504 International Labor and Employment Law

Pamela S. Poff
Senior Vice President & Deputy General Counsel
UBS PaineWebber Inc.

Kenneth J. Rose
Shareholder
Littler Mendelson, P.C.

Anthony J. Sutcliffe
Vice President & General Counsel
Ricoh Canada, Inc.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).
Materials may not be reproduced without the consent of ACCA.
Reprint permission requests should be directed to James Merklinger at ACCA: 202/293-4103, ext. 326; merklinger@acca.com

Faculty Biographies

Pamela S. Poff

Pamela S. Poff is the current deputy general counsel for employment law and related litigation and senior vice president with PaineWebber, Incorporated, where she oversees both domestic and international employment issues.

Before joining PaineWebber, Ms. Poff was a partner with the national employment defense law firm Jackson, Lewis, Schnitzler & Krupman where her specialty was preventative law and defending clients before administrative agencies and in state and federal courts. Ms. Poff has also been director of the New Jersey Division on Civil Rights and corporate equal opportunity compliance manager for the Mutual Benefit Life Insurance Co.

For the past 20 years, she has been an adjunct professor of employee relations at Rutgers Institute of Management and Labor Relations. She has received numerous awards throughout the years for her work in the civil rights arena. Most recently, she served as one of two private sector members on EEOC's Rulemaking Committee on the Older Workers Benefit Protection Act, and was recognized for her corporate leadership by the New Jersey Executive Policy Makers organization.

She received a BA *magna cum laude* from Upsala College, a JD from Seton Hall Law School, and is a graduate of the Program for Senior Managers, at Harvard University's JFK School of Government.

Kenneth J. Rose

Kenneth J. Rose is a shareholder in the San Diego office of Littler Mendelson. Mr. Rose represents employers with regard to wrongful termination litigation and trials, the development of employment policies and procedures, employment discrimination and harassment, wage and hour laws, international employment law issues, unfair competition, and labor unions. Mr. Rose cochairs Littler Mendelson's International Employment Law Practice Group. He is listed in *The Guide to the World's Leading Labour and Employment Lawyers*, published by the Euromoney Legal Media Group. Mr. Rose frequently makes presentations to corporate counsel, business groups, and human resource professionals on employment law issues. He is the author of *Lawful Hiring: A Primer for California Employers*.

Before relocating to San Diego, Mr. Rose practiced in Washington, where he concentrated in labor and employment law.

Mr. Rose is a member of the ABA's Section of International Law and the International Labor Law Committee of the ABA's Section of Labor and Employment Law. He is a member of the bar in California, Maryland, and the District of Columbia.

Mr. Rose received his BS from the Cornell University School of Industrial and Labor Relations, and his JD with honors from The George Washington University Law School.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

Anthony J. Sutcliffe

Anthony J. Sutcliffe is the vice president, general counsel, and secretary of Ricoh Canada Inc. in Toronto. His responsibilities include all of the legal affairs of the corporation including the responsibility for the corporation's real estate holdings, risk management, acting as sole director of the corporation's various subsidiaries, the human resources function, and environmental matters and initiatives.

Prior to joining Ricoh, Mr. Sutcliffe occupied the positions of vice president and general counsel of ITT Canada Inc, senior counsel of Bechtel Canada Inc., general counsel of Square D Electrical Inc., and counsel to Gulf Canada Ltd.

He is currently a member of the board of directors of the Canadian Corporate Counsel Association, sits on the executive board of the Toronto Chapter of the CCCA, and is an instructor at the Bar Admission Course of the Law Society of Upper Canada.

Mr. Sutcliffe received his BA from McMaster University and his LLB from Queen's University at Kingston.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

American Corporate Counsel Association's 2001 Annual Meeting

Session 504

International Labor and Employment Law

Labor Unions in the Global Economy
Kenneth J. Rose
Littler Mendelson, P.C.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

LABOR UNIONS IN THE GLOBAL ECONOMY

TABLE OF CONTENTS

I. GLOBALIZATION OF UNIONS ....

A. United Nations' Declarations and International Labor Organization Conventions on employees' right to organize unions ....

1. United Nations ....

2. International Labor Organization ....

B. The International Trade Union Structure ....

1. The International Confederation of Free Trade Unions (ICFTU) ....

2. European Trade Union Confederation (ETUC) ....

3. Trade Union Advisory Committee (TUAC) to the Organization for Economic Cooperation and Development (OECD) ....

4. International Trade Secretariats (ITS) ....

5. Company Councils ....

C. Efforts by International Unions to Provide Global Representation ....

1. Union Network International's Multinational Union Alliances in the telecommunications industry ....

2. The global initiatives of the International Metalworkers' Federation (IMF) ....

3. International Federation of Chemical, Energy, Mine and General Workers Union's (ICEM) transnational union strategies for acquiring union representation at global corporations ....

D. Global Agreements reached by unions and multinationals in 2001 ....

1. Agreement between Skanska and the International Federation of Building and Wood Workers (IFBWW) ....

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

2. Agreement between Telefónica and Union Network International (UNI) ....

3. Agreement between Statoil and International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM) ....

4. Agreement between Carrefour and UNI ....

II. LEGAL STRUCTURE FOR LABOR UNIONS AND COLLECTIVE BARGAINING IN EUROPE ....

A. United Kingdom ....

1. Recent changes in trade union recognition laws under The Employment Relations Act 1999 ....

2. Bargaining structures ....

3. Bargaining rights of recognized trade unions ....

B. Belgium ....

1. Workers' right to join or not join unions ....

2. Belgian unions are organized by industry not by craft ....

3. Representative union organizations ....

4. Collective bargaining ....

5. Collective agreements ....

6. Extension of collective agreements to non-union members ....

7. Office of Collective Bargaining Relations ....

8. Number of collective agreements in Belgium as of 1998 ....

9. Right to strike ....

C. Spain ....

1. Workers' right to join or not join unions ....

2. Representative unions ....

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

3. **Right to collective bargaining and collective agreements** ....

4. **Duty to bargain** ....

5. **Collective bargaining structure** ....

6. **Spanish workforce covered by collective agreements**............................

7. **Labor disputes/concerted actions** ....

8. **Mediation and arbitration of industrial disputes**...................................

D. **Germany** ....

1. **Workers' rights to join or not join unions**..

2. **Organizations that can enter into collective agreements**.......................

3. **Jurisdictional scope of collective agreements** ....

4. **Binding effect of collective agreements** ....

5. **Extension of collective agreements to non-represented parties** ....

6. **Number of German workers covered by collective agreements** ....

7. **Compulsory arbitration**...

8. **Judicial Dispute resolution**..

III. **EUROPEAN WORKS COUNCILS (EWCs)** ....

A. **European Union's Directive on Works Councils** ....

B. **Multinationals Covered by the Directive** ....

C. **Establishing an EWC and an EWC Agreement**..

1. **Initiation of the process for establishing an EWC** ....

2. **The Special Negotiating Body (SNB)**...

3. **Number of members on EWC** ....

4. **Negotiations for an EWC Agreement** ....

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

5. Content and scope of EWC Agreements..

6. Requirements imposed by the Directive whenever no EWC agreement is reached between the SNB and Central Management..

D. Entitlement to information..

E. Limitations on information and consultation obligation to protect company's proprietary information..

F. Funding the Operating Costs of the EWC..

G. Role of unions in EWCs..

H. Frequency of EWC Meetings..

I. Job Protection for SNB and EWC Members..

J. National Works Councils..

1. Germany..

2. Netherlands..

3. France..

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

LABOR UNIONS IN THE GLOBAL ECONOMY

I. GLOBALIZATION OF UNIONS

A. United Nations' Declarations and International Labor Organization Conventions on employees' right to organize unions

General rights for trade unionists are enshrined in the United Nations' Universal Declaration of Human Rights and a number of conventions issued by the International Labor Organization (ILO).

1. *United Nations*

U.N.'s Universal Declaration of Human Rights, Article 23: "Everyone has the right to form and to join trade unions for the protection of his interests."

2. *International Labor Organization*

ILO Convention No. 87 (Freedom of Association and Protection of the Right to Organise, adopted in 1948): Over 120 countries have ratified this convention. It declares: That workers can establish and join organizations of their choice without prior agreement from the state, that trade unions cannot be dissolved or suspended by the state, and that unions are free to create federations and confederations which, in turn, can affiliate at the international level.

ILO Convention No. 98 (Right to Organize and Collective Bargaining, adopted in 1949): Over 135 countries have ratified this convention. It protects workers against acts of anti-union discrimination, and encourages and protects the process of voluntary negotiation between workers and employer organizations to regulate terms and conditions of employment by means of collective agreements.

B. The International Trade Union Structure

1. *The International Confederation of Free Trade Unions (ICFTU)*

Headquartered in Brussels, the IFCTU brings together workers from 215 national unions in 145 countries and territories. Collectively, 125,000,000 members are represented by the IFCTU. It is governed by democratic structures, including a Congress held every four years and an Executive Board that meets annually. Both bodies determine policies for the organization. There are also committees that help develop policies and initiate and review activities.

A major part of the work of the ICFTU is in the area of representing trade union interests at the global level. Representation includes speaking at public forums, reports, statements, campaigning, lobbying and similar actions in a wide range of areas, and providing a voice for the international labor movement with international organizations, governments, Non-Governmental Organizations (NGO's) and others.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

The ICFTU's regional organizations are the African Regional Organization (AFRO) based in Nairobi, the Inter-American Organization of Workers (ORIT) based in Caracas, and the Asia-Pacific Regional Organization (APRO) based in Singapore. The regional organizations have considerable autonomy to develop regional priorities and activities. They represent the trade union movement with regional inter-governmental bodies, on trade and other agreements negotiated on a regional basis, and in maintaining relations with NGO's and other groups. In this representative function, their work is similar to that performed by the ICFTU at the global level.

2. *European Trade Union Confederation (ETUC)*

The ETUC, based in Brussels, was founded in 1973 and is composed largely of ICFTU-affiliated national unions. It includes organizations in both Western and Eastern Europe. Its activities include representing trade union interests with the European Union (EU). ETUC has, as its membership, 66 National Trade Union Confederations from 30 countries and 14 European Industry Federations with a total of about 59 million members. In addition, there are eight National Trade Union Confederations and one European Industry Federation with observer status.

Other trade Union structures operate under the auspices of the ETUC. These are the Council of European Professional and Managerial Staff (Eurocadres) and the European Federation of Retired and Elderly Persons (FERPA). In addition, the ETUC coordinates the activities of the 38 Inter-regional Trade Union Councils (ITUCs) which organize trade union cooperation at a cross-border level.

The ETUC is recognized by the European Union, the Council of Europe and the European Free Trade Association ("EFTA") as the only representative cross-sectoral trade union organization at the European level.

3. *Trade Union Advisory Committee (TUAC) to the Organization for Economic Cooperation and Development (OECD)*

TUAC, based in Paris, represents national trade unions of the member countries of the OECD before the OECD. Most TUAC affiliates are also affiliated with the ICFTU. The 30 OECD member countries include most of the European countries, Canada, United States, Australia, New Zealand, Japan, Korea and Mexico. TUAC has consultative status with the OECD and its various committees. It cooperates closely with the ICFTU and ITS on a wide variety of economic policy, sectoral and other issues (including education and training, public sector management, steel, and maritime transport). Through regular consultations with various OECD committees, the secretariat, and member governments, TUAC develops consensus positions among its affiliates and represents those positions with the OECD on a wide range of policy issues.

4. *International Trade Secretariats (ITS)*

ITS are worldwide federations of unions based on industry, craft or occupation. The role of ITS has expanded with globalization. They have they grown in membership and have been called upon to play a greater role by affiliates confronted with problems which do not respond to purely

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

national solutions. They are autonomous, self-governing, democratic, and are associated with the ICFTU.

Unlike the ICFTU, which represents national unions, ITS' have member unions which represent workers from a specific sector, industry or occupation. Within some ITS, there are groupings of unions or divisions of responsibility related to particular industries or occupations.

The following list provides information on the categories of workers represented by each ITS:

EI (Education International): Educators, teachers, lecturers and other employees in education.

ICEM (International Federation of Chemical, Energy, Mine and General Workers' Union): Energy sector, electricity sector, chemical industries, rubber and plastics industry, ceramics industry, paper and cellulose production, glass industry, cement industry, environmental protection industries, coal mining, mineral mining and stone and sand production.

IFBWW (International Federation of Building and Wood Workers): Construction industry, timber industry, forestry and allied sectors. The IFBWW represents over 11 million workers organized in 285 trade unions in 124 countries.

IFJ (International Federation of Journalists): Print media, broadcasting, film and television, news agencies, press offices, public-relations agencies and new electronic media.

IMF (International Metalworkers' Federation): Production workers and salaried employees in the automobile industry, aviation and aerospace industry, electrical engineering and electronics, mechanical engineering, shipbuilding, iron and steel production, non-ferrous metals as well as metal-processing industry.

ITF (International Transport Workers' Federation): Transportation industry.

ITGLWF (International Textile, Garment and Leather Workers' Federation): Textile, garment and leather sector.

IUF (International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association): Food and drink sector, hotel, restaurant, catering and tourism services, agriculture and plantation farming and tobacco processing.

PSI (Public Services International): Employees in public administrations, enterprises and institutions of regional authorities, public corporations, foundations, public institutions; in companies generating and distributing gas, electricity and water, of waste management; in the environmental, social and health sector; in public educational, cultural and leisure-time facilities as well as other public institutions, administrations and companies delivering public services; employees in international institutions which have been established by states or communities of states. Teachers and employees of nationally operated postal and railway services are explicitly excluded.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

UADW (Universal Alliance of Diamond Workers): Diamond sector.

UNI (Union Network International): UNI is the result of the merger on January 1, 2000 of CI (Communications International), FIET (International Federation of Commercial, Clerical, Professional and Technical Employees), IGF (International Graphical Federation) and MEI (Media and Entertainment International)-- Postal and telecommunications services, salaried employees in industry, business services, information technology, commerce, financial services, social insurance and private health care, property services, tourism, professional and managerial staff, newspaper sector, magazine sector, book publishing sector, advertising and PR agencies, job-printing companies, packaging and paper processing. technicians and others employed in broadcasting and television, film production, projection and other media, the advertising industry, theatres and similar artistic and entertainment industries.

5. *Company Councils*

Trade unions have been establishing world company councils, regional company councils and formal as well as informal networks of trade unions representing workers employed by the same company. These are, for the most part, structures which organize meetings where trade unionists from different countries, but working for a common employer, can get together to discuss a wide range of issues. They are used for different purposes, from improving conditions at home through the experience of others to real global co-operation in trade union work.

In spite of the fact that there are a few practical problems with this system, including the expense of holding international meetings, the complications of trade union pluralism, and language barriers, regional and world councils continue to be vital trade union links. Information technology can facilitate building networks inside companies and can become "virtual" company councils or can contribute to the work of existing structures. Company councils are established and maintained by ITS.

