.

The Act provides for administrative measures if these obligations are not fulfilled. The most important of these measures are described below.

On noting that its employees are not complying with the obligations specified in the Act in sufficient number to ensure that normal services are provided, a public sector body must suspend withholding any union assessment or dues (or an amount in lieu thereof) from the wages paid to the employees represented by an association of employees. The suspension is effective for a period equal to 12 weeks per day or part of a day during which this violation of the Act is noted by the public sector body. Despite any clause of a collective agreement or of an agreement, employees represented by the association of employees concerned are not required to pay to it any assessment, dues, contribution or other amount in lieu thereof for the duration of the suspension.

No employee who fails to comply with the obligation to perform all the duties attached to his/her functions, as mentioned previously, may receive remuneration for the contravention period. In addition, if the contravention of the Act consists of an absence from work or participation in a work stoppage, the salary to be paid to the employee under the applicable collective agreement for work performed is subsequently reduced by an amount equal to the salary the employee would have received for each period of absence or work stoppage.

If the employees of a public sector body do not comply with the obligation to perform all the duties attached to their functions in sufficient number to ensure that normal services are provided, the government may, by order, from that date, for the period and on the conditions it specifies—but exclusively for the purpose of ensuring the provision of services by the body—replace, amend or strike out any clause of the collective agreement between that body and the association representing the employees in order to determine how the body is to fill a position, hire new employees and handle any matter related to work organization.

The Act also contains provisions relating to civil liability. It stipulates that an association of employees is liable for any damage caused during a failure by employees it represents to comply with the obligation to perform all the duties attached to their functions, unless it shows that the damage is not a result of the contravention of the Act or that the contravention is not part of a concerted action. The same applies to a group to which the association of employees belongs, with which it is affiliated or to which it is bound by contract, if the group has not taken the appropriate measures to induce the association of employees to comply with the obligations it has under the Act.

With respect to penal proceedings, fines are provided for various offences under the Act. These fines range from \$7,000 to \$35,000 if the person is an executive, employee or representative of an association of employees or a group of such associations, or if the person is an executive or representative of a public sector body, or from \$100 to \$500 if the person is an employee or an individual other than those just mentioned; and from \$25,000 to \$125,000 in the case of an association of employees, a group of such associations or a public sector body. These fines apply to each day or part of a day during which the offence continues.

E. Construction Industry

In **Quebec**, Bill 135⁴⁶ was adopted to amend various provisions of the *Act respecting labour relations, vocational training and manpower management in the construction industry*. Unless otherwise indicated, these amendments came into force on December 13, 2005.

Among other things, Bill 135 has extended to anyone the application of prohibitions against intimidation, discrimination and coercion when the right to freedom of association is exercised, and it states that an employee association is prohibited from acting in an arbitrary or discriminatory manner when making employment references with respect to employees it represents.

Bill 135 also provides that any interested person may file a complaint with the Commission des relations du travail (Labour Relations Commission – CRT), within certain time limits, about an infringement with respect to freedom of association. If the complainant establishes to the satisfaction of the CRT that he/she is exercising a right related to freedom of association, it is up to the person or association of employees complained against to prove that there was good and sufficient reason for the act complained about. These provisions took effect on March 1, 2006.

In another vein, amendments have been made to the provisions of the Act that deal with the election and functions of job-site stewards. First, for the purposes of those provisions, the term “union” is now defined as any union or association of employees affiliated with a representative association, or any representative association that does not include such affiliated unions or associations. In addition, the amendments provide that the person elected as job-site steward must give his/her union a declaration that his/her election does not contravene section 26 of the Act (which specifies instances, related to a criminal offence, whereby a person is disqualified from holding certain positions). The union must immediately forward the declaration to the Commission de la construction du Québec (Quebec Construction Commission – CCQ). A new provision also specifies that on the job site, the job-site steward must limit himself/herself to doing work for the employer and carrying out the functions of job-site steward determined by the Act. These provisions took effect on March 1, 2006.

In addition, an amendment provides that the decision of a jurisdictional conflict resolution committee, created under a collective agreement, is binding until such time as the construction industry commissioner renders a decision on the jurisdictional conflict (if called upon to do so). Furthermore, Bill 135 provides that the commissioner’s decision also binds the associations of employees that are party to the conflict for the purposes of the future assignment of similar work on other job sites.

Other amendments contained in Bill 135 exclude from the scope of the Act construction work on greenhouses to be used for agricultural production when the work is carried out by the regular employees of the greenhouse operator or by employees assigned by the greenhouse manufacturer, and confirm that the Act does not apply to work on tailings

⁴⁶ *An Act to amend the Act respecting labour relations, vocational training and manpower management in the construction industry* received Royal Assent on December 13, 2005.

facilities. Further amendments have added “psychological harassment in the workplace” to the list of grounds on which a grievance may be filed and require the CCQ to conduct an inquiry into all written complaints that bring an infringement of the Act to its attention.

Bill 135 also recognizes the Conseil provincial du Québec des métiers de la construction (International) and the Fédération des travailleurs et travailleuses du Québec (FTQ-Construction) as representative associations of employees in the construction industry, in replacement of their former joint council.

