

*RIGHTS AND RESPONSIBILITIES
IN A CHANGING WORKPLACE:*

*A Review of Employment Standards
in British Columbia*

by Mark Thompson



Ministry of Skills, Training and Labour
Honourable Dan Miller, Minister

Canadian Cataloguing in Publication Data

Thompson, Mark, 1939 —
Rights and responsibilities in a changing workplace

ISBN 0-7726-2053-9

1. British Columbia. Employment Standards Act. 2.
Labor laws and legislation — British Columbia. I.
British Columbia. Ministry of Skills, Training and
Labour. II. Title.

KEB406.T46 1994
KF3455.T46 1994

344.711'01

C94-960080-6

ACKNOWLEDGEMENTS

The review of employment standards consumed 10 months. Many persons contributed to its completion and the ideas this report contains. The Minister of Labour and Consumer Services, the Honourable Moe Sihota, saw the need for the review and ensured that it began successfully. He supported the work of the Commission and was responsible for the introduction of legislation that reflected the principles in the interim report issued on June 2, 1993. In September 1993, the Honourable Dan Miller was named Minister of Skills, Training and Labour. He took a direct interest in the project and granted a request for an extension of the deadline for completing it. This extension promoted consultation within the Committee of Advisers and made a more complete report possible. Both Mr. Sihota and Mr. Miller backed the review in every way possible. Neither interfered with the deliberations of the Commission in any way nor attempted to influence the recommendations.

The Minister for Women's Equality, the Honourable Penny Priddy, expressed a keen interest in the work of the Commission. She assisted in the preparation of briefs that canvassed issues of special interest to women.

Over 600 individuals and organizations contacted the Commission to express their views on employment standards. Several hundred persons attended public hearings, many not to speak, but to be informed on the subject and the Commission's work. Persons who appeared at the hearings ranged from association executives with polished presentations to individual workers, or their spouses and even their parents who were unaccustomed to speaking to a large audience. The Commission found this process immensely informative, although not without its frustrations. In the end, this was an impressive display of Canadian democracy. Like all democratic processes, it was occasionally cumbersome, consumed considerable time, but ultimately productive and far superior to any of the alternatives.

The work of the Advisory Committee was invaluable. The members of the Committee, Susan Arnold, Anita Braha, Carolyn Chalifoux, Claude Heywood, Eric Mittendorfer, Steve Orcherton and Kathy Sanderson, contributed greatly to the review process. They sacrificed time with their families and their other careers to attend public hearings in all regions of the province. During the hearings, they received all points of view with respect and interest. After the hearings were completed, they discussed the issues raised with vigour, skill and courtesy. All displayed lively senses of humour, even when topics were debated passionately. On many issues, they came to agree with persons nominally representing other points of view from their sense of the common good of all British Columbians.

Major contributions to the work of the Commission were made by the staff of the Ministry of Labour and Consumer Services and Skills, Training and Labour. Judy Cavanagh was unstinting in her efforts and provided many valuable insights into the problems of administering the current *Employment Standards Act* and suggestions for improving on it. Her enthusiasm and cheer contributed to the work of the Commission from its creation to the long nights immediately preceding the presentation of the Report. At the beginning of the review, Ron Buchhorn was Assistant Deputy Minister of Labour and Consumer Services and Acting Director of the Branch. His views on the *Act* and what it could be were very useful, and the Commission viewed his resignation from the Ministry with genuine regret. Dan Cahill and Tom Dodds, experienced managers from the Employment Standards Branch, shared their wisdom freely and without reservation. The Legislative Review Committee from the Branch contributed many suggestions for improving the *Act*. Doubtless they will recognize many of these ideas in the recommendations in this Report. Industrial Relations Officers in each of the regional offices of the Branch arranged meetings with representatives of their communities. They also shared useful insights about the problems of protecting employment standards in their areas of responsibility. Josepha Boljesic accomplished the administrative arrangements for the Commission skilfully, including hearings in 13 cities virtually without incident. She collected over 600 briefs and prepared summaries accurately and quickly. Judy Tsukijima oversaw the arrangements for the review in the Ministry. Hugh Legg and Corinne Deshaw were responsible for the production of the discussion document, *Standards for a Changing Workplace* and dissemination of the Report to the public. The discussion document provoked more debate over employment standards than the province has ever experienced.

Dean Michael Goldberg and Associate Dean Don Wehrung of the Faculty of Commerce and Business Administration at the University of British Columbia provided essential support. They understood the significance of the task and cooperated in every way possible to ensure that it was completed successfully. Prof. Thomas Knight assumed some of my academic duties on short notice and continued performing them beyond the time to which we originally agreed. Noreen Warrington accepted a disruption in her normal routine to work as the secretary for the Commission at the University with enthusiasm and unflinching good cheer.