C. Efforts by International Unions to Provide Global Representation

In the past few years trade unions have begun to mobilize in transnational campaigns of industrial action and lobbying against some of the world's largest companies. It has been estimated that the top 500 transnational corporations account for 80 per cent of global investment and 70 per cent of global trade. There is potential for increased cross-border coordination between trade unions, particularly when the same company employs their members.

1. *Union Network International's Multinational Union Alliances in the telecommunications industry*

UNI, a Switzerland-based global union, has developed a strategy of "Multinational Union Alliances" to counter the global approach to business displayed by expanding multinational corporations that are operating in the telecommunications and postal sectors.

UNI has developed five Union Alliances to deal with specific multinationals in the telecommunications industry. These Alliances are the SBC/Ameritech, Cable & Wireless, Telefonica S.A. (Spain), France Telecom and Atlantic Alliances. The purpose of the alliances is

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

to: increase the leverage of member organizations through greater joint activity; share information and offer solidarity support when any affiliate of the alliance is engaged in collective bargaining; undertake common activity to support organizing; and, provide all possible support from the host country union for members of any other affiliate who are working in the host country.

The alliances have met on regular occasions and all now publish regular newsletters that are distributed amongst affiliated unions dealing with the specific multinational telecommunications company. All of the alliances have also developed and published web pages.

Alliance activities have included participation by the SBC/Ameritech Alliance in the Ameritech annual stockholders meeting, international days of action by both the Ameritech and the Telefónica alliances, the development of a set of international operating principles (codes of conduct) and efforts to obtain company agreement to them, initiation of the establishment of European Works Councils, publishing a comprehensive list of the telecom companies' global investments, analyzing and publishing comparisons of company reports, and analyzing and publishing comparisons of Cable & Wireless's employment contracts.

In 1996, one of UNI's predecessor unions, the Postal, Telegraph and Telephone International, spearheaded an offensive against Sprint after it dismissed Hispanic workers trying to organize a union at one of its subsidiaries in San Francisco. As a result, Deutsche Postgewerkschaft, the German telecommunications union, demanded Deutsche Telekom should introduce a code of labor standards as part of its deal to launch a $2.7 billion joint venture with Sprint. French telecommunication workers also managed to hold up a similar agreement between Sprint and France Telecom while STRM, the Mexican telecom company, drew up charges against Sprint for alleged breaches of the labor side-clauses in the North Atlantic Free Trade Agreement.

UNI has announced that it intends to obtain a series of global accords with multinational corporations to spell out the core labor rights safeguarded by the ILO conventions. On March 12, 2001, Telefónica and UNI signed a five-year code of conduct agreement that covers labor rights for the company's 120,000 employees worldwide (See below). At the announcement of the Telefonica/UNI agreement, UNI's General Secretary, Philip Jennings, issued the following statement: "Our campaign to sign up the world's biggest corporations to the core labor conventions is beginning to roll. As the business world is becoming increasingly global so the unions too have to respond on a global level to ensure basic trade union and working rights."

2. *The global initiatives of the International Metalworkers' Federation (IMF)*

The IMF, founded in 1893, is one of the largest and oldest of the International Trade Secretariats (ITS). It represents almost 23 million members in 193 unions in 101 countries worldwide. The IMF organizes both blue- and white-collar workers in industries such as steel, non-ferrous metals, ore mining, mechanical engineering, shipbuilding, automobile, aerospace, electrical and electronics. It is headquartered in Geneva, Switzerland where its worldwide activities are coordinated, with a network of regional offices in Eastern and Central Europe (Budapest), Eastern and Southern Africa (Johannesburg), Asia (Tokyo, New Delhi and Kuala Lumpur), and Latin America (Santiago, Chile). In recent years, particularly in view of the globalization of the economy, emphasis has been on developing regional activities.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

According to its website, the thrust of IMF' activities is determined by the "Action Programme" that was adopted in 1997 at the IMF's 29th World Congress held in San Francisco. At that World Congress, the IMF unveiled a strategy for building a global metalworkers' movement through organizing the unorganized and giving international solidarity more impetus, dealing with multinational corporations through negotiating corporate codes of conduct and creating information strategies, implementing countervailing union power through developing an alternative economic program, securing workers' rights, and ensuring that economic development is sustainable. Forty percent of the IMF's income is earmarked for international solidarity assistance and is used to help in the development of newly established unions.

Also according to the IMF's website, it uses modern communication techniques to stay abreast of developments in the metal industry, to provide its member unions with research on economic and social issues, and to monitor trade union and human rights in the metal industry. The IMF publishes comprehensive reports on trends in international metal industries. It also produces a journal, the IMF News, as well as providing a fax news service; to keep its affiliates well informed.

IMF brings together trade union representatives to discuss international union policy on subjects such as working time, new technology, industrial democracy and workplace health and safety. The IMF, jointly with its affiliated unions, has organized many meetings of World Company Councils, bringing together workers from the same company employed in different countries. The IMF also defends the interests of metalworkers before international bodies such as the ILO, the OECD and various United Nations agencies, as well as in discussions with officials of the World Bank and the International Monetary Fund.

3. *International Federation of Chemical, Energy, Mine and General Workers Union's (ICEM) transnational union strategies for acquiring union representation at global corporations*

The 20 million strong ICEM was formed in January 1996 as a result of the merger of existing trade union organizations in the mining, chemical and energy sectors. Its founding declaration indicates it will take a stepped up approach at global level. ICEM's stated long-term trade union aim is to engage the multinationals in negotiated exchanges with trade unions at the global level.

ICEM has made it clear that it does not anticipate international collective bargaining over wages. However, it believes global agreements would provide a way of enforcing minimum codes of behavior and agreed international standards at the company level worldwide in areas like health and safety and the environment.

ICEM signed an agreement in October 1998 with the World Chlorine Council in Montreal, bringing together a wide range of companies with unions from different countries including the United States, Germany, Sweden and Japan. The agreed accord says the parties will "recognize the role and legitimacy of trade unions in the workplace" and that they are pledged to "act in good faith to create a positive and enduring labor-management relationship that recognizes and respects the rights of employees to organize and bargain collectively." The signatory companies have agreed that they will not urge employees in their operations worldwide to oppose unionization. A clause in the agreement states that employers and consultants will "not engage

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

in derisive anti-union actions including, but not limited to, the use of unfair or illegal tactics during organizing campaigns; attacks on the honesty and integrity of union members, supporters or staff; attacks on the economic effectiveness of unions, spreading false information, firing or taking other reprisals against workers because they support unions". The agreement also states that labor and management will "not engage in derisive attacks on each other" and that organizing campaigns will be conducted with "fairness and integrity, consistent with employees' right to choose a representative for collective bargaining". There is also a relatively strong commitment to environmentally sustainable production.

In February 1998, ICEM held a conference that brought unions from 10 countries together to launch a global strategy against the activities of Rio Tinto, one of the largest mining companies in the world. Particular attention was focused on the alleged anti-union policies of the firm, especially in its operations in Australia, Portugal and Zimbabwe. The conference established a network of trade unions for the exchange of information and the creation of a database. It was also agreed that a broad-based campaign against the company should be launched through alliances with community groups, environmentalists, churches and other organizations. An essential part of ICEM's strategy was that the entire global network would back union action at the local level. The trade unions involved organized a demonstration of protest against Rio Tinto at its annual shareholders meeting in May 1998.

In July 1998 ICEM signed the first ever collective global agreement in the oil sector with Statoil, the Norwegian state oil company. This agreement covers recognition of basic union rights, health, safety and the environment, information and training. It applies to all Statoil operations over which the company has direct control. The agreement spells out the parties' commitment to the ILO core labor standards.

D. Global Agreements reached by unions and multinationals in 2001

The first half of 2001 saw a number of new "global agreements" on workers' rights and related issues agreed to by European based multinational companies and international trade union organizations. New "global agreements" providing for workers' rights in their worldwide operations have recently been concluded with four major European multinationals - Skanska (Sweden, construction), Telefónica (Spain, telecommunications), Statoil (Norway, energy) and Carrefour (France, commerce). These are among the latest additions to a growing list of similar accords negotiated between multinationals and international trade union organizations.

1. *Agreement between Skanska and the International Federation of Building and Wood Workers (IFBWW)*

On February 8, 2001, an international agreement on workers' rights was reached between Skanska (a Swedish-headquartered construction company) and the IFBWW. The agreement applies to Skanska's 80,000 employers in a total of 60 countries worldwide. It states that the employment of all workers must meet the minimum requirements of legislation of those countries in which Skanska's companies operate, in addition to meeting the requirements of relevant ILO Conventions.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

The labor standards set forth in the agreement are divided into eight areas, as follows: employment should be freely chosen (no forced or slave labor), no employment discrimination, ban on child labor, recognition of the workers' right to organize, "fair" compensation for work undertaken, workers should be given "reasonable" work hours, good working conditions should prevail, and there should be "fixed employment conditions."

The agreement provides for the setting up of an "application group", made up of representatives from the management of Skanska, the IFBWW and the executive committee of the company's European Works Council (EWC). The application group's role is to oversee compliance with the agreement and to try to resolve any conflicts connected with the accord which cannot be resolved through discussions at the workplace. If the application group fails to resolve a particular issue, the matter is to then be referred to an arbitration board comprised of one member each of the group management and IFBWW, together with an independent chair appointed by both parties. The rulings of the arbitration board will be binding.

In terms of workplace inspection visits, the agreement provides that a person appointed jointly by management and the EWC executive committee will visit and inspect a number of selected sites each year. If a specific worksite does not comply with the terms of the agreement, this will be reported back to the group management, which will take steps to rectify the situation.

(Previously, IFBWW had signed similar global workers rights agreements with IKEA (furniture), Faber-Castell (pencils) and Hochtief (construction).

2. *Agreement between Telefónica and Union Network International (UNI)*

On March 12, 2001, Telefónica (the Spanish-based telecommunications group) and UNI signed a five-year agreement that covers labor rights for the company's 120,000 employees worldwide. The accord takes the form of a code of conduct on trade union and workers' rights. Eighteen unions worldwide represent Telefonica's employees and each of these unions is affiliated with UNI. According to the UNI-Telefónica code of conduct agreement, the document is a follow up to a protocol that, Telefónica and UNI signed in April 2000 in which they agreed to negotiate a code "to maintain trade union and workers rights in all Telefónica activities world wide."

The new agreement describes both parties' commitment to adhere to the ILO core labor standards protecting freedom of association, the right to collective bargaining, freedom from workplace discrimination, and the abolition of child labor. Additional workplace issues covered by the agreement include minimum wages, occupational safety and health, hours at work, and the right to freely choose employment. It also states that "[b]oth parties shall be responsible for the administration and implementation of this agreement." The code of conduct refers to the relevant ILO Conventions and covers many of the same areas that are covered in the Skanska agreement.

3. *Agreement between Statoil and International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM)*

On March 15, 2001, Norwegian energy multinational Statoil ASA signed a two-year agreement with the ("ICEM") that applies to all of Statoil's operations globally. Statoil is one of the world's

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

largest suppliers of crude oil and a substantial supplier of natural gas to Europe. It is the leading Scandinavian retailer of petrol and other oil products. Statoil has operations in 22 countries worldwide and employs approximately 16,000 people. ICEM has about 20 million members. This global agreement covers, among other things, trade union rights, health and safety and training.

4. *Agreement between Carrefour and UNI*

On May 15, 2001, the French-based multinational Carrefour and UNI reached a global agreement. Under this agreement, Carrefour and UNI undertake jointly to monitor the proper application of ILO Convention 87 (right of employees to join a trade union of their choice), ILO Convention 98 (right to collective bargaining), and ILO Convention 135 (protection of employees and their representatives against any act of discrimination which infringes upon trade union freedom). The agreement provides that the relevant principles set out in ILO Conventions also are respected by the Carrefour"s suppliers.

The agreement goes on to state that respect for trade union rights and recognition of fundamental rights "are part of the corporate culture of the Carrefour group." In addition, the agreement condemns child labor, slavery and forced labor. In regards to its agreement with Carrefour, UNI stated that "This means that UNI now has a formal position as a social partner in Carrefour, with the possibility to raise issues in connection with workers' and trade union rights."

These latest three agreements join a small but growing number of similar global labor standards accords negotiated between multinational companies and international and national trade unions.

II. LEGAL STRUCTURE FOR LABOR UNIONS AND COLLECTIVE BARGAINING IN EUROPE

This section discusses the labor relations and collective bargaining laws in four European nations: the United Kingdom, Belgium, Spain and Germany.

A. United Kingdom

1. *Recent changes in trade union recognition laws under The Employment Relations Act 1999*

The Employment Relations Act 1999 (ERA), which took effect on June 6, 2000, provides a process by which trade unions in the United Kingdom can seek statutory recognition.

Unions and employers continue to be free to agree to voluntary recognition arrangements and to negotiate what are usually non-binding collective agreements. ERA provides that where the employer denies voluntary recognition, the trade union can apply to the Central Arbitration Committee (CAC) for formal recognition. The CAC is the government body that administers the statutory trade union recognition procedure created by ERA.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

If an union wishes to apply for statutory recognition in respect of a particular bargaining unit of workers, a number of pre-conditions must be met: the employer must have at least 21 employees, the employer must not already recognize another union in respect of this bargaining unit the union must be independent, the union must have 10% membership within the bargaining unit, and a majority of the voters within the bargaining unit must be likely to vote for recognition.

The statutory process for trade union recognition is kicked off when the union makes a formal application to the employer asking for recognition. This formal request to the employer must comply with the statutory requirements. The appropriate request must identify both the union and the bargaining unit for which recognition is being sought, and must also state that it is being made under ERA. The employer has 10 days in which to respond or reject this formal union request for recognition.

After this period, the union can apply directly to the CAC for recognition. If the request does not comply with the formal requirements, the employer can challenge the recognition request on that basis. Otherwise, the employer has to respond to the union's application for recognition by completing a CAC questionnaire and supplying the supporting documentation. The employer's response may include details of the employer's objections to the bargaining unit proposed by the union, the employer's views on union membership amongst the employees in this bargaining unit and whether in its view a majority of this group of workers is likely to support recognition.

The CAC will then decide whether to accept the application. Grounds not to accept the union's application might be that the employer already recognizes another union in respect of the proposed bargaining unit or that union membership amongst these workers is less than 10%.

If the application is accepted, the CAC will try to broker an agreement between the employer and the union on the bargaining unit. The period allowed for this is 20 days, although this can be extended.

If voluntary agreement cannot be reached within this 20 day (or extended) period, the CAC will determine the bargaining unit. The CAC's decision will be based on the written submissions by the union and the employer and can also include a hearing with the parties. ERA requires the CAC to pay particular regard to the need for the bargaining unit to be compatible with effective management of the operations, but also lists the following criteria that must be taken into account: the views of the employer and the trade union, existing national and local bargaining arrangements, the desirability of avoiding small fragmented bargaining units, the characteristics of workers falling within the proposed bargaining unit and of any other employees whom the CAC considers relevant and the location(s) of the employees.