Lastly, Bill 135 has amended certain penal provisions of the Act. Among other things, for a contravention of the provisions of the Act dealing with intimidation, discrimination and coercion used against an employee, or discrimination in hiring, the minimum fine has been raised from \$350 to \$700 and the maximum fine has been increased from \$700 to \$13,975. Furthermore, if the offence has been committed by an employer’s representative, a union representative, a business agent or a job-site steward, the Court must declare such person disqualified to represent, in any capacity whatsoever, an employer or an association of employees for five years from the day sentence is rendered.

In **New Brunswick**, Regulation 2006-52⁴⁷ amended the *Major Projects Regulations 90-51* under the *Industrial Relations Act*. Regulation 2006-52 designates as a “major project”, pursuant to section 51.1 of the *Industrial Relations Act*, the refurbishment of the Point Lepreau Generating Station.⁴⁸ A new Schedule F added to the *Major Projects Regulations* demarcates the geographic area where this major project is situated.

However, a provision also specifies that work carried out by the New Brunswick Power Nuclear Corporation and work carried out within the geographic area described in schedule F that is not related to the refurbishment of the generating station does not fall under the definition of “major project” under the Act.

Regulation 2006-52 came into force on July 27, 2006.

Inter-provincial Labour Mobility in the Construction Industry

On June 2, 2006, the governments of **Quebec** and **Ontario** signed the *Ontario-Quebec Agreement on Labour Mobility and Recognition of Qualifications, Skills and Work Experience in the Construction Industry (2006)*. From Ontario’s perspective, this agreement is aimed at improving access to construction contracts and construction jobs in Quebec for Ontario residents. Further to the agreement, the Quebec government adopted two regulations, both of which came into force on June 30, 2006: the *Regulation to amend the Regulation respecting the application of the Building Act (O.C. 676-2006)* and the *Regulation to amend the Regulation respecting certain*

⁴⁷ This regulation was gazetted on August 9, 2006.

⁴⁸ The refurbishment of the Point Lepreau Generating Station has been added to the works already designated as major projects under the *Major Project Regulation* (i.e., the Dalhousie Generating Station Orimulsion Conversion and Flue Gas Desulphurization Installation and the refurbishment of the Coleson Cove Generating Station).

exemptions from the requirement of holding a competency certificate or an exemption issued by the Commission de la construction du Québec (O.C. 677-2006).

In exchange, the Ontario government agreed to repeal the *Fairness is a Two-Way Street Act (Construction Labour Mobility), 1999*, whose purpose was in part to restrict access to construction workers residing in any jurisdiction designated by regulation. It was repealed on June 30, 2006, by proclamation.

F. Fishing Industry

Newfoundland and Labrador enacted Bill 73, *An Act to Amend the Fishing Industry Collective Bargaining Act*, which came into force on February 24, 2006. The most significant amendments to the *Fishing Industry Collective Bargaining Act* are outlined below.

Bill 73 has introduced new procedures for arriving at a collective agreement between a certified bargaining agent representing fishers and a processors' organization accredited to bargaining collectively for all processors in the province of a species of fish.

In substitution for the possible involvement of a conciliation board, a new Standing Fish Price-Setting Panel has been established, consisting of three members appointed by the government. The Panel has the duty, among other things, to facilitate collective bargaining under the Act. The Panel also has the power to impose a collective agreement where the parties are unable to achieve one through negotiation. It is prohibited for fishers to cease business dealings or for processors or processors' organizations to engage in a lockout.

Provisions of the *Labour Relations Act* regarding the possible appointment of conciliation officers continue to apply to matters within the scope of the *Fishing Industry Collective Bargaining Act*.

Bill 73 also provides that where, in the absence of an accredited processors' organization, a certified bargaining agent negotiates a collective agreement for a fish species and that collective agreement is binding on the processors who process more than 50% of that fish species, then the terms of that collective agreement are binding on all processors in the province who process that fish species.

In addition, Bill 73 provides for increased fines in the event of an illegal lockout or cessation of business dealings.

G. Collective Agreement Expiry Date Exception

In **Saskatchewan**, the *Collective Bargaining Agreement Expiry Date Exception Act* (Bill 20) came into force on December 2, 2005, the date it received Royal Assent.

This Act provides that the expiry dates of certain collective bargaining agreements between IPSCO Saskatchewan Inc. and United Steelworkers of America, Local 5890 and between Shaw Pipe Protection Limited and Construction and General Workers'

Union, Local 180, are the expiry dates specified in these agreements. These dates apply regardless of the provision of the *Trade Union Act* which deems that a collective bargaining agreement expires three years from its effective date if it provides for a longer term of operation.

III. OCCUPATIONAL HEALTH AND SAFETY

A. *Legislation of General Application*

In **Newfoundland and Labrador**, the *Occupational Health and Safety Regulations* and the *Workplace Hazardous Materials Information System (WHMIS) Regulations* under the *Occupational Health and Safety Act* were amended by Regulations 71/05 and 72/05 (gazetted September 16, 2005). As a result, provisions that apply to worker health and safety representatives also became applicable to workplace health and safety designates, effective September 16, 2005. (On December 16, 2004, amendments were made to the *Occupational Health and Safety Act* concerning the appointment, in certain circumstances, of a workplace health and safety designate.)