Finally, my wife, Mary, and my children, Andrew, Julie and James, were understanding and tolerant of the strain that this work placed on them. Mary and Andrew in particular, suffered with a husband or father who was often physically absent and even more frequently distracted. No words can express my gratitude to them.

All of these individuals contributed to the work of the Commission. Only I am responsible for the points of view and recommendations in this Report.

TABLE OF CONTENTS

MANDATE	1
SUMMARY OF RECOMMENDATIONS	3
I INTRODUCTION	21
A. PRINCIPLES OF THE REVIEW	24
B. STATEMENT OF PURPOSES	28
II COVERAGE	31
General Statement	31
Domestics	36
Agriculture	41
Professionals	53
Persons with Disabilities	54
Education	59
Artists	64
Fishers	66
Residential Workers	70
Other Groups	75
Taxi drivers	75
Newspaper carriers	77
Security personnel	79
Fire fighters	79
III TERMS OF EMPLOYMENT	81
A. MINIMUM WAGE	81
B. LEAVES FROM WORK	91
Bereavement Leave	91
Family Leave	92
Jury Duty	93

C.	STATUTORY HOLIDAYS	93
D.	PART-TIME WORKERS	98
E.	HOURS OF WORK	102
	Work Schedules	103
	Banking of overtime	106
	Meal breaks	107
F.	ANNUAL VACATION	108
IV	ENFORCEMENT	113
	Penalties	113
	Education	116
	Complaints	119
V	VARIANCES AND EXEMPTIONS	127
VI	APPEALS	133
VII	TERMINATION	143
VIII	DIRECTORS' AND OFFICERS' LIABILITY	153
IX	STRUCTURE OF THE ACT	159
X	MISCELLANEOUS	161
	Maternity Leave (Section 52)	161
	Camps	161
	Apparel	163
	Child Employment	164
	Payment of Wages	165
	Employer Payroll Records	167
	Review of the <i>Act</i>	168
XI	TRANSITION	171
	APPENDICES	175
	BIBLIOGRAPHY	179

*MANDATE
FOR THE REVIEW
OF EMPLOYMENT STANDARDS
AND THEIR REGULATION
IN BRITISH COLUMBIA*

Professor Mark Thompson is appointed as commissioner with the following terms of reference:

- to review employment standards and their regulation in British Columbia;
- to provide the minister of labour and consumer services with recommendations as to how the consultation for such a review should be undertaken;
- to review and make recommendations on an expedited basis, on three aspects of the existing *Employment Standards Act*:
 - the legislative amendments necessary to deal with the repeal of section 2(2) which deals with variances from the act;
 - the legislative amendments necessary to transfer employment standards appeals to the labour relations board;
 - the changes required to part 5.1, dealing with group termination notice, made necessary by a recent court decision.

In carrying out his mandate, Professor Thompson will be assisted by an advisory committee but he has the sole responsibility for the provision of Reports and the recommendations to the minister of labour and consumer services.

SUMMARY OF RECOMMENDATIONS

I. INTRODUCTION

The Commission recommends that:

1. a Statement of Purposes be added to the *Act*. The Commission proposes the following purposes:
 - To ensure that employees in British Columbia receive basic standards of compensation and conditions of employment;
 - To promote the fair treatment of employees and employers;
 - To encourage open communication between employers and employees;
 - To provide rapid and equitable resolution of disputes over the application and interpretation of this *Act*;
 - To foster the development of a productive and efficient labour force in British Columbia that can contribute fully to the prosperity of the province;
 - To contribute to the ability of employees to meet work and family responsibilities.

II. COVERAGE BY THE ACT

DEFINITION OF “EMPLOYEE”

2. the Ministry be given the power to declare persons to be employees for the purposes of the *Act*, subject to appeal to the Employment Standards Tribunal.
3. the *Act* should clearly state that persons meeting the traditional common law tests of employee status are employees under the *Act*.
4. dependent contractors as the term is used in the *Labour Relations Code* be included in the definition of “employee” in this *Act*.
5. the definition of “employee” in the *Act* state explicitly that part-time employees are included.
6. the definition of “employee” including persons on leaves of absence, to include persons with the rights of recall under collective agreements.