Once the bargaining unit has been determined, the CAC will have to decide whether a secret ballot election among the workers is required to determine recognition. A secret ballot election must be held if the CAC concludes that the number of workers in the bargaining unit who are union members falls short of a majority. Where the majority of the employees in the proposed bargaining unit are trade union members, absent exceptional circumstances, the CAC will issue a declaration that the trade union is recognized without the need for an election. The exceptional circumstances are as follows: the CAC decides that an election should be held 'in the interests of

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

good industrial relations,' a 'significant number' of the union members within the bargaining unit inform the CAC that they do not want the union to conduct collective bargaining on their behalf, and/or 'membership evidence' is produced which leads the CAC to conclude that there are doubts about whether a 'significant number' of the union members within the bargaining unit want the union to conduct collective bargaining on their behalf.

If a secret ballot election is to be held, the CAC appoints a qualified independent person (QIP) to conduct the ballot. There is a so-called 'access period' before the election is held. During the access period, the employer is under the following duties: to co-operate generally with the union and QIP, to give the union access to the workers, and to supply the CAC with the names and addresses of workers within the bargaining unit.

In order for the union to achieve recognition, the secret ballot election must indicate that the union is supported by a majority of the workers voting and by at least 40% of the workers constituting the bargaining unit. If so, the CAC will issue a declaration that the union is recognized.

If the ballot is in favor of union recognition, the CAC must try to help the parties reach a collective agreement within a defined time period. If, by the end of this agreement period, the parties have still not made an agreement, the CAC will specify the method by which collective bargaining will be carried out. This will in effect be a legally enforceable contract between the union and employer.

Throughout this entire recognition and bargaining process, workers will have the right not to be subjected to any detriment by the employer because they have participated in any way in this process. Workers whose rights are violated in this regard can take their complaints to an Employment Tribunal.

2. *Bargaining structures*

Within a single company, such bargaining may take place at the shop floor level, at the plant or factory level, at the multi- plant level, the divisional level or the corporate level.

Bargaining can also take place at the level of the industry or industrial sector in the form of multi-employer bargaining between an Employers' Associations and confederations of trade unions. Multi-employer bargaining is often conducted through bodies variously named National Joint Industrial Councils, Joint Industrial Councils, or National Joint Committees.

3. *Bargaining rights of recognized trade unions*

Recognized trade unions have the right to bargain over pay, hours, holidays, and health and safety issues. They also have the right to be consulted prior to the implementation of layoffs.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

B. Belgium

1. *Workers' right to join or not join unions*

In Belgium, the right to join or not join a union is guaranteed by the Freedom of Association Act of 1921: "No person shall be compelled to be a member or to refrain from being a member of any association."

2. *Belgian unions are organized by industry not by craft*

Belgian trade unions are not organized on an occupational or craft basis, but by the industry or sector to which employees belong (e.g. textiles, metalworking). White-collar workers are an exception and within the confederations are organized in a single union irrespective of the sector in which they work.

3. *Representative union organizations*

In Belgium, the system of union representation consists in granting certain prerogatives only to the most important unions. The Collective Agreements and Joint Committees Act of December 5, 1968 (Collective Agreements Act) provides that the following are regarded as representative unions: (1) multi-industry employees' organizations which are established at national level, are represented on the Central Economic Council and National Labour Council and have at least 50,000 members; and (2) industrial unions affiliated to or forming part of a national multi-industry organization. At present the only trade unions that satisfy the stated conditions are the Confederation of Christian Trade Unions, the Belgian General Federation of Labour and the Federation of Liberal Trade Unions of Belgium.

4. *Collective bargaining*

In Belgium, there is a system of free collective bargaining. However, the government (subject to having allowed the social partners the opportunity of negotiating on matters themselves and having followed proper parliamentary procedure), has the power to intervene in collective bargaining in order to preserve the competitiveness of enterprises.

5. *Collective agreements*

Collective agreements are regulated by the Collective Agreements Act. This Act conferred full legal status on the collective agreement in Belgium, while at the same time regulating numerous technical points such as its form, duration, notice of termination, etc. An important aspect is the obligation to register a collective agreement with the authorities.

The Collective Agreements Act also incorporates other important policy options on matters such as 1) the concept of representative employers' associations and trade unions, and 2) the role assigned to the social partners on the one hand and the government on the other in fixing pay and employment conditions. The Act provides that it is the role of the employers' associations and the unions to regulate pay and employment conditions. The government is accorded only a secondary role.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

The Collective Agreements Act describes a collective agreement as "an agreement concluded between one or more employees' organizations and one or more employers' organizations or one or more employers, governing individual and collective relations between employers and employees within the enterprise or in an industry and regulating the rights and obligations of the contracting parties." The Act manifestly regards the collective agreement as a true agreement emanating from the social partners, who remain private parties and are not operating as an extension of government authority.

Under Belgian law, a collective agreement is binding on (1) employers who are members of the organizations which negotiated it or who themselves negotiated the agreement; (2) individual employers and employers who are members of the organizations, that subsequently acceded to the agreement and employers who are members of these organizations; (3) employers who join an organization bound by the agreement, as from the date on which they join; and (4) all employees of any employer bound by the agreement. In the event of the transfer of an undertaking (i.e., sale or merger) involving an entire company or a part of it, the new employer must observe the agreement by which the former employer was bound, until it ceases to be in force. Transfer is to be given a broad interpretation here.

6. *Extension of collective agreements to non-union members*

In Belgium, the government, acting through Royal Decree, can make generally applicable a collective agreement concluded within a joint body (National Labour Council, Joint Committee or Joint Subcommittee). A collective agreement, which has been decreed generally applicable, is then binding on all employers and employees who fall within the sphere of activity or industry covered by the agreement. In practice, important use is made of such agreements, which cover different aspects of pay and conditions of employment. In this way, collective bargaining governs a great many matters for the vast majority of employees and employers.

7. *Office of Collective Bargaining Relations*

This body, which is part of Belgium's Ministry of Employment and Labour, operates an official conciliation service. The duties of official conciliators are "to help prevent industrial disputes and to keep a watch on the outbreak, course and ending of such disputes; to perform all official conciliation functions; to maintain permanent contact with the employers' associations and trade unions and with the labor and employment inspectors of the Ministry of Employment and Labour; and to compile all reports on labor relations in an industry, a branch of industry or a particular enterprise." The Office of Collective Bargaining Relations may also be required to chair Joint Committees and is the governmental authority with which collective agreements must be registered.

8. *Number of collective agreements in Belgium as of 1998*

The number of collective agreements and similar texts registered with the Office of Collective Bargaining Relations totaled 2,979 in 1998. This exceeded the average outcome recorded for previous even years in Belgium (a mean figure of 2,145 collective agreements registered each

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

year). Out of the 2,979 agreements reached in 1998, 409 were concluded by sectoral joint committees (13%) and 2,570 (86%) at the company level.

9. *Right to strike*

In 1981, the Belgian Supreme Court ruled that the employee has a right to strike and that the workers' participation in a strike is not in itself an unlawful act. The individual employee, not the trade union, is the holder of the right to strike. No legal provision exists to prohibit employees from taking part in a strike that is not approved by a representative.

C. Spain

1. *Workers' right to join or not join unions*

Spain's *Trade Union Freedom Act of 1985* explicitly recognizes the right of workers to join or not to join a trade union. This Act declares null and void any negotiated agreements or decisions that impose or impede union membership or make employment dependent on membership or non-membership.

2. *Representative unions*

The Trade Union Freedom Act of 1985 also regulates the formation of trade unions and their activities. In particular, it covers trade union representation at enterprise level (workplace branches, trade union delegates); the identification, responsibilities and powers of most representative unions; and negotiated agreements on the check-off system for collecting trade union dues and on collective bargaining levies.

Representativeness is a method used under Spanish law for assessing the practical power and influence of particular trade unions at the different levels at which they operate (e.g. regional or national), in order to identify which unions are appropriate social partners. The method was introduced in Spain through the Act, with a view to identifying the unions to be granted the right to negotiate generally applicable collective agreements and to have representation on public bodies. It was later extended to other trade union activities, such as calling union elections, representation within the enterprise, receiving funds distributed from the assets accumulated by the one-time Vertical Union (union assets), etc. In Spain, the representativeness of a trade union is assessed on the basis of its electoral strength or the results it achieves in union elections, which are used as a basis for distinguishing between most representative trade unions and other trade unions with lesser degrees of representativeness.

Under the Act, trade union delegates are defined as representatives in workplaces with more than 250 employees. Their functions are centered on consultation on matters relating to union members, defending members' interests before the employer, and acting as the communication channel between the employer and the union.

Spanish labor organizations generally are either *industrial unions* (representing an entire industry or branch of activity), or by geographical criteria (district, provincial, regional unions, etc.) or enterprise *unions* (occupational unions, unions of professional and managerial staff and inter-

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

occupational or general unions). Depending on their internal composition, a distinction is usually made between single unions and umbrella-type unions grouped together on the basis of geographical area (territorial federations), industry (industrial federations) or both (trade union confederations and central trade union bodies).

3. *Right to collective bargaining and collective agreements*

The Spanish Constitution grants to employees' and employers' representatives the right to regulate their own collective and individual labor relations. It implies support and protection of collective bargaining, as well as a degree of non-intervention by the Government in the conduct of industrial relations. The Workers' Statute of 1980, in turn, establishes the right of workers to organize and bargain collectively. Term collective agreements refers particularly to generally applicable collective agreements drawn up in accordance with the requirements of the Workers' Statute.

Spanish legislation on generally applicable collective agreements stipulates that only workforce representative bodies (or trade union bodies, provided they are in the majority) are empowered to bargain at enterprise level, and that only trade union and employers' organizations possessing a minimum status of representativeness are empowered to bargain above enterprise level. Majority representation status within the scope of the agreement is a requirement for both the employees' and the employers' side in all cases. There are no legal restrictions on the negotiation of agreements that have only limited applicability.

Spanish law leaves the parties free to decide on the bargaining unit. It permits the most representative trade unions and employers' associations to establish rules on precedence and coordination between agreements by means of general multi-industry agreements. It also provides that, in the absence of such agreed rules, a collective agreement may not, while it is in force, be affected by another agreement of differing scope. The parties are also free to decide on the duration of the agreement. In the event, no expiration date is expressly stated, then the agreement is extended from year to year.

The content of collective agreements may cover all types of issues within the field of industrial relations. Collective bargaining agreements concern terms and conditions of employment and other matters relating to the contract of employment (pay, working hours, working time, health and safety, occupational groups and categories, promotion, vocational training, selection tests, geographical and functional mobility, disciplinary procedures, etc.) or relating to the collective aspects of labor relations (trade union rights, the rights of workers' representatives, bargaining levels, the joint collective agreement committee, settlement of disputes concerning the interpretation and application of the agreement, no-strike clauses, etc.). The content of a collective agreement is usually divided into substantive clauses and obligatory clauses, and into minimum or compulsory content and possible content.

4. *Duty to bargain*

Spanish law requires that workers' and employers' representatives bargain in good faith, and permits refusal of a request to bargain only when justified on legal or contractual grounds, when

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

a current agreement exists, or in cases not involving the renewal of an existing agreement which has expired.

5. *Collective bargaining structure*

The Spanish bargaining structure is relatively decentralized with a large number of bargaining levels involved-- notably the national product-sector level, the provincial product-sector level and the company/workplace level. Until the mid-1970s, the provincial product-sector level was the most important, in terms of both the number of agreements concluded and the number of workers affected. In terms of the number of workers affected, the provincial product level is still the most important (with about 1000 collective agreements applying to two million workers). In recent years, there has been a growing importance attached to company and workplace collective agreements (some 2500, applicable to one million workers) and inter-provincial or national product-sector collective agreements (approximately 70, applicable to 1.7 million workers).

6. *Spanish workforce covered by collective agreements*

As of November 1999, there were 3,732 collective agreements covering 7,556,000 Spanish workers.

7. *Labor disputes/concerted actions*

In Spain, collective labor disputes may be disputes of rights (concerning application of an existing agreement or regulation) or disputes of interest (concerning regulation of a particular issue). A third party is usually called in to settle a dispute of rights, whereas direct use of industrial action is more common in the case of a dispute of interest.

In Spain, strikes are the most common form of industrial action. Other forms of industrial action are picketing, boycotts, blockading of goods and transport blockades. Employers may engage in lockouts.

Under Spanish law, the parties to a collective agreement must set up the joint collective bargaining committee, to deal with any disputes concerning the application and interpretation of the agreement and to perform any other functions assigned to it. It is often a requirement that appeals must be brought before these committees before they may be taken to court.

8. *Mediation and arbitration of industrial disputes*

The use of conciliation and mediation of industrial disputes is increasing in Spain.

Also, in the past few years, arbitration, as a means for resolving industrial disputes, has been given impetus both by the law and by collective agreements. In 1996, the most representative trade unions and employers' organizations concluded an *Agreement on Extrajudicial Dispute Settlement,* providing for the use of arbitration to resolve a wide range of industrial disputes.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

Some collective agreements make provision for the possibility of referring disputes regarding their application and interpretation to a third party, usually following the unsuccessful intervention of the joint collective agreement committee.

D. Germany

1. *Workers' rights to join or not join unions*

The German Constitution guarantees freedom of association. It guarantees every individual the right to form a collective industrial organization, to participate in the formation of a union, to join an existing union, to choose between several unions in deciding to join one, to remain a member of a union and to decide to withdraw from union membership. Constitutional protection is also given to "negative" freedom of association, i.e. the right of the individual not to join a collective industrial organization.

The Constitution protects not only the right of the individual to join with others in forming organizations but also protects organizations as such (collective freedom of association). This includes a guarantee of existence and guarantee of activity. The right to organize also gives individual members the right to take an active part in respect of their collective industrial organization. This includes, for example, the right of union members to publicize the union within their company.

2. *Organizations that can enter into collective agreements*

Collective agreements are of central importance to industrial relations.

The capacity of an employee organization to conclude collective agreements is of crucial importance in deciding whether an association of employees possesses trade union status. Germany's Federal Labour Court has ruled that only collective industrial organizations that fulfill the eligibility criteria for the capacity to conclude collective agreements are trade unions within the meaning of the law.

The Federal Labour Court has established the following minimum criteria that an association of employees must fulfill in order to possess the capacity to conclude collective agreements. The workers' organization's standing rules must state that among its functions is safeguarding its members' interests and the intention to conclude collective agreements. The organization must be freely formed, not subject to influence from the opposing side, independent and organized on a basis above individual establishment level. Additionally, it must recognize current law on collective agreements as binding and must possess a measure of social power in terms of its organizational strength and its ability to exert pressure on its social counterpart. Willingness to resort to industrial action is a common, but not essential, characteristic of the capacity to conclude collective agreements.

On the workers' side, the capacity to conclude collective agreements is possessed only by trade unions and their central organizations (Spitzenorganisationen). (Collective Agreements Act § 2(1.2)). On the employers' side, in addition to the employers' associations, an individual employer is also able to conclude a collective agreement. (Collective Agreements Act § 2(1)).

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

Craft trades associations and guilds also possess the capacity to conclude collective agreements. (Craft Trades Code § 54(3) 1, § 82(3)).