The legislature of Newfoundland and Labrador also passed Bill 9, *An Act to Amend the Occupational Health and Safety Act*, which came into force on May 26, 2006, the day it received Royal Assent. Among other things, this legislation amended the *Occupational Health and Safety Act* by changing the limitation period during which offences under the Act or regulations may be prosecuted. Under the amended Act, any prosecution must be started within 2 years of the date on which the offence is alleged to have been committed (as previously), or within two years of the date on which an assistant deputy minister or an officer of the Occupational Health and Safety Division becomes aware of the alleged offence (as provided in the amendment).

In the **federal jurisdiction**, a regulatory amendment (SOR/2005-401, gazetted December 14, 2005) added a new Part XIX (Hazard Prevention Program) to the *Canada Occupational Health and Safety Regulations* (COHS Regulations) under Part II of the *Canada Labour Code* on November 28, 2005.

These new provisions require that the employer, in conjunction with the policy committee, or, if there is no such committee, the workplace committee or the health and safety representative, develop, implement and monitor a program for the prevention of hazards in the workplace that is appropriate to its size and the nature of the hazards. This program must include an implementation plan, hazard identification and assessment (including the methodology used), preventive measures, employee education, and a program evaluation. Various requirements are specified with respect to each component of the program. The obligation to develop, implement and monitor a hazard prevention program applies in respect of every workplace controlled by the employer, and in respect of workplaces not under its control, to the extent that the employer controls the work activity carried out by one or more employees.

If a program evaluation has been conducted as mentioned above, the employer must prepare a program evaluation report and submit a copy to the Minister of Labour as part of the employer's annual hazardous occurrence report referred to in Part XV of the COHS Regulations. The employer must keep readily available every program evaluation report for a period of six years.

A series of regulations were adopted under **Ontario's Occupational Health and Safety Act** (Regulations 628/05 to 632/05, gazetted December 24, 2005).

A new comprehensive *Confined Spaces Regulation* will come into force on September 30, 2006. It will apply to all workplaces covered by the Act, except farming operations, work performed underwater during a diving operation, as defined in the *Diving Operations Regulation*, as well as work and workplaces governed by the *Industrial Establishments Regulation*, the *Mines and Mining Plants Regulation*, the *Construction Projects Regulation*, or the *Health Care and Residential Facilities Regulation*. Amendments have been made to the last four Regulations just mentioned to revise their confined spaces provisions. These amendments will also take effect on September 30, 2006. In addition, certain sections of the *Confined Spaces Regulation* will not apply to emergency work performed by firefighters or certified gas technicians working under the direction of a fire department.

In **Prince Edward Island**, amendments to the *General Regulations* under the *Occupational Health and Safety Act* (EC2006-43 and EC2006-44, gazetted February 4, 2006) came into force on May 1, 2006.

These amendments set safety standards for the operation, inspection and maintenance of automotive lifts. As discussed later in this report, they have also introduced new provisions dealing with violence in the workplace and working alone. In addition, Part 24 of the Regulations (Scaffolds) was repealed and replaced by revised safety requirements contained in new separate regulations, the *Scaffolding Regulations*.

In a separate development, effective May 24, 2006, the *Act to Amend the Occupational Health and Safety Act* (Bill 25) increased from \$50,000 to \$250,000 the maximum fine payable for contravening the *Occupational Health and Safety Act*, regulations, or an order or requirement of an occupational health and safety officer or the Director of Occupational Health and Safety.

A provision of the Act that restricts the release of information obtained by occupational health and safety officers or other persons in the course of their duties or functions under the Act or regulations was also amended. The amendment allows for the disclosure of such information where that disclosure facilitates the administration of other legislation administered by the Workers Compensation Board.

A series of amendments to **British Columbia's Occupational Health and Safety Regulation** (under the *Workers Compensation Act*) came into effect on May 17, 2006 (B.C. Regs. 17/2006 to 21/2006, gazetted March 21, 2006).

In the case where an employer is required to initiate and maintain an occupational health and safety program (i.e., when it has a workforce of 20 or more workers and at least one workplace that is not determined to have a low risk of injury, or when it has a workforce of 50 or more workers), an amendment specifies that the program applies to the whole of the employer's operations.

Other amendments deal with health and safety requirements relating to such topics as the protective barrier at the back of logging trucks' cabs, work platforms, respirators, self-contained breathing apparatuses and occupational exposure to cytotoxic drugs.

In addition, on August 15, 2006, amendments were made to the Regulation with respect to the safety of automotive lifting devices.

Finally, in **Ontario**, the *Good Government Act, 2006* (Bill 190) received Royal Assent and came into force on June 22, 2006.

This legislation has, among other things, amended the *Occupational Health and Safety Act* to allow a Director appointed under the Act to publish or otherwise publicly disclose the name of a person convicted of an offence under the Act, a description of the offence, the date of the conviction and the person's sentence.