DEFINITION OF “WORK”

7. the definition of “work” in the *Act* state clearly that it includes home work. Employers who assign work to employees to be performed in their residence or the residence of another person should be required to provide the Ministry with the particulars of this work situation, including the names of employees, their social insurance numbers, their rate of pay and the location of the home work site.
8. the definition of “work” state that employees are considered to be at work when they are on call and in a location designated by the employer, unless the location designated is the employee’s residence.

DOMESTICS

9. regulations 3(2)(b) and 9(1)(r) be eliminated so that live-in domestic workers are covered by the minimum wage and hours of work provisions of the *Act*.
10. employers should be required to present a live-in domestic worker with a contract of employment at the commencement of the employment relationship. The contract should set out clearly the terms and conditions of employment, including duties to be performed, hours of work, days off and the like.
11. the Ministry should have the authority to approve living accommodations for domestic workers for whom living in a private residence is a condition of employment and the rent charged for these accommodations.
12. the *Act* should ensure that domestic workers are not “converted” to other categories of employee by their employer for the purpose of evading the hours of work provisions in the *Act*.

AGRICULTURE

13. the exemption of farm workers from the minimum wage provisions of the *Act*, currently contained in Section 3(2) and 3(4) of the Regulation be eliminated.
14. the calculation of effective wage rates be based on the lesser of the period of employment or two weeks for seasonal farm workers hired directly by producers.
15. farm workers be exempt from the hours of work provisions of the *Act*, with the following exceptions: employers who accept this exemption shall not allow their employees to work more than 10 hours per day or 60 hours per week.
16. farm labour contractors be required to maintain records containing the following information: the name and social insurance number of each employee, the

location and type of work performed each day; the number of hours worked and rate of pay for each day. These records shall be retained by contractors for a minimum of three years. A contractor engaged by a producer shall provide the producer with a copy of these records at the earlier of the end of each bi-monthly pay period or at the completion of a contract. The producer shall retain copies of these records for three years. Violations of these provisions should be subject to penalties under this *Act* and as well as the requirement under Section 68 of the *Act*, that producers will be deemed to be employers for the purposes of collection if they deal with unlicensed contractors.

17. the *Act* retain the designation of farm labour contractors as employers, but that persons who engage the services of farm labour contractors be liable for unpaid wages for work done on their premises and not paid by farm labour contractors.
18. the Ministry examine applicants for farm labour contractor licenses on all relevant statutes and regulations to which they are subject, including the Workers' Compensation Board health and safety regulations, motor vehicle safety regulations and Unemployment Insurance regulations.
19. the Ministry cooperate with other agencies of the provincial government and the RCMP to improve the system of inspecting farm labour contractors' vehicles.

PROFESSIONALS

20. Regulation 7 be eliminated and a person who is qualified to practice a profession under an *Act* of the Legislature that applies solely to, and governs the practice of, that profession be covered by all parts of the *Act* except that part which regulates hours of work.

PERSONS WITH DISABILITIES

21. the government establish an interagency committee to prepare proposals for action by government and the private sector to promote the accommodation of persons with disabilities in British Columbia.
22. Section 105(3)(c) be repealed.
23. Section 8(2)(d) of the Regulation be repealed, but that the Ministry be given the authority to issue variances to the *Act* to employers with operations that provide rehabilitation, education or training to persons with disabilities. Variances should be granted under the procedures recommended in this Report, which would include consultation with employees affected and, if necessary, organizations representing their interests.

EDUCATION

24. the exclusions for students currently contained in Regulation Section 8 (a) and (b) be retained, but (c) be eliminated.
25. students in post-secondary institutions in the province employed by the institution where they are enrolled should be excluded from the minimum daily pay provisions of the *Act*.
26. the Ministry consult with the parties in education to draft more general definitions of the categories of employees who should be excluded from the hours of work provisions of the *Act*.
27. Sections 9(1)(w) and 12(c) of the Regulation be amended to include the following language: “a senior tutor or tutor who is employed by the corporation as defined in the *Open Learning Agency Act*.”
28. the exemption in Section 12(b) of the Regulation be deleted. The attention of the government is drawn to a conflict of interest in this recommendation.

ARTISTS

29. complete coverage of actors, performers and musicians by the *Act*. Special circumstances of some artists can be addressed through the variance system. The Ministry should develop policies dealing with the employment status of artists to guide them and their employers.