The collective industrial organizations have a special procedure before the labor courts available to them known as the "Beschluss" procedure (further discussed below). (Labour Courts Act §§ 2a (1.3), 97). They can seek declaratory judgments as to their capacity to conclude collective agreements. The procedure is initiated at the request of any trade union, association of employees or employers' association provided that they are responsible in terms of the geographical area and occupations concerned.

3. *Jurisdictional scope of collective agreements*

Every collective agreement concluded must specify its scope of application as deriving from the jurisdiction of the parties to the agreement according to their standing rules. This indicates which employees are directly and compulsorily affected by the agreement in question.

Under the standing rules of the German Federation of Trade Unions, its member unions undertake to comply with the organizational regions for collective bargaining.

Only a single collective agreement can apply to a given company or facility. The agreement that takes precedence is that which is the most relevant in terms of the business of the company, the occupations of its workers, and the geographical area it concerns (principle of specificity). In instances where it is not possible to determine this precedence for the company concerned, the collective agreement that is deemed applicable is the one that covers the most employment relationships within that establishment.

4. *Binding effect of collective agreements*

In principle, the provisions laid down by a collective agreement apply only between the parties to individual contracts of employment who are mutually bound by the agreement. The Collective Agreements Act (Tarifvertragsgesetz) makes an exception for provisions relating collectively to the establishment and to the law on the works constitution. Those deemed to be bound by a collective agreement are the members of parties to a collective agreement and individual employers who are parties to a collective agreement. Association-level agreements apply to employees who are members of the trade union concluding such an agreement and who are employed by an employer who is a member of the employers' association concluding the agreement, and also to these employers. Company agreements apply to the employer concluding the collective agreement in question and to his or her employees, provided that they belong to the union concluding the agreement. There is also a binding effect in the case of agreements that have been the subject of the extension of collective agreements.

5. *Extension of collective agreements to non-represented parties*

By means of an official procedure called "Allgemeinverbindlichkeitserklärung" (*Order Imposing Extension*, issued by the Minister for Labour), the applicability of an existing collective agreement can be extended to include employees and employers not bound by the agreement. (Collective Agreements Act § 5). This application of collective agreements to non-represented

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

parties is most prevalent in industry sectors, such as the building industry or retail distribution, that have a large number of small businesses whose owners are not members of any association.

The precondition for an *Order Imposing Extension* is that the employers bound by the collective agreement in question should together employ at least 50% of all the employees working within the occupational and geographical area covered by the agreement (counting both those already bound by the agreement plus non-union members). In addition, the procedure must be deemed to be in the public interest—meaning that the terms and conditions of employment in the area concerned should not fall below the generally prevailing level.

6. *Number of German workers covered by collective agreements*

Altogether 54,940 valid collective agreements were officially registered by the Ministry of Labour at the end of 2000, of which 33,357 were "association agreements" concluded between trade unions and employers' associations and 21,583 were company agreements concluded between trade unions and individual employers. Although the number of company agreements has shown a steady increase since the beginning of the 1990's, more than two-thirds of German employees are still covered by an industry sectoral agreement.

7. *Compulsory arbitration*

If the parties to a collective agreement are unable to arrive by negotiation at a collective agreement, they are obligated to commit themselves to the decision of an independent arbitrator.

8. *Judicial Dispute resolution*

The "Urteil" procedure is used in disputes under labor law between employees and employers arising from the employment relationship, in disputes of rights between the parties to a collective agreement or between the latter and third parties arising from collective agreements and/or in connection with questions of freedom of association and the right to organize. The "Urteil" procedure is similar to the normal procedure before the ordinary system of courts in civil proceedings. Its special features are connected with the need to arrive at a decision as quickly as possible. Other special features include the obligatory preliminary conciliation hearing and the regulations on representation in court and legal costs.

For certain industrial relations disputes, the "Beschluss" procedure is used. These are disputes arising from the 1972 Works Constitution Act, the 1976 Co-Determination Act and the 1952 Works Constitution Act. The "Beschluss" procedure is used in disputes relating to the election of employee representatives to the supervisory board, decisions on the capacity of a labor or employers' organization to conclude collective agreements, and for determining the collective bargaining jurisdiction of employees' and employers' organizations.

This "Beschluss" procedure differs from the "Urteil" procedure in that there are no adversary parties, only interested parties. The employer, the employers' association, the works council and the trade union can be interested parties. Furthermore, it is up to the court itself to ascertain the underlying facts from the petitions of interested parties and to take evidence. No preliminary conciliation hearing (compulsory in the case of the "Urteil" procedure) is held. In some

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

instances, a compromise is possible under the "Beschluss" procedure also. With the "Beschluss" procedure, there are special rules on legal costs. There are no court fees. Also, in the case of a dispute between the employer and the works council, the employer bears all of the other costs.

III. EUROPEAN WORKS COUNCILS (EWCS)

A. European Union's Directive on Works Councils

On September 22, 1994, The European Union's (EU) Council of Ministers issued *Council Directive 94/95/EC on the establishment of a European Works Council... for the purposes of informing and consulting employees (Directive).* The objective of this Directive is the improvement of the employees' right to be informed and the right to information and consultation in multinational companies and company groups that operate within the EU.

To date, as an overview published by the European Trade Union Institute shows, 596 multinationals have set up EWCs. The leaders are German companies, with 102 European Works Councils, followed by 91 in British companies. Spain, where so far only one company has set up a European Works Council, is bringing up the rear. Because the EU Directive also covers them, so far 83 U.S., 19 Japanese, 3 Australian and one South African company have also set up European Works Councils.

(In some EU countries, e.g. Netherlands, France, Germany, local laws also require employers to also have national works councils. Discussed below).

This employee right to be informed and consulted is carried out by creating an EWC at the (European) headquarters of the company or group of companies. EWCs are established to inform and consult employees regarding business decisions that affect the workforce and impact on employees' interests. They communicate information from management to employees to ensure that decisions made in one participating nation which affect the employees in another participating state will be communicated to all workers.

B. Multinationals Covered by the Directive

The Directive applies to any multinational company that employs at least *1,000 workers in the EU*, and also has at least *150 employees in each of at least two Member States*. The territorial scope of the Directive is the 15 EU Member States plus Norway, Iceland and Liechtenstein.

The Directive applies even if the multinational's headquarters is outside the EU—e.g. in the U.S., Japan, Korea, Australia, etc. Whenever the multinational is not headquartered within the EU, a representative location within the EU can be designated to take over the Central Management responsibilities related to the Directive. Failing such a designation, the management of the establishment which has its domicile or headquarters in a Member State and which employs the greatest number of the company employees in any one of the Member States shall assume that responsibility. An employee or employee representative may request information from Central Management to determine whether the company is covered by the thresholds above. Central

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

Management must provide information on the number of employees that it has had in the EU during the past 2 years.

C. Establishing an EWC and an EWC Agreement

1. *Initiation of the process for establishing an EWC*

There are two ways to begin the process for establishing an EWC. Central Management can initiate the negotiations on its own initiative or must start the process if a request for negotiations to commence has been received from at least 100 employees (or their representatives) in each of at least two EU countries. Valid requests must be in writing, addressed to the central or local management, and specify the date sent. Often union national officials undertake this step, in co-operation with local union representatives, European Sector Federations and European trade union colleagues.

2. *The Special Negotiating Body (SNB)*

The next step in the establishment process is for a SNB to be set up. All Member States of the EU in which the company operates must be represented on the SNB. The SNB is made up of employers and employees' representatives and the process for selection of representatives is determined by the local law of the Member States where the EWC is to be located.

3. *Number of members on EWC*

According to the Directive, EWCs are to have a minimum of three and maximum of 30 Members. Many negotiated EWC agreements provide for more than 30 members. Under the rules adopted by each of the Member States, each Member State in which the company has employees must be represented by at least one member of the EWC and the remainder of the membership is to be in proportion to the number of employees the company has in each of the Member States.

4. *Negotiations for an EWC Agreement*

After the SNB has been set up, Central Management is expected to meet with the SNB for the purpose of negotiating a written agreement. The SNB and the Central Management will draft a written agreement regarding the scope, composition, functions, and term of office of the EWC, or arrange for an alternate procedure to inform and consult the employees. Central Management and the SNB must negotiate in good faith with the goal of reaching an agreement to establish an EWC. A majority vote of the SNB's members is necessary to approve an agreement.

Experts of its choice, (usually union national officials or European Federation representatives) may assist the SNB. Central Management is only required to pay the expenses of one expert.
Central Management will also be required pay for all the reasonable expenses relating to the SNB in carrying out its function.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

5. *Content and scope of EWC Agreements*

The SNB and Central Management negotiate the detailed arrangements for the information and consultation with a view to reaching a written agreement. They decide: which undertakings are covered by the agreement, the number of members the EWC will have, allocation of seats and term of office of the members, the function and procedure of the EWC, the venue, frequency and duration of EWC meetings financial and material resources for EWC, the duration of the agreement and how it should be renegotiated.

The principal purpose of any EWC agreement is to establish a framework for transnational information and consultation. The geographical focus of all agreements is Europe. As such, the goal of the EWC is to ensure that the corporation's employees within Europe shall be informed and consulted about decisions that are important for the activities and strategy of the corporation.

Most existing negotiated EWC agreements cover such subjects as: the geographic location of the EWC, the company's business structure, the company's economic and financial situation, production and sales, employment trends, substantial changes in organization of the company's business operations, newly implemented working methods/ production processes, transfers of production, mergers, cut-backs, closure of undertaking or parts thereof and collective redundancies.

6. *Requirements imposed by the Directive whenever no EWC agreement is reached between the SNB and Central Management*

The Directive empowers the SNB to terminate or decide not to open negotiations by a two-thirds vote. Once the SNB takes one of these two steps, a request for negotiations may not be made for two years unless the parties set an earlier date. If the SNB takes either action, *no* EWC will be established and the default provisions will not apply to the community-scale undertaking.

The default provisions of the Directive will apply in three situations. First, the Central Management and SNB may decide that the default provisions are acceptable. Second, if Central Management does not commence negotiations within six months of a request for an SNB, the default provisions will automatically apply. Third, if negotiations with an SNB do not result in an agreement within three years and the SNB has not decided to terminate or refuse the negotiations, the default provisions will apply.

The default provisions require the establishment of EWCs with a minimum of three and a maximum of thirty members. Like the guidelines for the composition of an SNB, the default provisions require that each EWC have one member from each participating Member State in which the company has one or more establishments. Similarly, the employee representatives serving on the EWC must be in proportion to the number of company employees working in each Member State and according to the local law of the Member State within which the Central Management is located.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

D. Entitlement to information

Only questions concerning the multinational's EU operations in at least at least two Member States are referred to the EWC. The EWC does not deal with issues concerning only the company's operations in a single Member State.

In the absence of a negotiated EWC Agreement entered into between Central Management and the workers, the following obligations apply per the Directive. The EWC has the *right to information and consultation* on a *regular and punctual basis* on matters concerning the EU interests of the company as a whole, or regarding at least two establishments in different Member States. The Directive defines consultation as "the exchange of views and establishment of dialogue between employees' representatives and Central Management or any more appropriate level."

The EWC must be informed and consulted at least once per year with respect to the development of the company's business. This information and consultation process includes a written report drafted by the company and a meeting during which the report is discussed. This report is to address the structure of the company, its economic and financial situation, the probable development of activities and of production and sales, investments, the employment situation, employment development, substantial changes in the company's organization, the introduction of new work methods and production processes, environmental care, production transfers, mergers, relocations, cutbacks or closures of all or apart of any operation, business slowdowns and collective dismissals.

Exceptional circumstances, that will considerably affect the employees' interests on a European level, also give rise to a right to special information and consultation sessions. Examples of such circumstances are relocations of operations, shutting down of companies or establishments or collective dismissals (or RIFs). The disclosure of the information and the consultation meeting must take place "as soon as possible," although not necessarily prior to the decision itself that triggered this event. Then, EWC has the right to be informed of such events and to request a meeting with Central Management concerning those matters. The company must address how the changed circumstances will affect employees and the EWC may then issue its own views after being consulted. Nevertheless, while presumably Central Management is obliged to take the EWC's opinions into consideration, the EWC's opinion is not binding on management.

E. Limitations on information and consultation obligation to protect company's proprietary information

To protect trade secrets, members of the SNBs and EWCs (as well as their experts) may, "in specific cases" and "according to objective criteria," be prohibited from disclosing to third parties any trade secret information provided to them by management. Moreover, local law in the country where the EWC is located may excuse the company from disclosing any information to the EWC that would seriously hinder or harm its operations.

In the case of a breach of confidentiality, actions for breach of statutory duty will apply.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

Also, SNB or EWC members revealing confidential information will not qualify for protection from unfair dismissal.

F. Funding the Operating Costs of the EWC

The company's Central Management must pay for the operating costs of the EWC and any expenses incurred by the members of the EWC. Those costs and expenses include the financial and material resources for members to perform their functions, the cost of meetings, cost of interpreters, and travel and lodging costs.

The EWC is permitted to engage experts, although, in that regard, Central Management may limit its financial obligation to one expert.

G. Role of unions in EWCs

The Directive does not refer to "trade unions." Rather, it provides for workers' representatives to negotiate EWC agreements. It is up to national trade unions and the international trade union organizations to position themselves such that representatives of trade unions are selected to be the workers' representatives on the SNBs that negotiate EWC agreements and on the resulting EWCs.

H. Frequency of EWC Meetings

EWC's are required to meet at lease once a year. Some hold two meetings per year.

I. Job Protection for SNB and EWC Members

Employee representatives serving as members on SNBs or EWCs are protected from discrimination related to their representative responsibilities. These representatives may not be impeded in performing their activities or incur any advantage or disadvantage as a result of their membership. All members are entitled to payment for the period of absence from work to participate in meetings and other activities related to their representative roles.

J. National Works Councils

Some European nations have domestic works council laws that are separate and apart from the EU Directive and the EWCs. What follows is a discussion of domestic work council laws in Germany, the Netherlands and France.

1. *Germany*

The Works Constitution Act establishes the basis for the formation and operation of works councils in Germany. As the form of institutionalized representation of interests for employees within a company, the German works council serves management and the workforce. The means it has at its disposal for fulfilling this function are its rights of participation, i.e. the information, consultation and co-determination rights of the works council.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

Manual workers and white-collar workers and (in principle) both sexes, as well as the individual departments of the establishment, must have representation on the council proportional to their presence among the workforce. The council is elected. The works council is obligated to act in good faith towards the employer, and is also required to co-operate with those trade unions which have a presence at the company and with the relevant employers' association.

The requirement for setting up a works council is that the company should regularly employ at least five employees who are eligible to vote. The term of office is four years. The size of the council depends on the number of employees at the company who are eligible to vote; provided that it has several members, the council elects two of them as its chairperson and vice-chairperson.

The employer bears the costs of the council's activities. In companies where there are several works councils, a company works council must also be formed. In a group (of companies), a group works council can be formed as well.