It is also worth noting that legislation introduced in **New Brunswick** to amend the *Occupational Health and Safety Act* (Bill 61), summarized in the 2004-2005 issue of *Highlights of Major Developments in Labour Legislation*,⁴⁹ died on the order paper. The bill was reintroduced in the following session of the legislature (as Bill 13). It received second reading on December 13, 2005. However, it also died on the order paper when the Legislature was dissolved on August 18, 2006, following an election call. Among other amendments, this Bill would have added new provisions to the *Occupational Health and Safety Act* as regards new duties for employers (with respect to workplace inspections), the training of members of joint health and safety committees, as well as the establishment of joint health and safety committees and the designation of health and safety representatives on construction sites.

B. Protection from Tobacco Smoke

The **Alberta Smoke-Free Places Act**, which was described in the *Highlights of Major Developments in Labour Legislation (2004-2005)*,⁵⁰ was proclaimed in force on January 1, 2006.⁵¹ A Regulation under the Act, the *Smoke-Free Places Signs Regulation*, took effect on the same date.

In **Nova Scotia**, Bill 225, *An Act to Amend Chapter 12 of the Acts of 2002, the Smoke-free Places Act*, received Royal Assent on December 8, 2005. This Bill brings amendments to the *Smoke-free Places Act*. It will require all indoor workplaces and public places to be smoke-free⁵², with the exception of designated smoking rooms in health-care facilities for the acute or long-term care of veterans, in licensed nursing homes and residential care facilities, and in homes for aged and disabled persons. It will

⁴⁹ This document is available at the following website:
http://www.hrsdc.gc.ca/asp/gateway.asp?hr=/en/lp/spila/cli/dllc/01Developments_in_Labour_Legislation_in_Canada.shtml&hs=lzl.

⁵⁰ *Ibid.*

⁵¹ The Proclamation of the *Smoke-Free Places Act* was published in the Alberta Gazette, Part 1, of November 15, 2005.

⁵² The *Smoke-free Places Act* currently permits smoking in rooms and areas that are enclosed and separately ventilated, where no person under the age of 19 may enter.

also prohibit smoking in outdoor areas of restaurants or places licensed to serve alcoholic beverages if these areas are used for the serving or consumption of food or beverages.

These amendments will take effect on December 1, 2006, upon the government so ordering by proclamation.

In the **Northwest Territories**, Bill 16—the *Tobacco Control Act*—was assented to on March 2, 2006.

Once proclaimed into force, the *Tobacco Control Act* will prohibit the smoking of tobacco, subject to certain exceptions, in buildings, structures and vehicles to which the public has access⁵³, and in other prescribed public places. The exceptions will notably include certain public places used for traditional Aboriginal spiritual or cultural practices or ceremonies requiring the use of tobacco; parts of nursing homes, group homes or other residential facilities that meet the prescribed requirements; and parts of workplaces to which the public is not admitted that are used for private residential accommodation or that meet prescribed requirements.

An employer or his/her representative will be prohibited from dismissing, disciplining or suspending an employee, or threatening to do so, imposing a penalty on an employee or intimidating or coercing him/her because the employee has acted in compliance with or has sought the enforcement of this legislation.

Proprietors of public places in which smoking is prohibited will have to ensure that no ashtrays⁵⁴, matches, lighters or other things designed to facilitate smoking are provided in those public places, except as may be permitted by the regulations, and that no-smoking signs are displayed in the prescribed form, manner and location.

Proprietors of public places where smoking is prohibited will have to refuse service to persons who contravene the prohibition on smoking, and may use reasonable means to remove a person who refuses to stop smoking.

If a provision described above is inconsistent or in conflict with another Act, a regulation or a municipal bylaw, the provision that is more restrictive with regard to smoking will prevail.

Inspectors appointed or designated under the Act will enforce and administer the new legislation, and there will be fines for contravening its provisions.

Bill 16 will come into force on a date or dates set by order of the N.W.T. Commissioner.

⁵³ The term “workplace” is defined as all or any part of a building, structure, vehicle or conveyance in which one or more employees work, and includes any other area provided by the employer for the use of the employees. It is worth noting that in 2004, the *Environmental Tobacco Smoke Work Site Regulations* were adopted under the *Safety Act* and the *Mine Health and Safety Act*.

⁵⁴ This prohibition will not apply to ashtrays and lighters installed in a vehicle by the manufacturer.

C. Violence in the Workplace and Persons Working Alone

As previously mentioned, **Prince Edward Island** made amendments to the *General Regulations* under the *Occupational Health and Safety Act*. These amendments, which came into force on May 1, 2006, include new provisions dealing with violence in the workplace and working alone.

The new provisions define "violence" as the threatened, attempted or actual exercise by a person, other than a worker, of any physical force that causes or can cause injury to a worker, and includes any threatening statement or behaviour that gives a worker reasonable cause to believe that he/she is at risk of injury.