FISHERS

30. the *Standards Act*, cover fishers who work on vessels with remuneration by the value of the share of a catch, relying on the definition of “employee” in labour relations legislation covering the fishing industry. Coverage under the *Act* for employees should not put fish processors into the status of employers under that *Act*.
31. Fishers should be exempt from coverage by the sections of the *Act* currently found in Parts 3, 4 and 5, as well as new provisions governing statutory holidays and minimum wages.
32. The Commission recommends the exemption from the regulation of hours of work for campmen should be continued. However, their commission payment system should not deny them this minimum standard of compensation. Campmen should be covered by the minimum wage provisions of the *Act*, so that the calculation of minimum wage is averaged over an appropriate number of days as determined by regulation or variance. The regulation should also take

into account the variability of their work schedules. The term “campmen” is obsolete and should be replaced by “fish camp worker” in the regulations.

33. the exemption of tendermen from the provisions of the *Act* regulating hours of work be maintained. Provisions requiring the payment of a minimum wage should be maintained, but calculated over an appropriate period of time as established in the regulations. The term “tenderman” is also obsolete and should be replaced by “tender vessel worker” in the regulations.
34. The Commission recommends tendermen should receive the appropriate entitlement for statutory holiday and annual vacation pay as an addition to their regular pay cheques.

RESIDENTIAL WORKERS

35. the exclusion of live-in homemakers from the hours of work provisions of the *Act* continue, but that they be paid for 12 hours per 24 hour period according to the requirements for premium rates. For the remaining 12 hours of the day, they should be paid the greater of 3 hours or time actually worked at their regular rate.
36. the term “live-in homemaker” be changed to “Live-in Home Support Worker”.
37. the term “night companion” in the Regulation be replaced by “night attendant”.
38. the definition of “day” in the *Act* be changed to establish the beginning of a day for the purposes of scheduling work should begin with the commencement of an employee’s shift.
39. a person who is employed in a private residence not on a commercial basis and solely to provide care for a child, an elderly person or a disabled person for 15 hours or less per week be excluded from the provisions of the *Act*.
40. resident caretakers be covered by the *Act* including the hours of work and overtime provisions. Employees who are required to live on the employer’s premises should be entitled to a rest break of a minimum of 8 hours in addition to their regularly scheduled hours of work. They should be entitled to 2 hours pay or pay for the number of hours of work caused by the interruption in the rest period, whichever is greater. The hours worked during the scheduled rest period are to be added to the hours worked during the scheduled shift for the purposes of calculating overtime pay. A notice of the hours of work, including days off, for each employee who is on duty should be posted in a location for residents’ information. A copy of this notice should be given to the employee. The Ministry shall have the authority to approve rental charges levied against the compensation of resident caretakers.

TAXI DRIVERS

41. taxi drivers should be covered by all provisions of the *Act*, including sections 27, 32 and 33.

NEWSPAPER CARRIERS

42. the exemption for newspaper carriers from coverage by the *Act* in Section 8(g) of the Regulation be removed except for carriers who attend school and work no more than 15 hours per week. The definition of newspaper in the Regulation should be retained.

SECURITY PERSONNEL

43. the exemption in Section 9(1)(n) of the Regulation be deleted. The Ministry should allow employers of security personnel in camps and other facilities in remote areas the opportunity to apply for variances to exempt these persons from the hours of work provisions of the *Act*.

FIRE FIGHTERS

44. Regulation 9(1)(y) be eliminated and that a person hired as a forest fire fighter or ancillary worker to fight forest fires or provide services to forest fire fighters, including persons within categories of employment referred to in the Forest Fire Fighting Compensation Regulation be covered by the *Act* except for the requirement of the notice of the hours of work.

III. TERMS OF EMPLOYMENT

A. MINIMUM WAGE

45. the government consider further increases in the minimum wage, but only after careful consideration of the effects of these changes on employers, low-wage workers and the economy generally.
46. the youth minimum wage for employees under 18 years of age be eliminated.
47. there be no exemptions to the minimum wage, as long as the minimum wage bears approximately the same relationship to the average industrial wage as has prevailed historically.
48. the *Act* include a requirement for a tripartite committee chaired by a qualified person outside the government to review the minimum wage at least every two years. This committee should consult with all ministries of the government

concerned with labour markets, economic development and social assistance prior to making a recommendation. In addition, it should examine the impact of possible changes in the minimum wage on workers, employers and the economy generally. The committee should have the power to recommend that changes to the minimum wage be made or not made, although final authority to implement changes should rest with the Cabinet.

B. LEAVES FROM WORK

BEREAVEMENT LEAVE

49. the *Act* grant all employees the right to three days of leave without pay upon the death of a member of the employee's immediate family. The "immediate family" should include grandparents, parents (natural and adoptive), children (natural and adoptive), spouses (including common law), siblings, and other persons permanently residing with the worker.