2. *Netherlands*

Dutch works councils are expected to promote the interests of both management and of its workforce. In the Netherlands, the works council has its legal basis in the 1979 Works Councils Act. This Act makes it compulsory for a works council to be set up by all employers who employ either 100 or more employees, or at least 35 employees for more than one third of normal working hours (in which case the council has slightly more limited powers). In enterprises with fewer than 35 employees, a works council is not compulsory but the employer is required to hold consultations with the workforce at least twice a year on the state of affairs in the enterprise and any particularly important matters that arise.

Works council members are elected directly, by secret ballot, from lists of candidates drawn up by employees within the company either in consultation with the unions or not. The company is obliged to provide the council and its committees with facilities for consultation meetings and time for training. In addition, since 1979 the dismissal of works council members has been prohibited.

Dutch works councils possess various powers. The most far-reaching is the right of consent ('instemmingsrecht"). Under Article 27 of the Works Councils Act, the employer must obtain the council's consent for any decision introducing, amending or withdrawing the rules on labor-related matters specified in that Article. These include rules on working hours and holidays, payment systems and job evaluation schemes, health and safety at work and company works rules. The council's consent is not, however, required in cases where the matter concerned is already regulated by a collective agreement. Other powers are the works council's right to prior consultation on economic matters ("adviesrecht"), covering circumstances such as transfer of control of the company and the retrenchment, expansion or significant alteration of its activities, together with the right to regular consultation meetings with the employer and the right to information. A duty of secrecy may be imposed on the council in respect of certain types of information supplied to it.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

A problem may arise in areas where the respective powers of the works council and the unions threaten to overlap. For example, an employer who is contemplating a company merger is required both to consult the works council and to give the unions the opportunity to express their view. On the one hand, the union may provide useful support for works council activity, but, on the other, the works council may pose a threat to the unions by attracting influence to itself at the expense of a union's power within the company. In any event, the works council can offer union members a very appropriate forum for defending their interests in the workplace.

Disputes may arise between the council and the employer over the application of the Works Councils Act. For the purposes of resolving any such disputes, the Act contains a provision whereby both the works council and the employer may (if earlier mediation by a Joint Sectoral Committee has failed), apply to the courts for a ruling on the issue. In cases where an employer has ignored the work council's advice on management decisions as referred to in Article 25 of the Act, the works council possesses a right of appeal to a special court, the Companies Division of the Amsterdam Court of Appeal.

Works councils exist in 90% of the Dutch enterprises with 100 or more employees and in 60% of those with 35-99 employees.

3. *France*

In France, since 1945, works councils have been compulsory in enterprises with more than 50 employees. The works council is comprised of employee members elected by the workforce but also of the head of the enterprise (who chairs the council and takes part in certain votes) and of representatives appointed by the trade unions (who act in a purely consultative capacity).

The works council has charge of the company's welfare and cultural facilities. By law, it has only consultative powers in regard to employer initiatives concerning the organization and management of the business. Other than in the case of profit-sharing agreements, French works councils possess no formal bargaining power. In practice, the dividing line between consultation--which is the prerogative of the works council, and collective bargaining--which is the prerogative of the representative trade unions, is a very fine one. Numerous agreements, formal or otherwise, are concluded between the head of an company and the works council, and the courts accord these a certain legal force, at the least as unilateral undertakings on the part of the employer. As such, French works councils are both a complement and a competitor to trade unions.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

LABOR UNIONS IN THE GLOBAL ECONOMY

Appendix

For additional information, please go to the following websites:

Description	
1.	Home page of Global Union's website and links to the websites of a number of international trade unions www.global-unions.org
2.	Home page of International Confederation of Free Trade Unions www.icftu.org
3.	Home page of website for World Trade Union Directory www.cf.ac.uk/socsi/union
4.	Websites for various international trade unions and federations http://directory.google.com/Top/Society/Work/Labor_Movement/Unions/Global_Federations/
5.	Home page of European Trade Union Institute www.etuc.org/etui
6.	Article re international labor standards agreement entered into by Chiquita Brands International, Inc. and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations and the Latin American Coordinating Committee of Banana Workers' Unions on June 14, 2001, which is applicable to all of Chiquita's Latin America banana operations www.eiro.eurofound.ie/2001/06/features/eu0106222f.html

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

Description	
7.	May 28, 1997 article regarding the International Metalworkers Federation's interest in organizing multi-national employees www.hartford-hwp.com/archives/25a/006.html
8.	International agreement on workers' rights between Skanska (Swedish company) and the International Federation of Building and Wood Workers (IFBWW) dated February 8, 2001 http://www.ifbww.org/~fitbb/TRADE_UNION_RIGHTS/SKANSKA/Skanska_eng.htm
9.	International agreement on workers' rights between Statoil (of Norway) and International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM) – article and text of agreement www.icem.org/update/upd2001/upd01-13.html
10.	Text of European Union Council Directive www.europa.eu.int/eur-lex/en/lif/dat/1994/en_394L0045.html
11.	List of companies that have installed European Works Councils as of June, 2000 www.etuc.org/etui/databases/ewcfeb01.pdf
12.	IBM European Works Council Agreement www.lomb.cgil.it/rsuibm/1999627a.htm

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

EMPLOYMENT & LABOUR LAW

IN CANADA

PRESENTED TO

AMERICAN CORPORATE COUNSEL ASSOCIATION

2001 ANNUAL CONFERENCE

BY

ANTHONY J SUTCLIFFE

VICE PRESIDENT , GENERAL COUNSEL

RICOH CANADA INC.

TORONTO

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

INDEX

INTRODUCTION

A. Non-Unionized Employees

(a) Introduction
(b) Employment Standards
(c) Termination of Employment
(d) Civil Actions
(e) Constructive Dismissal
(f) Human Rights
(g) Acquisitions
(h) Parental Leave
(i) Employment Equity
(j) Pay Equity
(k) Privacy Legislation
(l) Benefits Coverage
(m) Worker's Compensation

B. Unionized Employees

(a) Jurisdictions
(b) Provincial Inclinations
(c) Purchase of a Business
(d) Construction Labour Law

Conclusion

Appendix A

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

INTRODUCTION

This paper will briefly explore some of the salient points of employment and labour law in Canada from the perspective of in house counsel. It will only be a brief overview as the topic is expansive enough to occupy considerably more space than can be provided for here. Appendix A, attached, contains a more detailed review of benefits legislation in Canada.

The topic will be examined from two perspectives: the employment of non-unionized employees and the employment of unionized employees. Incorporated in the former topic are certain subjects that apply to both fields of the law. Among them are termination of employment, constructive dismissal, Human Rights, parental leave, acquisitions, employment standards, pay and employment equity, benefits, workers compensation and privacy legislation. While none of these are in conflict with the rights and benefits conferred by collective bargaining agreements, often the negotiated working terms and conditions exceed significantly those found in the statutes. Accordingly, reference must be made to both in reaching a decision with respect to a particular fact situation.

A Non-Unionized Employees

(a) Introduction

This section of the paper will examine legislation that impacts on employees and employers from two sources: the statue law and caselaw (or Judge-made law). The former establishes the foundation or minimums, which are deemed by the legislators to

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

be the basic entitlements of the employee in the particular jurisdiction. They often provide the bas upon which a judge, in the event that a matter is litigated, founds his decision and builds from it to an award. In addition, each of the pieces of legislation has within it its own enforcement and application authority.

(b) Employment Standards

Employment standards law is structured on a provincial basis in Canada. Each Province (and each of the three territories) has its own employment legislation. In addition there are certain industries which, by statute are deemed to fall in the Federal Jurisdiction. Among them are banking, airlines, radio and television, inter-provincial trucking, federal employees and the military. Any industry or occupation, which does not fall into the federal jurisdiction, is, by definition in the purview of the applicable provincial or territorial jurisdiction. That is not, however, the last word on the subject as some of the territories, The Northwest Territories, for example, adopt by reference the federal legislation as their own legislation and treat it as such.

This paper will deal with and make reference to, in the most part, the Ontario legislation for two reasons: more branch plant operations are located in Ontario than in any other Canadian jurisdiction and the Ontario legislation is the most dominant in Canada and is often followed by other provinces (except of course Quebec, which has made a religion out of being different). In the event that there are significant differences in the legislation

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

in particularly notable provinces, note will be made of them and the difference will be set out.

(c) Termination of Employment

Any employer may, in principle, terminate the employment of an employee for any reason at any time. The issue that is dealt with in all employment legislation is the issue of how much notice, or pay in lieu of notice, the employer is required to provide the employee. All employment standards acts in Canada provide a sliding scale of required notice on termination. It ranges from one week to eight weeks. In addition, several provinces, including Ontario, provide for longer periods in the event that the employer is terminating the employment if more than a certain number of employees (50 in Ontario) in a certain period (6 months in Ontario). In such cases additional notice is required and the provincial Ministry of Labour must be informed and involved with efforts to find the displaced workers new employment. Also Ontario has legislation which provides that employees with more than five years of service receive additional severance pay which is also calculated on a sliding scale and is capped at to 26 weeks pay. Once those requirements are met, that is usually the end of the employer's obligation to the employees, unless the employee commences a civil action for damages arising from the termination, which is discussed in more detail below.

In three jurisdictions – Nova Scotia, Quebec and the Federal jurisdiction, the employment standards legislation contains additional provisions, which provide

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

employment tribunals with the authority to order re-instatement of the terminated employee with or without damages. These provisions make it very difficult for employers to trim their staffs in lean times although there has developed a body of case law, which provides employers with an economic argument for the reduction in staff. It is an area to be careful of in the event that your client employer is intending to establish or acquire an operation in one of the referenced jurisdictions.

(d) Civil Actions

In addition to the above, as mentioned, there is always the forum of the civil courts in which to seek redress for dismissal. Since there are only a few jurisdictions in which the dismissed employee can seek re-instatement, and then only before an adjudicator appointed under a piece of legislation, the redress sought in civil court is almost always monetary in nature. The issue is solely the determination of the appropriate amount of pay in lieu of notice to account for the termination of employment.

What is appropriate is a constantly shifting target. It is influenced by such factors as age, position or title, responsibility, years of service, reporting relationships, the opportunity and prospects for replacement employment and whether the dismissed employee passed up other opportunities to accept the position from which he was dismissed. All these factors will be taken into account by a judge assessing the quantum of the damages. That assumes, of course, that there is no issue of cause. In the event that there is an allegation of cause, that is a preliminary matter for the trier of

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

fact to determine before they settle on the quantum issue. An overwhelming number of cases heard in Canada are heard in the civil courts before a Judge sitting alone. As a result, there are few awards on account of a punitive damages, which are, in any event, limited by case law, nor are there triple damages as are provided for in the US. The reality brought to a matter by a judge sitting alone often provides a measure of reality to the decision and makes it one which can be reasonably estimated in advance by reference to the case law. Punitive damages arising out of claims for pain, suffering and/or humiliation as a result of the termination process are rare. In order to sustain such claims, the employer's actions must meet a stern test of being truly egregious.

As a result of our loser-pay regime in the civil courts, and the limited use of contingency-based litigation, there is less litigation in wrongful dismissal actions that there would otherwise be, The commencement of litigation is often used as a method of kick-starting the negotiation process. In addition, in Ontario and most of the other provinces, there is civil procedure provisions that provide that in the event that there is a decision in which the Plaintiff is awarded an amount which is less than a rejected offer made by the Defendant prior to the commencement of trial, the Plaintiff may be held liable for the costs of the Defendant or the obligation of the Defendant to pay the Plaintiffs costs may be reduced. It should be noted that the decision to award costs is always within the discretion of the Judge. Generally, it can be said that Judges are reluctant to award costs against a small losing plaintiff in favour of a large corporation who may be perceived to have greater ability to pay then the Plaintiff.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

As a result of the foregoing, there are a lot of settlements in the days and weeks leading up to trial, as the costs of preparing for and conducting a hearing mount up.

(e) Constructive Dismissal

There has developed in the case law in Canada the theory of constructive dismissal. Employees who have not actually been dismissed from their positions commence action alleging that the employer's attitude towards them constitutes the equivalent of dismissal and therefore ought to treated the same and attract the same damages as an actual dismissal. The case law requires that there be a number of indicia of a constructive dismissal constituting a substantial change in the conditions of employment. Among them are: status (both actual and perceived), position within the Company, reporting relationships (both subordinate and superior), control of budgets, decision making authority and other "soft" indicators as parking spaces, memberships, location and perceived status of an office and so on. In the event that there is found to be constructive dismissal, the damages will be calculated and awarded on the same basis as if the employer had terminated the employee.

Constructive dismissal cases are not that common since, in order to commence their action, the Plaintiff needs to abandon their job, a major and expensive decision at best. In the event that they do not and they continue in the (unsatisfactory) position, they may be deemed to have acquiesced to the very changes in their employment status that are the foundation of their claim of constructive dismissal.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

In the event that constructive dismissal is found to have occurred, the bases for the award of pay in lieu of notice will be calculated by the Court on the same bases as any other termination without cause.

(f) Human Rights

Each of the Provincial and Territorial systems, as well as the Federal Jurisdiction, has a Human Rights Commission. They are tasked with the responsibility of monitoring and enforcing the Human Rights legislation in their respective jurisdictions. The prohibited grounds of discrimination are generally uniform. They include race, ancestry, and place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, same-sex partnership status, family status or handicap. Canada does not generally have the private litigation and jury trial approach to human rights. The enforcement is almost all carried on by the respective Human Rights Commissions. While redress in the civil courts is available in the strict interpretation of the legislation, it is rarely used.

Unfortunately, this results in considerable delays as the Hunan Rights Commissions are, as are many government departments these days, the subject of cost-cutting measures and reduction in service. As a result, it is often years before a complaint is investigated and a resolution is reached. In addition, because the process as established is without charge to the Complainant, there are more than a few frivolous

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

claims with little merit which are filed with the intent of achieving other ends. Such prosecutions are immune from the loser pays concept mentioned above since the carriage of the case lies with the Commission and not the actual complainant. Further, the legislation prohibits retaliation against employees who commence Human Rights complaints which retaliation has been held to include a civil action for damages and costs following a finding that the complaint was unsupportable. As a result, the number of baseless claims has mushroomed in recent years resulting in delays that are compounded by the lack of resources in cash-strapped government departments.

In an attempt to reduce the backlog of cases, several Commissions have instituted first-level mediation of discrimination claims. Recent results have demonstrated that over 75% of claims heard in this process are settled.

Notwithstanding, the Commissions do have the authority to order re-instatement of the complainant with actual damages and a relatively small amount for punitive damages. As a result, when a complainant is proceeding with a Human Rights Complaint which alleges that their termination was in violation of a prohibited ground of discrimination, employers are often well advised to consider the relatively small cost of settling for the outstanding amount rather than face the return of the employee to the workplace with the attendant disruption that may ensue. Considering the 2-year delay in decisions these days, it could be a lot of money In back wages, but still a lot less than the result of a jury trial in the US which could involve actual and punitive damages.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

(g) Acquisitions

One of the issues that arise in the negotiation of M & A transactions is the disposition of the employees. In many cases the Purchaser wants the employees, or at least some of them, to stay on to transition the business to the new ownership or to carry on the business thereafter . In such a case, both the Vendor and the Purchaser have to agree as to offers of employment to the employees who are staying and the nature, terms, and responsibility for those who are being terminated as a result of the transaction. At common law, the employment relationship is not transferable from one employer to another, As a result, on a purchase and sale of a business; there is a deemed termination of employment of all of the employees of the subject enterprise. There are costs that arise from such a termination, some of which arise out of case law and some out of statute law.