These provisions require that the employer conduct a risk assessment of the workplace to determine whether a risk of injury from violence may be present. The risk assessment must take into consideration the previous experience of violence in that workplace, occupational experience of violence in similar workplaces, and the location and circumstances in which the work takes place. If a risk of injury is identified, the employer must establish procedures, policies and work environment arrangements to eliminate the risk of violence to workers or, where this is not possible, to minimize that risk. The employer must also establish procedures for reporting, investigating and documenting incidents of violence in the workplace.

In addition, the employer is required to inform workers, who may be exposed to the risk of violence in the workplace, of the nature and extent of that risk. This includes warning workers about particular persons that have a history of violent behaviour whom they may encounter in the course of their work. The employer must instruct these workers on how to recognize the potential for violence, the procedures, policies, and work environment arrangements which have been developed with respect to violence to workers in accordance with the Regulations, and the appropriate response to incidents of violence, including how to obtain assistance.

The employer must also ensure that a worker reporting an injury or adverse symptom as a result of an incident of violence in the workplace is advised to consult a physician for treatment or referral.

With respect to the provisions dealing with working alone⁵⁵, an employer must develop and implement written procedures to ensure, so far as is reasonably practicable, the health and safety of a worker who works alone from risks associated with the work assigned. Among the information that the procedures must contain are the identification of possible risks to each worker working alone, the steps to be followed to minimize those risks (including contacting the worker at specified time intervals) and details on how to obtain assistance in the event of injury or other circumstances that may endanger the health or safety of the worker. An employer must also implement a training program in respect of these procedures for persons working alone and their supervisors.

⁵⁵ This refers to the situation of a person who is the only worker of the employer at a workplace where assistance is not readily available in the event of injury, ill health or emergency.

D. Hazardous Substances

Ontario has amended the *Regulation respecting Control of Exposure to Biological or Chemical Agents* under the *Occupational Health and Safety Act* (through Regulation 607/05, gazetted December 17, 2005) in order to adopt new or revised occupational exposure limits (OELs) for 23 workplace hazardous substances. Most of the changes to the OELs came into force on November 28, 2005, while changes to the OELs for a hazardous substance (i.e., styrene) came into force on March 1, 2006, and revised OELs for styrene and another hazardous substance (i.e. formaldehyde) will take effect on December 31, 2007.

E. Biological Hazards

Saskatchewan's *Mandatory Testing and Disclosure (Bodily Substances) Act*, which was described in the *Highlights of Major Developments in Labour Legislation (2004-2005)*,⁵⁶ was proclaimed in force on October 17, 2005.⁵⁷

In addition, Saskatchewan adopted *The Occupational Health and Safety Amendment Regulations, 2005* under the *Occupational Health and Safety Act, 1993* (Regulation 112/2005⁵⁸).

Effective October 19, 2005, these Regulations have revised provisions of the *Occupational Health and Safety Regulations, 1996* dealing with exposure to infectious materials or organisms, and have improved protection for health care and other workers.

Under the new provisions, if workers are required to handle, use or produce an infectious material or organism or are likely to be exposed at a place of employment, an employer, in consultation with the occupational health committee, must develop and implement a written exposure control plan to eliminate or minimize worker exposure. Such an employer had, no later than January 1, 2006, to describe in his/her exposure control plan the steps to be taken as of July 1, 2006 to ensure compliance with these provisions and, if applicable, those dealing with the risk of injury from a contaminated hollow bore needle, as described below.

No employer may allow a worker to undertake any tasks or procedures that may put workers at risk of exposure to an infectious material or organism unless the worker has been trained with respect to the exposure control plan and the use of control measures appropriate for the task or procedure undertaken.

An employer, in consultation with the occupational health committee, must review the adequacy of the exposure control plan, and amend it if necessary, at least every two

⁵⁶ This document is available at the following website:

http://www.hrsdc.gc.ca/asp/gateway.asp?hr=en/lp/spila/cli/dllc/01Developments_in_Labour_Legislation_in_Canada.shtml&hs=lz .

⁵⁷ The proclamation was published in the Saskatchewan Gazette, Part I, of October 21, 2005.

⁵⁸ This regulation was gazetted November 4, 2005.

years or as required to reflect advances in infection control measures, including engineering controls.

In addition, effective July 1, 2006, in health care facilities (except medical or dental offices/clinics), correctional facilities and youth custody facilities, new duties are specified for employers and contractors when there are tasks or procedures in which it is reasonably anticipated that a worker or self-employed person may incur a percutaneous injury from a contaminated hollow bore needle. In such circumstances, an employer or a contractor must identify, evaluate and select needles with engineered sharps injury protections or needleless systems, in consultation with representatives of those workers or self-employed persons who will use the selected device, and must ensure that the selected safe needles are used. The employer or contractor is not required to fulfill those duties in certain circumstances, such as when he/she can demonstrate that needles with engineered sharps injury protections or needleless systems pose an additional risk to the patient, worker or self-employed person. Lastly, the employer or contractor must maintain an injury log for all exposures involving a percutaneous injury with a sharp that may be contaminated; entries in the injury log must contain specified information and protect the confidentiality of the exposed worker or self-employed person.

Legislation was also passed in **Nova Scotia** to reduce the risk of needlestick injuries from hollow-bore or intravenous needles, and thus to decrease the concomitant risk of contracting various diseases such as hepatitis B, hepatitis C, and HIV. The *Safer Needles in Healthcare Workplaces Act* (Bill 13) received Royal Assent on July 14, 2006 and will come into effect on January 1, 2007.

This Act mandates the use of safety-engineered needles in most healthcare workplaces, including nursing homes and licensed residential care facilities. Under the Act, every employer, including contractors and subcontractors, must ensure that employees and dependent contractors in a healthcare workplace use only safety-engineered needles. These are defined as a shielded needle device, a retractable needle system, a needleless device or a needle reduced device that is commercially available and approved as a medical device by Health Canada.

The Act does list some exceptions to this rule, however. It stipulates that an employer may allow an employee to use a needle that is not a safety-engineered needle where:

- the employer, in consultation with the joint health and safety committee or the health and safety representative, if any, can demonstrate that a safety-engineered needle either poses a greater risk than another needle to a patient, client, resident or employee, or may impair the effectiveness of a treatment;
- a needle device is pre-filled with a biological or antibiotic product that is present in the province on January 1, 2007 (i.e., the day that the Act comes into force);
- there is a public health emergency under the *Health Protection Act* or a state of emergency or state of local emergency under the *Emergency Measures Act*;
- a needle is stockpiled for use in a public health emergency or a state of emergency and is present in the province on January 1, 2007; or
- a national program (such as a blood-collection program or vaccination program) has not yet received Health Canada's approval to use a safety-engineered needle.

The Governor in Council may also make regulations exempting an employer from the requirement to use safety-engineered needles, or exempting a workplace or class of workplace from the definition of a “healthcare workplace”, thereby excluding it from the application of the Act.

Once the Act comes into force, employers subject to it will have to develop and implement a compliance plan within one year, unless an exemption is granted by the Governor in Council. The Act provides that such a plan must be developed in consultation with the applicable joint health and safety committee or health and safety representative, if any.

Employers subject to the Act will also have to provide instruction and training to employees who are required to use a safety-engineered needle, or who might accidentally come into contact with such a device. This instruction and training will have to be reviewed at least once per year, in consultation with any relevant health and safety representative.

An individual who fails to comply with the Act will be liable, upon summary conviction, to a fine of up to \$25,000 and/or imprisonment for up to twelve months. In the case of a corporation, the Act provides for a maximum fine of \$250,000.

In **Alberta**, the *Mandatory Testing and Disclosure Act* (Bill 26) received Royal Assent on May 24, 2006.

Effective on a date to be announced by proclamation, Bill 26 will replace the *Blood Samples Act*, which was assented to on May 11, 2004, but was not proclaimed in force. The new Act will allow an individual to apply to the Provincial Court 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”) while providing emergency assistance to that individual or performing duties as a firefighter, paramedic or peace officer, or while the individual is involved in a circumstance or activity or belongs to a class of individuals described in the regulations.

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, state any attempts that have been made to determine if the source individual is infected with a pathogen that causes a communicable disease, be submitted with a physician’s report, and meet any other prescribed requirements. Such an application will have to be made within 30 days of the applicant’s coming into contact with a bodily substance of the source individual, unless otherwise provided by regulation.

If the court issues a testing order and it is necessary to take a sample of a bodily substance from the source individual, one or more qualified analysts designated by a medical officer of health will conduct tests on the sample obtained under the legislation. As soon as possible after receiving the results of an analysis, a medical officer of health will have to make reasonable efforts to forward a copy of the results to the physicians of the applicant and the source individual. The results of an analysis will not be admissible

in evidence in any criminal or civil proceeding other than in accordance with the Act (i.e., the *Mandatory Testing and Disclosure Act*) or the *Public Health Act*.

Information concerning an applicant or a source individual that comes to a person's knowledge in the course of carrying out any responsibility under the *Mandatory Testing and Disclosure Act* or the regulations may not be used or disclosed, except in limited circumstances spelled out in the new legislation.

The Minister responsible for the legislation will not have to defray any cost of the applicant or the source individual, unless otherwise provided for by the regulations.

A person who contravenes the *Mandatory Testing and Disclosure Act* or the regulations will be guilty of an offence and be liable to a fine not exceeding \$2,000 for a first offence or \$5,000 for a second or subsequent offence.

Finally, a bill was introduced in **Ontario** to replace section 22.1 of the *Health Protection and Promotion Act*. This section deals with applications for orders to provide blood samples and the analysis of those samples. Bill 28, the *Mandatory Blood Testing Act, 2006*, received second reading on June 13, 2006.

Under the *Health Protection and Promotion Act*, a person who has come into contact with a bodily substance of another person in certain situations set out in or prescribed under the Act (e.g., while providing emergency health care or first aid services) may apply to a medical officer of health to have the blood of the other person analysed for viruses that cause certain communicable diseases. Under the current regulations, the medical officer of health may take seven days in attempting to get a blood sample or other evidence of seropositivity voluntarily from the person. If the medical officer of health fails to obtain a blood sample voluntarily, he/she may order that person to provide a blood sample for analysis, with or without first holding a hearing, and without notice to the person who will be subject to the order. If the medical officer of health refuses to grant the application for an order, his/her decision may be appealed to the Chief Medical Officer of Health or the Health Services Appeal and Review Board.