In Case law, an offer of employment, which is contiguous to the previous employment, is often sufficient to discharge the liability of both the previous employer and the new employer. In effect, it provides a situation in which the employee has been presented with the opportunity to fully mitigate any damages that they may suffer as a result of the acquisition and its impact on their employment. As a result of the offers of employment, however, the new employer also assumes, for all purposes the service credits of the employees amassed with the Vendor. These credits are used for the calculation of such benefits as vacation entitlement, public holidays, pregnancy and parental leave, termination and severance pay. The offer of employment is usually sufficient for the

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

Purchaser to discharge their obligation. However, there are some jurisdictions which provide that, regardless of offers of employment with continuing service credits, the minimum standards in the Employment Standards Act must be paid. British Columbia is one such jurisdiction.

In recent years, as a result of a number of highly publicized cases, there have been special provisions written into the legislation of several provinces to address the peculiarities of the service industry. These provisions state that in the event that there is a sale of business in, among others, the cleaning, security or food industries, that the employment of the employees is deemed to be continuous regardless of any offer of employment, or lack thereof, made by the Purchaser. As a result, the number of M & A transactions in these businesses, which were driven principally by the opportunity to cut costs by hiring a new, lower-cost staff, has declined in recent years.

In addition to the above, purchasers who are contemplating the acquisition of an enterprise which currently employs a large number of staff whom the purchaser may wish to retain, must take into account the cost of the employer's contribution to social welfare plans in the costing of the acquisition. Both of the plans (Employment Insurance and Canada Pension Plan) require contribution by both the employer and the employee. The contribution of both, on an annual basis, is capped by a formula, which varies by income level. As a result, some high-income earners cease making such contributions within the first four months of the year while others continue making contributions throughout the year. However, in the event that the employee starts new

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

employment, or is deemed to have done so by the act of an acquisition, during the year, the calculation and the contributions by both employer and employee recommence as at the date of the new employment. The employee may claim the overpayment as a refund on their next tax return but the employer is not afforded such a benefit. Any overpayment of the employer's contribution is kept by the government, without credit to the employer. As such amounts may be as large as high six figures, the timing of an acquisition is often affected and may be adjusted in order to minimize the amount of additional employer contributions.

(h) Parental Leave

Recent amendments to the provincial and federal legislation with respect to parental leave (the leave allowed new parents, not just the biological mother) have allowed the parents to take up to 50 weeks of leave with employment insurance from the federal program. Job protection is provided for the same period. The leave is nominally available to one parent but may be shared between the two. The legislation has been designed to also provide the same benefits for adoptive parents. The issue now in debate (and in the courts) is whether it should apply to same-sex adoptive or biological partners. As at this writing, that matter remains to be resolved.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

(i) Employment Equity

All jurisdictions in Canada have Employment Equity legislation in force. The enforcement of it, however, varies from jurisdiction to jurisdiction. Most governments require that corporations doing business with it be registered under and comply with the employment equity legislation in the appropriate jurisdiction. There are generally no other actively pursued enforcement activities and, in the event that the corporation does not deal in trade with the government, the impact of employment equity legislation will be minimal.

The general thrust of employment equity legislation is two-fold. First to ensure that the corporation in question actively promotes employment equity. This is usually demonstrated by a statement to that effect in employment advertisements. The second is more subjective and requires that the employer have a workforce that is generally representative of the cultural and ethnic makeup of the community in which it operates. Since what constitutes a community and ethnic and cultural makeup is difficult to establish due to the general unavailability of reliable information and the mobility of populations, enforcement of these pieces of legislation, with the exception of government contracting mentioned above, has been spotty.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

(j) Pay Equity

All jurisdictions have in place legislation that requires that there be equal pay for work of equal value. The agencies, which have been tasked with the mandate to establish compliance, have been affected with cutbacks in recent years. As a result, the enforcement of the legislation has occurred in the breach rather than in any prospective or proactive manner.

The most notable activity in this field has been among the federal civil service employees. This workforce, which is predominately female, has, through its union, been engaged in extensive litigation for more than a decade on the issue of the calculation of equity formulas. At the time of this writing, the issue was being appealed to the Supreme Court by the Federal government, which lost the last round in the Court below. The result of this decision will be closely watched in the employment community, as its determination will set the pattern for settlements to come in the future. Regardless, any employer who has policies and procedures that are in compliance with comparable legislation in the US will likely be in general compliance with such legislated requirements in Canada.

(k) Privacy Legislation

Although not strictly employment legislation, privacy laws, as recently introduced have a significant impact on the employment function in a corporation. The legislation has

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

initially been introduced in the Federal sector, with the proviso that it will automatically be extended to those provinces who, in the three years following the introduction in the federal sector fail to enact similar legislation of their own. Quebec, which for a number of years has had similar legislation in place, is not affected by this provision.

The legislation requires that organizations that maintain and store personal information collected from individuals safeguard that information and not release it without the appropriate authorization from the individual involved. Further, it requires that all organizations to which the legislation applies, appoint a privacy officer who has the responsibility for compliance with the legislation and for responding to comments or complaints with respect to matters touched by the legislation. Since an overwhelming majority of corporations archive personal information regarding their employees, this legislation impacts most employers. In addition, in the case of corporations who are engaged in commerce directly with the public and who maintain a large customer database, on the manner in which they store and handle their customer information.

(I) Benefits Coverage

Benefits coverage in Canada , with the exception of basic medicare, is usually employer-provided, either voluntarily or by virtue of agreement contained in a Collective Bargaining Agreement. Basic hospital services, as well as certain drug (based on age eligibility) and vision care benefits are provided by the provincial governments without charge to residents. The programs are paid for by employer contributions, in the form of

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

a payroll tax or by a combination of the general provincial revenue and employee premiums. Some provinces offer drug plans to all resident regardless of age, while others have an age-based drug benefit, principally aimed at retirees.

Most employers provide a mixture of benefits, including semi-private hospital care, major medical (including, but not limited to such benefits as ambulance, chiropractic, massage therapy, counseling, extensive vision care, prosthetics and benefits for extended families). The size and the largesse of the employer and the competitive jurisdictions in which they operate will often drive the extent of the benefits. In the event that an employer operates in a locale in which there is significant competition for employees with particular skills, the employer may have to offer a rich benefit package in order to attract the candidates that they need to operate. As a result, the same employer will often offer the same benefit package across all of their operations, regardless of whether the competitive recruiting environment exists there or not.

(m) Workers Compensation

Workers Compensation in Canada is operated in each jurisdiction by a Crown Corporation (agency of the government). There is no federal equivalent. Participation in the program is mandatory for all employees and employers, although there is an option for officers of a corporation to elect not to be covered by the legislation. Private workers compensation insurance is generally unavailable and is prohibited if used as a substitute for the government system.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

The programs are structured as a no-fault scheme. All employees are entitled to coverage and to benefits arising out of a work-related injury, regardless of contributory negligence. In exchange for this benefit, the legislation provides that the employees forgo the right to sue employers for their negligence. This principle was incorporated in the first workers compensation legislation enacted at the turn of the century and has repeatedly been upheld in decisions of the highest courts. Benefits include wage loss, health care, vocational rehabilitation, permanent disability awards and survivor benefits. The disability benefits range from 90% of average wages in Alberta, Saskatchewan and Quebec to 75% of average wages in British Columbia.

The scheme is entirely funded by employer's contributions (assessments). The assessments are based and calculated on a number of factors, including the inherent risk of the business in which the employer is engaged and the claims experience of employees and former employees of the employer. The rating methods vary by province.

As a result, there is significant economic pressure on employers to keep the accident rate to a minimum and to take steps to provide a safe workplace. In addition, in Ontario (and soon in other provinces) the enforcement arm of the Workers Safety & Insurance Board (as Workers Compensation is called in Ontario) has instituted a program of unannounced workplace inspections. The program, entitled Workwell, conducts audits of workplaces to assess compliance with the provisions of the legislation. The

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

inspections are not limited to industrial or commercial establishments. Inspections are conducted in offices with the same thoroughness as other locations. In the event that the workplace is assessed as failing the inspection, a repeat inspection is scheduled, usually within three months. Should the follow up inspection find that the workplace has not made satisfactory improvement in the interim, the inspection agency has the authority to levy a fine for non-compliance. The amount of the fine is determined by a formula, which takes into account to size of the enterprise and its accident experience in the recent past.

There are a number of organizations which represent employers in Workers Compensation matters and who have developed an expertise in assisting employers who have been found wanting during a Workwell inspection. They provide, for a fee, management of the processes and training required in order to achieve a satisfactory result in such inspections.

B Unionized Employees

(a) Jurisdictions

As with employment law legislation, the legislation governing unionized employees is structured on both the provincial (and territorial) and the federal levels. Federal labour law applies to those employees engaged in occupations that are deemed by legislation to be in the federal sector. The criteria for such a determination is the same as with respect to employment law. All of the Provinces and the Territories have their own

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

labour legislation. Some of the Territories adopt the Federal scheme by reference, applying and enforcing it as their own. Each of the Provinces has their own labour law and regulations. They are enforced by the authority of the legislation through the enforcement vehicle of the Labour Relations Board or Commission.

The thrust of the law and its inclination is significantly impacted by the political and social bent of the government in power in the individual province and the one that may have last amended the legislation. Certain provinces have been governed by The New Democratic ("NDP") or socialist governments, either currently in British Columbia and Saskatchewan. or, in the case of Ontario, in the past decade. As a result, they and their appointees to administrative tribunals are somewhat, or very, employee/union oriented. Such inclinations are often reflected in the nature of decisions from such tribunals and, as a result, the caselaw created by such decisions.

(b) Provincial inclinations

Some provinces are significantly right wing in their inclination. Among them are Manitoba, Ontario and Alberta. Manitoba and Alberta as a result of decades of centre or right wing governments and Ontario as a result of the election of the Conservative government in the mid '90s. Prior to the election, Ontario was governed by a succession of Liberal and then NDP governments, which significantly skewed the labour legislation and its enforcement to the leftist or union side. The Conservative government , elected in 1995, campaigned on a right-wing platform, many of the proposals of which incorporated radical overhaul of the labour legislation.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

Among the reforms instituted by the Conservatives in Ontario were: secret ballots on strike and ratification votes, applications for certification, collective agreement offers; the requirement for the posting in the workplace the method and standards for a decertification application; the requirement for secret and separate ballots on ratification of a first collective agreement and a strike vote.

This last amendment was particularly galling to unions as it could, in a situation involving a weak union, result in the situation where the union, having made its best deal with and an employer and having it turned down by the membership, followed by the same membership denying the union a mandate to call a strike, thus opening the door to a decertification application one year following certification without ever having entered into a first agreement.

In BC in the election held in June, the NDP were swept out of power by a new Liberal government. The new government campaigned on a platform of reforms, many of which included making BC more employer-friendly from, among others, an employment law perspective. A the time of this writing, no specific amendments to either the Labour or employment legislation have been announced but they are expected within the first few months of the new regime. Accordingly, there can be no specific predictions as to which of the existing labour laws would be targeted for amendment. However, among those which have been mooted as candidates are: certification without a vote in the event of employer misconduct during a certification drive, automatic first collective agreements

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

upon application, a ban on substitute workers during a strike, endorsement of secondary picketing, limited de-certification applications, use of surveillance in union matters and a general propensity to favour union side issues in application of the legislation.

(c) Purchase of a business

In the case of the purchase of a business, the presence of a union contract will significantly affect the attraction of the acquisition as a valued item. All jurisdictions provide for successor rights for incumbent unions. Upon application of the union in the case of a sale, a declaration will be issued by the appropriate Board that the collective agreement applies to the ongoing business. The new employer will then be bound by the terms of the existing collective agreement. Although there has been a softening of the position as set out in the case law in recent years, administrative tribunals generally disfavour new owners who purchase a business, and then close for a period of time, followed by a reopening, in an effort to get rid of the union. There have been cases in the retail food industry in which new employer have closed for a number of years, only to re-open with a completely new staff and, following a lengthy hearing, have the former union and collective agreement imposed on them and their new employees.

Such decisions are often influenced by the political bent of the particular jurisdiction in which the case is heard and an assessment of the nature of the local environment is critical to the decision making process in such matters.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

The foregoing comments apply also to the sale of only a part of a business and not always the sale of the whole business. In the event that the tribunal can establish to its satisfaction that the part that was sold comprises a viable entity on its own, it may be held that the collective agreement was "sold" along with the business. Likewise, if the portion of the business that was sold is merged with a previously existing business of the Purchaser and the two parts are not overwhelmingly dissimilar in size, there have been decisions that have extended the collective agreement to the entire enterprise, regardless of the employees' preferences.

On occasion the definition of a "sale" has been held to mean something as small as the transfer of a license, in the event that the possession of the license is critical or central to the viability of the enterprise.

There are also provisions dealing with enterprises that may be under common control, referred to as a related employer. In such cases , upon application by the union, it has been held that the collective agreement should apply to the entire enterprises under the common control. Such applications are usually made in the event that there is a suspicion that the employer is using the existence of the non- –union enterprise to the disadvantage of the unionized employees and that they have suffered as a result.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

The general thrust of various Board decisions in this field have been to ensure that corporate formalities (however much beloved by corporate lawyers) don't interfere with the continuing bargaining rights of employees.

(d) Construction Labour Law

In addition to the foregoing, which applies to industrial and general employment environments in a unionized setting, there is an entire body of law and legislation that applies to the construction industry. Due to its short-term and transient nature, the construction business has lent itself to a unique treatment, which recognizes the project-centered nature of the employment. As a result, one of the most prominent features of this body of law is the province-wide bargaining scheme and the resolution of jurisdictional disputes between (or in some cases among) different unions competing for bargaining rights with the same employer on the same project. The body of law has its own rules, caselaw, and specialists. In the event that an employer is contemplating engaging in commerce in construction in Canada and there are collective bargaining rights in place, they would be well advised to consider it a complex matter best left to full-time practitioners of the subject.

Conclusion

There are a considerable number of further examples of interesting points in Canadian Labour law but they fall beyond the scope of this brief review. In general, it is trite to say that labour and employment law is fluid. It is subject to the shifting political winds

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

and, as has been seen in Ontario over the past decade can shift quickly from one end of the spectrum to the other and back again as governments change.

It is trite to say that the assumption that employment practices in the US, if entered into in Canada, may yield quite a different result than anticipated of desired. As a result, a prudent practitioner will consider all steps involving employment in Canada as potentially fraught with disadvantage and will consider the consequences in advance.