Bill 28 would shorten the length of time the process takes from the receipt of an application to the issuing of an order, if any, and it would transfer the power to make an order from a medical officer of health to the Consent and Capacity Board. Under the Bill, a person could still apply to a medical officer of health to have the blood of another person analysed for viruses in circumstances similar to those mentioned in the *Health Protection and Promotion Act*. The medical officer of health would have to attempt to contact the other person and request a blood sample for analysis or other evidence of seropositivity. If the person who is requested to provide a blood sample or other evidence does not provide it voluntarily within two days⁵⁹ after the receipt of the application, the medical officer of health would have to refer the application to the Consent and Capacity Board.

The Consent and Capacity Board would be required to hold and conclude a hearing into the application within seven days after the application is referred to it, and it would be

⁵⁹ The deadline would be extended by one day if it falls on a weekend or other holiday.

empowered, in specific situations, to order the person to provide a blood sample for analysis. The Board would have to give its decision within one day after concluding a hearing. There would be no appeal from the Board's decision.

Most provisions of Bill 28, including the legislative changes mentioned above, would come into force on a date to be announced by proclamation.

F. Boilers and Pressure Vessels

On March 1, 2006, **Alberta** adopted a new *Pressure Equipment Safety Regulation* (Regulation 49/2006), which replaced the previous *Boilers and Pressure Vessels Regulation* and the *Design, Construction and Installation of Boilers and Pressure Vessels Regulations*. Shortly afterwards, on March 9, 2006, the province issued a *Pressure Equipment Exemption Order* (Regulation 56/2006) that contains a list of apparatuses to which the *Safety Codes Act* and the *Pressure Equipment Safety Regulation* do not apply. Both regulations came into force on April 1, 2006.⁶⁰

For the purpose of ensuring that they are reviewed for ongoing relevancy and necessity, this Regulation is scheduled to expire on January 31, 2015 and the Exemption Order is scheduled to expire on August 1, 2014.

G. First Aid

Effective June 1, 2006, amendments have been made to **Newfoundland and Labrador's** *Occupational Health and Safety First Aid Regulations* (by means of Regulation 45/06⁶¹ under the *Occupational Health and Safety Act*) to provide that the Workplace Health, Safety and Compensation Commission must establish the education, practical training and other criteria required for obtaining first aid certificates (i.e., advanced first aid, emergency first aid or standard first aid). Previously, the Regulations required the successful completion of a specified St. John Ambulance safety course.

The Commission may designate as acceptable a course or program offered by a person or organization, which provides the training mentioned above, if it considers it to be equivalent to what is required by the Regulations.

H. Road Transport (Hours of Service)

In the **federal jurisdiction**, a new *Commercial Vehicle Drivers Hours of Service Regulations* (SOR/2005-313)—under the *Motor Vehicle Transport Act*—was published in the Canada Gazette, Part II, of November 16, 2005.

The *Commercial Vehicle Drivers Hours of Service Regulations* govern the maximum driving hours and minimum off-duty hours of commercial vehicle (bus and truck) drivers employed or otherwise engaged in extra-provincial transportation. These Regulations

⁶⁰ Both of these regulations were published in the Alberta Gazette, Part II, of March 31, 2006.

⁶¹ This Regulation was gazetted June 2, 2006.

require drivers to keep a record of their daily driving and other work activities in a prescribed format and to make these records available to designated enforcement officials upon request.

On January 1, 2007, the *Commercial Vehicle Drivers Hours of Service Regulations* will repeal and replace the *Commercial Vehicle Drivers Hours of Service Regulations, 1994*. The main objective of the new Regulations is to reduce the risk of fatigue-related commercial vehicle collisions by providing drivers with the opportunity to obtain additional rest. The most important changes featured in the new Regulations include the following:

- introducing a new daily requirement for a minimum of 10 hours off-duty. The current Regulations do not contain a specific daily requirement;
- reducing the daily maximum driving time by 18.8% from 16 hours to 13 hours;
- reducing the daily maximum on-duty time by 12.5% from 16 hours to 14 hours;
- introducing a new elapsed time limit of 16 hours from the last off-duty period of 8 consecutive hours or greater to the beginning of the next such period;
- requiring that upon reaching the on-duty, driving or elapsed time limit, a minimum of 8 consecutive hours of off-duty time is taken before re-commencing driving;
- eliminating an option that permits a driver, on a limited basis, to reduce the minimum off-duty time from 8 hours to 4 hours;
- increasing the minimum rest period for team drivers using a vehicle equipped with sleeper berth accommodations from 2 to 4 consecutive hours (under certain conditions, resting time in the sleeper berth can be accumulated as off-duty time);
- providing reasonable flexibility by permitting, within defined parameters, the averaging of on-duty and off-duty time over a 48-hour period;
- simplifying the rules by reducing the number of available work/rest cycles from three to two: a maximum 70-hour cycle over 7 days and a maximum 120-hour cycle over 14 days;
- requiring drivers who wish to switch or reset the cycle (cumulative time) under which they are operating to obtain a minimum of 36 consecutive hours off-duty for Cycle 1 (70 hours/7 days) and a minimum of 72 consecutive hours off-duty for Cycle 2 (120 hours/14 days); and
- requiring a minimum of 24 consecutive hours off-duty, at least once every 14 days for all drivers.

I. Mine Safety

Quebec adopted the *Regulation to amend the Regulation respecting occupational health and safety in mines* under the *Act respecting occupational health and safety* (O.C. 119-2006, gazetted March 8, 2006); it came into force on March 23, 2006.

This Regulation has added new definitions to the *Regulation respecting occupational health and safety in mines* relating to explosives, in particular regarding the place of loading, the loading area and the blasting area. In addition, it has amended certain

provisions relating to air quality and equipment (e.g. diesel engines and hoists). Safety measures have also been increased as regards fire prevention, the transportation, storing and loading of explosives, the storing of fuel and other combustible materials, and electrical equipment. Lastly, other amendments include adding two additional modules to the training course for underground mine workers.

Effective June 15, 2006, the **federal** government amended the *Coal Mining Occupational Health and Safety Regulations* under the *Canada Labour Code* to include provisions applying to employers who propose to enter a mine that has been closed without the intent to significantly disturb the ground (for example, to assess its economic potential).⁶² Under the new provisions, such employers must, before entering a closed mine, adopt and implement a safety code approved by the Senior Director, Occupational Health and Safety and Injury Compensation. The safety code must contain provisions having substantially the same purpose and effect as the Regulations, and it must notably include the following information: the name and geographical location of the proposed entry, a description of the work to be done and its duration, a description of safety and control measures that will be used when entering the mine, a list of equipment to be used, a description of the health and safety responsibilities of the employer and the employees, a list of individuals who will be entering the mine, and a description of how the mine will be sealed.

Other safety requirements contained in the Regulations do not apply to employment in a mine that is entered after having been closed if the employer has adopted and implemented a safety code approved by the Senior Director, and this applies as long as the employer does not significantly disturb the ground.

Finally, **Newfoundland and Labrador** adopted a regulation⁶³ to amend section 111 of the *Mines Safety of Workers Regulations*, which deals with training for rescue equipment. As a result, the power to determine training needs as regards the use and maintenance of mine rescue equipment, to approve required training courses, and to issue certificates of mine rescue training has been transferred from the chief inspector to the Workplace Health, Safety and Compensation Commission. This amendment came into force on August 11, 2006.

J. Construction Safety

In **Ontario**, Regulation 627/05 (gazetted December 24, 2005) made a number of amendments to the *Construction Projects Regulation* under the *Occupational Health and Safety Act*, notably to revise the electrical hazards provisions and to add safety requirements regarding multi-tiered load hoisting operations. The amendments introduced by this Regulation took effect on January 1, 2006, except for most of the revised electrical hazards provisions, which came into force on April 1, 2006.

⁶² The *Regulations Amending the Coal Mining Occupational Health and Safety Regulations* (SOR/2006-138) were published in the *Canada Gazette*, Part II, of June 28, 2006.

⁶³ *Mines Safety of Workers Regulation (Amendment)* under the *Occupational Health and Safety Act* (Regulation 60/06), published in the *Newfoundland and Labrador Gazette*, Part II, of August 11, 2006.

K. Safety in Diving Operations

Two provinces have adopted regulations regarding diving safety under their occupational health and safety legislation.

Comprehensive new *Occupational Diving Regulations* (N. S. Reg. 174/2005, gazetted September 30, 2005) have been adopted in **Nova Scotia**. They apply to all dives conducted at a workplace, except dives where only a snorkel is used and scientific dives conducted by an organization that is a member of the Canadian Association for Underwater Science (CAUS) in accordance with specified standards of practice published by CAUS. These Regulations came into force on May 1, 2006.

In **Newfoundland and Labrador**, Regulation 110/05 amended the *Occupational Health and Safety Regulations* on December 9, 2005 to update standards respecting diving operations, and to revise those applying specifically to seafood harvesting and aquaculture diving operations.

L. Trades Qualification

In **Ontario**, the *Trades Qualification and Apprenticeship Act* sets out certification requirements for certain trades and apprenticeship training requirements, including hazard recognition and health and safety training. Ministry of Labour health and safety inspectors enforce the Act's certification requirements for the following trades: electricians, hoisting engineers, plumbers, refrigeration and air conditioning mechanics, sheet metal workers and steamfitters. Upon request, employers and these trade workers are required to provide written proof of trades qualifications, such as a certificate of qualification or apprenticeship contract, to Ministry inspectors.

Until April 3, 2006, occupational health and safety inspectors had generally issued orders to comply if such written proof could not be provided immediately. As a result of amendments brought by Regulation 53/06⁶⁴ to Regulation 950 under the *Provincial Offences Act*, inspectors now have the power to issue tickets to employers, supervisors and workers in specified trades if written proof of trades qualifications is not provided.

⁶⁴ This Regulation was gazetted March 18, 2006.