One of the most prudent steps to contemplate to address this matter is to retain knowledgeable local counsel who is conversant with the latest developments in all of the salient areas of the law and who can guide you through the issues and take the necessary steps to ensure, as much a possible, that the outcome is that which is desired.

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

APPENDIX A

Benefits Legislation in Canada

Canadian legislation covers a broad range of social and tax measures directly affecting employer-sponsored protection provided to employees.

Employers should regularly review their benefits programs for relevance and effectiveness from the perspective of legislative change, corporate goals, as well as current and deferred costs.

Furthermore, effective communication is the key for employees to fully appreciate and comprehend their benefits plans.

I. Old Age Security Act

-payments indexed quarterly to reflect changes in cost of living

1) Old Age Security (OAS) Pension

- from age 65, regardless of means, subject to residence requirements, full monthly pension of $431.36 as of 2001-01-01
- full pension if 40 years of residence in Canada after age 18; otherwise, full pension if at least age 25 on 1977-07-01, lived in Canada on that date (or had lived in Canada before that date, but after age 18), and lived in Canada for 10 continuous years prior to the OAS pension application (each missing year during the 10-year period may be replaced by 3 years of earlier residence in Canada, provided the person lived in Canada during the whole year before the application)
- persons not eligible for a full pension: partial pension of 1/40 of full pension per year of residence after age 18, if at least 10 years of residence after age 18
- special provisions apply to immigrants from countries that have a social security agreement with Canada
- clawback: OAS pensioners with net income in 2001 exceeding $55,309 must repay 15% of excess net income up to full OAS amount; since July 1, 1996, OAS benefits are reduced at the time of payment to reflect the clawback

2) Allowance and Allowance for Survivor

- subject to income test and resident requirements
- payable from age 60 to 65 to eligible spouses and surviving spouses of OAS pensioners
- as of 2001-01-01, maximum monthly allowance to spouses is $765.28, and maximum allowance to surviving spouses is $844.88

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

3) Guaranteed Income Supplement (GIS)

- subject to income test and residence requirements
- recipient must be age 65 or over and in receipt of OAS pension
- maximum monthly benefit as of 2001-01-01:
  - $512.65 for single pensioner of for pensioner whose spouse in not receiving OAS pension or the Allowance
  - $333.92 for each person in a conjugal relationship when both are receiving OAS pension or for pensioner whose spouse is receiving the Allowance
- additional supplements of varying amounts also paid by Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Saskatchewan

II. Canada/Quebec Pension Plan (C/QPP)

- Year's Maximum Pensionable Earnings (YMPE) are indexed every year in accordance with a wage index; $38,300 in 2001
- Year's Basic Exemption (YBE): $3,500
- Employee contribution rate: 4.3% of employment earnings in excess of YBE, up to YMPE (maximum contributions in 2001: $1,496.40); same rate for employer, self-employed contribution rate is 8.6%
- Combined contribution rate will increase from 8.6% in 2001 to 9.9% in 2003 and is expected to remain at 9.9% thereafter
- QPP contribution is required for every retired person who work; the retirement benefits will be revised when the retired person stops working
- QPP: in case of phased-in retirement, contributions may be made based on a full salary
- Pensions indexed annually based on cost-of-living increases

1) Retirement Benefits

- eligibility: from age 65 (60 if has substantially ceased working) and contributions made for a least one year
- monthly benefits: 25% of average monthly pensionable earnings adjusted in relation to average YMPE in year of retirement and preceding 4 years; subject to certain restrictions, some months of lowest earnings may be dropped in the calculation of average pensionable earning, or replaced by months after age 65
- C/QPP maximum monthly pension payable from age 65 in 2001: $775
- C/QPP pension reduced by 6% per year (maximum of 30%) if taken after age 65
- Pensionable earnings may be split equally between parties for benefit and eligibility purposes in case of divorce, separation or declaration of nullity if spouses cohabited for a minimum period
- Spouses may share their pension if they are age 60 or over
- CPP: retirement benefits for disability pension recipients from 1998 are based on the benefit at time of disability indexed to inflation instead of recomputation at retirement
- QPP: retirement benefits for disability pension recipients from 1999 are reduced by 0.5% for each month for which they received a disability pension between ages 60 and 65

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

2) Death Benefits

- eligibility: contributions during 1/3 of the deceased's contributory period or 10 years, whichever is less (subject to a minimum of 3 years)
- lump-sum payment: lesser of 6 times deceased's monthly retirement pension and $2,5000 (CPP); $2,500 (QPP)
- surviving spouse's monthly benefit:
  - while spouse under 65:
    -QPP: fixed amount + 37.5% of deceased's retirement pension

Age of spouse	Fixed monthly amount	Maximum in 2001
55 and over	$399.59 (not indexed)	$690.22
45 to 54 or disabled	$353.84	$644.47
Non-disabled under 45 with dependent child	$328.54	$619.17
Non-disabled under 45 without dependent child	$90.63	$381.26

- CPP: $138.07 + 37.5% of deceased's retirement pension (maximum in 2001: $428.70); unless disabled or has dependent children, spouse under age 45 entitled to reduced benefit, and no benefit if under age 35
  - While spouse is 65 or over: C/QPP, 60%of deceased's retirement pension (maximum in 2001: $465)
  - If surviving spouse also entitled to retirement or disability benefits, combined benefit is subject to various maximum amounts
- **orphan's monthly benefit:**
  CPP: $178.42 per orphan in 2001; QPP: $56.65 per orphan in 2001
  - payable to dependent children only (under 18 or, for CPP only, under 25 if attending school)
  - for COO only, orphan may receive double benefits if both parents are dead and were eligible contributors

3) Disability Benefits

- **definition of disability:** inability to regularly perform any substantially gainful occupation (under QPP, own occupation if age 60 or over); disability must likely result in death or be of indefinite duration
- **eligibility:** contributions in disabled's contributory period for
  - CPP: at least 4 of the last 6 years
  - QPP: at least 2 of the last 3 years, at least 5 of the last 10 years or for half of the years (minimum of 2 years)
- monthly benefits payable from the 4th month following month of disability
- **contributor's monthly benefit:** $353.87 (CPP) or $353.84 (QPP) + 75% of contributor's retirement pension (maximum in 2001: CPP, $935.12; QPP, $935.09)
- **children's benefit:** identical to orphan's benefit

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

III. Saskatchewan Pension Plan

- voluntary money purchase retirement savings plan; any person age 18 to 69 may contribute up to $600 per year; member may elect to start receiving retirement benefits at any time from age 55 or transfer funds to a Life Income Fund (LIF), a Locked-in Retirement Income Fund (LRIF) or a Locked-in Retirement Account (LIRA); member leaving province may continue to contribute; after six months of plan membership, contributions are locked in and must remain in the plan until death or retirement; no government matching contribution; no minimum guaranteed monthly pension

IV. Private Pension Plans

Jurisdiction	Effective Date	Reform Date
Alberta	January 1, 1967	January 1, 1987
British Columbia	January 1, 1993	---
Manitoba	July 1, 1976	January 1, 1985
New Brunswick	December 31, 1991	---
Newfoundland	January 1, 1985	January 1, 1997
Nova Scotia	January 1, 1977	January 1, 1988
Ontario	January 1, 1965	January 1, 1988
Quebec	January 1, 1966	January 1, 1990
Saskatchewan	January 1, 1969	January 1, 1993
Federal	October 1, 1967	January 1, 1987

- **eligibility** after 24 months of continuous service (mandatory membership in Manitoba); part-time employees eligible after 2 consecutive calendar years (2 years of continuous employment in Newfoundland) in each of which earning reach 35% (Manitoba, 25% and mandatory membership) of YMPE, or 700 hours of employment in each of 2 consecutive calendar years in Ontario and Saskatchewan; Quebec, eligibility for all employees following the calendar year in which earnings reach 35% of YMPE, or 700 hours of employment
- **vesting and locking-in:**
  - for benefits accrued between effective date and reform date (1987-01-01 in Ontario; 1994-01-01 in Saskatchewan): 10 years of service or participation and age 45; British Columbia, vesting after 2 years of participation for all benefits and locking-in after 2 years of participation for benefits after effective date; Manitoba, vesting after 10 years of service or participation but no locking-in before age 45; New Brunswick, 5 years of service; Quebec, immediate; Saskatchewan, if one year of service or participation and age plus years of service or participation equals 45; British Columbia, New Brunswick and Saskatchewan, employers must provide for at least 50% (or such other percentage as is provided under the plan in New Brunswick) of the value of benefits at termination or retirement (or death in British Columbia); excess employee contributions may be refunded

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

  - for benefits accrued after reform date (1987-01-01 in Ontario; 1994-01-01 in Saskatchewan): 2 years of participation (Alberta, 5 years of service before 2000 and 2 years of participation after 1999; Manitoba, 2 years of participation or service; Quebec, immediate; Saskatchewan, 2 years of service); employers must provide for at least 50% of the value of benefits at termination, retirement or death (federal, not applicable if plan provides indexation at prescribed rate during deferral period); excess employee contributions may be refunded, except Quebec and federal
- **transferability of commuted value** upon termination of employment must be offered up to eligibility for early retirement (Manitoba, up to retirement; Alberta, British Columbia and Quebec, up to retirement for defined contribution plan); depending on the province and the member's age, commuted value may be transferred on a locked-in basis to a prescribed retirement savings arrangement
- **cash availability** upon termination of employment:
  - for benefits accrued between effective date and reform date (1987-01-01 in Ontario; 1994-01-01 in Saskatchewan): refund of up to 25% of commuted value of pension (Saskatchewan, 50% of member contributions with interest), except British Columbia, New Brunswick, Newfoundland and Quebec
  - for all benefits accrued: refund of 100% of commuted value if annual pension less than 2%of YMPE (Alberta, Manitoba, Newfoundland and federal, 4% of YMPE; British Columbia, 10%of YMPE; Quebec, n/a) or if commuted value less than 20% of YMPE (Manitoba, Saskatchewan, 4%of YMPE; Newfoundland, 10% of YMPE; New Brunswick, Nova Scotia, Ontario and federal, n/a)
- **pre-retirement death benefit** for service after reform date (effective date in British Columbia and New Brunswick; 1987-01-01 in Ontario; 1994-01-01 in Saskatchewan): Alberta (for service after 1999), Manitoba, Newfoundland, Ontario, Quebec, Saskatchewan and federal, if member was eligible for early retirement, spouse receives a lifetime pension equal to 60% of member's early retirement pension; Alberta, Nova Scotia and federal, refund of member contributions with interest if there is no eligible spouse; waiver by spouse allowed in British Columbia, Ontario, Quebec and federal
- **post-retirement death benefit** for all years of service: upon the member's death, spouse receives a pension equal to 60% of member's pension; Manitoba, 662/3%; actuarial reduction allowed; waiver by spouse allowed; termination of spouse's pension on remarriage prohibited
- **early retirement** must be allowed within 10 years of normal retirement age; federal, 10 years of pensionable age; British Columbia and Newfoundland, from age 55; Manitoba, reasonable age and service requirements allowed; Alberta and Quebec, employees on working-time reduction and who are within 10 years of normal retirement age may receive an annual benefit form their plan to make up for part of pay loss; Quebec, employees retiring less than 10 years before normal retirement age may receive a temporary pension from their plan until age 65; actuarial reduction allowed
- **upon postponed retirement,** member may continue accrual up to pension plan's maximum service or pension, if pension is not paid; Quebec, postponed

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

pension must be revalorized and partial pension payment may compensate for salary reduction

- **integration of C/QPP benefits** limited to 1/35 per year of credited service (from 1966-01-01 in New Brunswick; employment from 1966-01-01 in Saskatchewan); Manitoba, limit of 3% per year; Newfoundland, reduction according to the formula approved by the superintendent; federal, no limit; **integration of OAS benefits** limited to 1/35 per year of credited service before reform date (1984-01-01 in Manitoba, limit of 3%; 1987-01-01 in Ontario; effective date in British Columbia and New Brunswick); Newfoundland, reduction according to the formula approved by the superintendent for service before 1996-12-31, and no integration permitted for service after that date; federal, no limit; Saskatchewan, no integration permitted
- **sex distinctions** prohibited for member's contributions, benefits (accrued after reform date in federal and Nova Scotia; 1987-01-01 in Ontario; after effective date for British Columbia and New Brunswick) and eligibility for membership; no requirements in Alberta, Newfoundland and Quebec
- **division of pension on marriage breakdown:** provision in all jurisdictions; generally, limit division to 50% (except British Columbia and federal) of pension benefits accrued during marriage or plan membership; transferability of pension benefits generally allowed
- **garnishment** of pension benefits permitted in certain provinces
- **minimum interest rate** on member's contributions in all jurisdictions

V. Workers' Compensation

- no-fault guarantee of compensation for work-related injury or disease; legislation specifics vary by province
- funded 100% by employers; rating methods vary by province
- provides wage loss, health care, vocational rehabilitation, permanent disability awards and fatality survivor benefits
- **disability wage loss benefits:** British Columbia, 75% of gross eligible earning; Alberta, Quebec and Saskatchewan, 90% of net eligible earning; Ontario and New Brunswick, 85% of net eligible earning; Manitoba, 90% for the initial 24 months, then reduced to 80% of net eligible earnings; Prince Edward Island, 80% for the initial 39 weeks, then 85% of net eligible earning; Newfoundland, 80% of net eligible earning; Nova Scotia, 75% for the initial 26 weeks, then 85% of net eligible earnings
- **permanent disability pension awards:** based on the degree of physical impairment and ensuing wage loss; Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario and Quebec have dual award systems, providing both wage loss and non-monetary loss awards; Alberta: based on physical assessment of capacity to work and potential wage loss
- **adjustment:** all provinces adjust benefits periodically, some on the basis of CPI-related indexation, others with legislated periodic improvements

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

VI. Employment Insurance (EI)

1) Income Benefits

- **benefits:** 55% of average insurable earnings (total earnings over last 26 weeks); maximum weekly insurable earnings in 2001 are $750; maximum weekly benefit is $413; no benefits for employees who quit their job without just cause or are dismissed for misconduct
- **intensity rule:** for extensive users, 1% reduction in benefits for each 20 weeks of benefits in excess of the first 20 weeks of benefits over last 5 years, to a maximum reduction of 5% (Rule re: maximum repealed by amendment 2001-06-01)
- **family income supplement:** up to 80% of average insurable earnings for claimants with children and a family income below $25,921
- **allowable earnings:** claimants entitled to earn up to 25% of their weekly EI benefits without any decrease ($50 for those receiving less than $200 of benefits per week)
- **premium in 2001:** $2.25 for employee and $3.15 for employer per $100 of insurable earnings, to a maximum annual premium of $878 for the employee and $1,229 for the employer
- **eligibility:**
  - layoff benefits for employees working a minimum number of hours in the last 52 weeks: from 420 to 700 hours, depending on regional unemployment rate; for new entrants and re-entrants to labour force: at least 910 hours required
  - maternity, parental and sickness benefits: 600 hours of insurable employment
- **waiting period:** benefits payable after 2 weeks of unemployment
- **benefit duration:**
  - layoff benefits: payable for up to 45 weeks, depending on number of hours worked in last 52 weeks and regional unemployment rate
  - maternity and sickness benefits: payable for up to 15 weeks
  - parental benefits to take care of a newborn or to adopt a child: payable for up to 35 weeks, may be shared between parents if both eligible
  - maternity, sickness and parental benefits subject to a combined maximum of 50 weeks; if in combination with layoff benefits, total benefit period may not exceed 50 weeks
- **clawback:**
  - first-time claimants: if net income for taxation year exceeds 11/4 times maximum yearly insurable earning ($48,750 in 2001), up to 30% of benefits recovered
  - repeat claimants: if net income for taxation year exceeds the maximum yearly insurable earnings ($39,000 in 2001), form 50% to 100% of benefits recovered, depending on extent of past use
- **premium reduction:**
  - employers with a registered disability income plan qualify for EI premium reduction: registered plans qualifying for premium reduction must provide benefits at least as generous as EI sickness benefits

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

- amount of reduction: $0.29/$100 of weekly insurable earnings for most plans; cumulative sick leave or pregnancy plans eligible for a reduction of up to $0.30/$100 of weekly insurable earning if plans meet certain standards; 5/12 of reduction must be shared with employees in cash or equivalent benefits

2) **Re-Employment Benefits**

- assistance will be provided to those experiencing difficulty in returning to work through the 5 following programs:
  - wage subsidies
  - earnings supplement
  - self-employment assistance
  - job-creation partnerships
  - skills loans and grants

VII. Public Hospital and Medical Care

1) Hospital Benefits

- hospital plans vary by province, but they all cover, during the active treatment period, room and board to ward level, operating room and anaesthetic facilities, medically necessary in-patient emergency services
- entry fees and/or daily ward charges for chronic-care and nursing homes exist in most provinces
- all provinces cover out-of-province expenses to varying degrees

3) Medical Care, Drugs, Dental Care and Vision Care

- **medical care:**
  - medicare plans essentially cover all services rendered by medical practitioners at home, office or hospital; depending on province of residence, limited coverage available for paramedic services and prosthetic or orthopedic appliances
  - charges incurred by a person temporarily outside province of residence reimbursed to varying degrees
- **drug expenses (out of hospital, excluding any special programs for low-income persons):**
  - all provinces have a provincial dug list
  - Alberta: 70% reimbursement for residents age 65 and over; out-of-pocket maximum of $25 per prescription
  - British Columbia: all residents, 70% reimbursement after annual deductible of $800 per family; out-of-pocket annual maximum of $2,000 per family, coinsurance increased to 100% thereafter; age 65 and over: 100% reimbursement after a deductible equal to the dispensing fee with an out-of-pocket annual maximum of $200
  - Manitoba: compulsory annual enrolment for all residents; 100% reimbursement after annual family deductible of 3% of adjusted annual family income, or 2% if adjusted annual family income less that $15,000 (adjusted

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

annual family income: family income reduced by $3,000 for spouse and each dependent child)
  - Nova Scotia: optional coverage for residents age 65 and over (those with private first-dollar coverage are not eligible until their expenses exceed $350 per year if they receive GIS and $565 if not), deductible of 33% of expenses up to $450 per year
  - Ontario: for residents age 65 and over, after an annual deductible of $100, 100% reimbursement for charges in excess of the dispensing fee (maximum, $6.11 per prescription); for residents under age 65, 100% reimbursement after large out-of-pocket costs varying with family income and size
  - Prince Edward Island: for residents age 65 and over, deductible of $8 plus dispensing fee per prescription
  - Quebec: for all residents not eligible for a group insurance plan, 75% reimbursement after monthly deductible of $8.33 per adult, 100% reimbursement after monthly out-of-pocket maximum of $62.50 per adult
  - Saskatchewan: for all residents, 65% reimbursement after semi-annual deductible of $850 per person; additional coverage available for those whose family drug costs are high in relation to their net income
- **Dental care (excluding any special program for low-income persons):**
  - Specific dental and oral surgery in hospital covered in all provinces
  - Limited coverage for children in Newfoundland, Nova Scotia, Prince Edward Island and Quebec
  - Alberta: limited coverage for those age 65 and over and dependents
- **Vision care (excluding any special program for low-income persons):**
  - Alberta: coverage limited to residents under age 19 and age 65 and over
  - British Columbia: one eye examination every two years for persons 16 to 65 years of age; no limit for children or seniors
  - Manitoba and Quebec: coverage limited to residents under age 18 and age 65 and over
  - Nova Scotia: coverage limited to residents under age 10 and age 65 and over
  - Ontario: eye examinations covered for all residents once per 24 months (once per 12 months if under age 20 or age 65 and over)
  - Saskatchewan: coverage limited to residents under age 18

4) Out-of-Country Coverage

- coverage limited to a maximum per diem rate in all provinces
- coverage limited to emergency services in Manitoba, New Brunswick, Nova Scotia, Ontario, Quebec and Saskatchewan
- with prior approval, services not available in the province or residence may be covered

5) Contributions

- costs supported in some provinces by additional contributions:
  - Alberta: $34 single, $68 family, per month (cost varying based on income for residents age 65 and over)

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

- British Columbia: $36 single, $64 family or 2, $72 family of 3 and over, per month
- Manitoba
  - employer: 2.15% payroll tax if payroll greater than $2,000,000; 4.13% if payroll between $1,000,000 and $2,000,000; 0% if payroll under $1,000,000
- Newfoundland
  - employer: 2% payroll tax (on payroll in excess of $400,000)
- Nova Scotia
  - residents age 65 and over: annual premium for optional drug coverage of up to $215 (lower for low-income recipients); GIS recipients do not pay a premium
- Ontario
  - employer: payroll tax rate of 1.95% (first $400,000 of payroll exempt)
  - residents: 20% of Ontario income tax in excess of $3,466 plus 36% of Ontario income tax in excess of $4,373
- Quebec
  - employer: 4.26% payroll tax; reduced rate if payroll under $5,000,000
  - residents: 1% of most non-salary taxable income in excess of $11,000 (excluding the portion between $26,000 and $40,000) to a maximum of $1,000
  - residents covered under the Drug Insurance Plan: annual premium up to $385 (lower for low-income recipients)

VIII. Parental Leaves

1) Maternity Leave

- all jurisdictions have provisions regarding maternity leave
- **eligibility:** from 13 to 52 weeks of service, depending on jurisdiction; British Columbia, New Brunswick and Quebec: no requirements
- **duration:** up to 17 or 18 weeks, depending on jurisdiction; if medically required, extension allowed up to 3 weeks in Alberta and 6 weeks in British Columbia, Quebec and Saskatchewan
- all jurisdictions: employee to be reinstated to the same position or a comparable one after maternity leave
- British Columbia, Nova Scotia, Ontario, Quebec, Saskatchewan and federal require participation in employer-sponsored benefits to continue during maternity leave, subject to continuation of employee contributions (Nova Scotia and Saskatchewan: employee may be required to pay employer contributions)
- Quebec and federal grant leave to a pregnant or breast-feeding woman when preventive reassignment is impossible and working conditions could be dangerous to the mother's or baby's health

2) Parental Leave

- all jurisdictions have provisions regarding parental leave for birth and adoptive parents; Alberta: for adoptive parents only

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

- **eligibility:** from 13 to 52 weeks of service, depending on jurisdiction; British Columbia, New Brunswick and Quebec: no requirements
- **duration:** Alberta, 8 weeks; British Columbia, New Brunswick, Ontario and federal, 35 weeks for birth mother and 37 weeks for birth father and adoptive parents; Manitoba, 37 weeks; Newfoundland and Prince Edward Island, 35 weeks for birth parents, 52 weeks for adoptive parents; Nova Scotia, 35 weeks for birth mother, 52 weeks for birth father and adoptive parents; Quebec, 52 weeks; Saskatchewan, 12 weeks for birth and adoptive parents and 18 additional weeks for adoptive parents; if the newborn or adoptive child suffers from health condition, extension allowed up to 5 weeks in British Columbia
- **adopted child age limit:** Alberta, under age 3; New Brunswick, under age 19; Quebec, under the age of compulsory school attendance; other provinces, not specified; federal. Based on criteria of the province where parents reside
- all jurisdictions: employee to be reinstated to the same position or a comparable one after parental leave
- British Columbia, Nova Scotia, Ontario, Saskatchewan and federal require participation in employer-sponsored benefits to continue during leave, subject to continuation of employee contributions (Nova Scotia and Saskatchewan: employee may be required to pay employer contributions)
- New Brunswick, Prince Edward Island and federal: when both parents take a leave, the combined total duration of those leaves may not exceed the maximum duration permitted
- Quebec; 2-day paid leave upon birth or adoption of child for employee with 60 days of service with employer

IX. Human Rights

1) Discrimination in Employment

- grounds for discrimination in employment vary between jurisdictions, but main prohibitions are vis-a-vis: age (defined differently in various jurisdictions), sex, sexual orientation, pregnancy, race or ethnic origin, religion, marital status, family status, physical or mental disability
- Alberta, Manitoba, New Brunswick, Prince Edward Island and Quebec: mandatory retirement prohibited (with exceptions)
- All jurisdictions (except Manitoba): statutory exceptions with respect to insurance and pension plans allowing discrimination on specific grounds
- Manitoba: issued guidelines regarding discrimination in benefit plans
- Quebec: distinctions based on pregnancy, sexual orientation or handicap prohibited in benefit plans; distinctions based on age, sex or civil status allowed if based on actuarial data and if legitimate

2) Employment Equity (Affirmative Action)

- all jurisdictions: adoption of affirmative action programs allowed; British Columbia, Nova Scotia and Saskatchewan can appoint boards of inquiry that may order companies to adopt affirmative action programs

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

- federal: public and private sectors with over 100 employees required to implement employment equity measures
- employers with 100 employees or more bidding on federal contracts of $200,000 or more must certify they will implement employment equity measures
- Quebec: employers with 100 employees or more soliciting contracts or subsidies of more contracts or subsidies of more than $100,000 have to certify they will implement affirmative action programs

3) Pay Equity

- all jurisdictions: equal pay required for equal or similar work for women and men
- Manitoba, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island: pay equity legislation requiring pay equity measures in public sector; Ontario and Quebec: pay equity legislation requiring pay equity measures in public and private sectors
- Quebec and federal: equal pay required for work of equal value

X. Tax Provisions

1) Income Tax

- **Old Age Security Act:** payments not subject to clawback are taxable
- **Canada/Quebec Pension Plan:** payments taxable; employer contributions deductible; employee contributions subject to a 16% federal tax credit (at provincial level, the percentage used to calculate the tax credit varies with each province)
- **Workers' Compensation:** payments essentially non-taxable; employer contributions deductible
- **Employment Insurance:** payments taxable; employer contributions deductible; employee contributions subject to a 16% federal tax credit (at provincial level, the percentage used to calculate the tax credit varies with each province)
- **Health and Dental Expenses:**
  - Government plans; individual's contributions not deductible but taxable to employee if paid by employer (21.5% tax credit on individual's contributions to the Quebec Health Services Fund for Quebec tax purposes); employers may deduct contributions; benefits not taxable; Quebec prescription drug insurance premium qualifies for the medical expense tax credit
  - Private plans: employers may deduct their contributions; employee contributions qualify for the medical expense tax credit; employer contributions and benefits not taxable to employees (for Quebec income tax purposes, contributions are taxable to employees and qualify for the medical expense tax credit)
- **Insured Salary Continuance:**
  - Benefits paid from plan to which employer contributed taxable; employee contributions deductible from taxable benefits; employer contributions not taxable to employees
  - Benefits paid under employee-pay-all plan not taxable

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

- **Group Life Insurance Policies:** net employer contributions on total amount of group life insurance and on dependent life insurance considered taxable income for employee; employee contributions in respect of taxable coverage reduce taxable benefit
- **Registered Pension Plans (RPP):**
  - Combined employer-employee contributions to money purchase RPP tax deductible up to the lesser of 18% of remuneration and $13,500, subject to comprehensive limit if employee also participates in defined benefit RPP or DPSP
  - 100% of employee contributions to defined benefit RPP tax deductible (except for limits applicable to past service before 1990); employer current and past service contributions to defined benefit RPP, tax deductible without limit, but must be approved by tax authorities
- **Deferred Profit-Sharing Plans (DPSP):**
  - Employer contributions tax deductible up to the lesser of 18% of remuneration and $6,750, subject to a comprehensive limit if employee also participates in RPP; employee contributions are prohibited
  - Contributions vest after 2 years of plan membership
  - Employer contributions to DPSP is denied if significant shareholder (or related person) is beneficiary

-Registered Retirement Savings Plan (RRSP):

- RRSP contributions limits for 2001:
  - a) individuals not participating in an RPP or DPSP in 2000: lesser of 18% of earned income in 2000 and $13,500
  - b) participants in money purchase RPP and DPSP in 2000: lesser of 18% of earned income in 2000 and $13,500, reduced by pension adjustment (i.e. employer and employee contributions to RPP and employer contributions to DPSP for 2000)
  - c) participants in defined benefit RPP in 2000: lesser of 18% of earned income in 2000 and $13,500, reduced by pension adjustment (i.e. deemed value of benefits accrued in 2000 under RPP)

  plus any unused RRSP contribution room at the end of 2000
- the RRSP contribution limit for 2001 is increased by the Pension Adjustment Reversal (PAR) calculated for 2001
- the RRSP contribution limit for 2001 is reduced by the 2001 net Past Service Pension Adjustment (PSPA)
- unused RRSP contribution since 1991 may be carried forward indefinitely
- funds accumulated under RRSP may be withdrawn totally or partially at any time prior to end of year in which individual attains age 69; in addition, over same period, these funds may be used to purchase life annuity or fixed-term annuity to age 90 or transferred to a Registered Retirement Income Fund (RRIF)
- tax-free transfer of retiring allowances to RRSP limited to $2,000 per year of service prior to 1996, plus $1,500 for each year of service prior to 1989 for which employer contributions to either an RFP or a DPSP have not vested in the employee

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).

- **Private Pension Benefits:** federal tax credit of 16%, (max. $160) of eligible pension income (at provincial level, the percentage used to calculate the tax credit varies with each province) may be claimed for total of:
  - Life annuity payments from RPP; and
  - Annuity payments out of DPSP, RRSP or RRIF and taxable portion of other annuities, if age 65 or older, or regardless of age if received due to spouse's death

2) Life and Health Insurance Premium Tax

- 2% of net premiums in all provinces except:
  - Newfoundland: 4%
  - Nova Scotia: 3%
  - Prince Edward Island: 3.5%
  - Saskatchewan: 3%

  (also applicable to most self-insured plans in Nfld., Ontario and Quebec)
- group insurance plans, including most self-insured plans, are subject to sales tax in Ontario (8% on net cost) and Quebec (9% on net cost; 7.5% tax on charges for self-insured plans subject to GST)

This material is protected by copyright. Copyright © 2001 various authors and the American Corporate Counsel Association (ACCA).