FAMILY LEAVE

50. the *Act* include the right to 5 days a year of unpaid leave to meet responsibilities related to the care, health or education of children or the care and health of members of the immediate family.

JURY DUTY

51. the *Act* include a provision that employees called to serve on a jury have the right to return to their jobs after the end of their jury service. When this provision causes special hardship to an employer, the employer should have the right to request a variance to meet the needs of its operations without undermining the protection of the employee. The Minister should urge the Attorney General to provide adequate reimbursement for jurors so that persons of all income levels and types of employment have the opportunity to serve on juries without undue financial hardship.

C. STATUTORY HOLIDAYS

52. a part of the *Act* be devoted to this subject, setting out the major conditions, i.e., the holidays to be celebrated, the conditions under which employees shall be paid for these days, and the arrangements for paying employees who work on these days. The *Act* should refer to paid holidays established by law as "Statutory Holidays".
53. the *Act* should give Cabinet the authority to change the statutory holidays listed in it.

54. the *Act* should require that all persons who have completed 30 days of employment are eligible for a paid statutory holiday. Employees who have worked less than the standard work week in the preceding four weeks should receive their holiday pay on a pro-rated basis.
55. employees who do not work on a holiday but would have normally been scheduled, receive the day off with pay, or, if it was the employee's normally scheduled day off, the employee receives another day off with pay. Employees who are scheduled to work on a statutory holiday should receive 1.5 times their regular rate of pay for all work of 11 hours or less. They should receive double time for work after 11 hours. They should also receive another day off with pay at straight time, to be taken before the employee's annual vacation or termination of employment, whichever occurs first. The Commission further recommends that those employees exempted from the hours of work and overtime provisions of the statute receive the same entitlements as other employees for statutory holiday pay.
56. parties under a collective agreement be able to alter the date on which a holiday is celebrated. Where no collective agreement exists, the employer and the employees may agree to alter the date, on the condition that employee rights are not diminished. The employer must retain a record for three years showing that the employees agreed to the change.
57. the current exemption in the Regulation for managers be retained, but should apply only when individuals are acting in a managerial capacity.
58. the exclusion in Regulation 5(e) for workers engaged primarily in harvesting fruits or berries be eliminated.

D. PART-TIME WORKERS

59. that employees who work 15 hours or more for an employer continuously for 6 months or more should be eligible for proportional coverage by all nonstatutory fringe benefits available to full-time employees, except for pensions. Eligibility for pensions will be regulated by the *Pension Benefits Standards Act*. Part-time employees will be responsible for paying the costs of fringe benefit coverage not borne by employers. Employers should have no liability to pay wages in lieu of fringe benefit coverage for employees who are not eligible or who choose not to accept coverage. The Ministry should have the authority to grant variances to this requirement under appropriate circumstances.

E. HOURS OF WORK

WORK SCHEDULES

60. employers and employees have the ability to schedule compressed work weeks when they consist of a sequence of days at work and days from work that forms a pattern that repeats over a period not exceeding 8 consecutive weeks and under which employees are scheduled to work an average of not more than 40 hours and not less than 35 hours per week at the employees' regular wage and apply over a period of at least 26 weeks. Employers shall be required to submit evidence to the Ministry that at least 65 per cent of all employees affected by the proposed schedule approve of it. Evidence of employee approval shall be in a form prescribed by the Ministry. These variances of the daily and weekly hours shall have a time limit, but be renewable. Employers should post a notice of the variance in each workplace in a form and language accessible to employees affected.

BANKING OF OVERTIME

61. the *Act* permit the banking of overtime when both the employer and employees agree. The Ministry should have the authority to determine the procedures by which the agreement of employees will be established. All agreements to bank overtime should state explicitly that credits are to be earned at overtime rates. The employer may stipulate that credits from the overtime bank are taken in time off or monetary compensation for individual employees or groups of employees. The Ministry should inform employers and employees who adopt this system of the implications of bankruptcy legislation in terms of collection of monies owed to employees.
62. employees who do not receive a meal break of at least 1/2 hour within a period of 5 hours shall receive double time for 1/2 hour of their time worked to compensate for the lack of a meal break.

F. ANNUAL VACATION

63. employees who have completed 10 years of continuous service should receive 4 weeks of vacation with pay. Other entitlements in the *Act* should remain unchanged.
64. employees shall be credited with vacation pay as it is accrued, either by payment with other wages or as a credit of paid time owing to the employee. This entitlement shall begin after an employee has completed five continuous days of employment. The employee shall have the right to choose when to receive the vacation pay, to a maximum period of two years. The Ministry

should inform employers and employees who adopt this system of the implications of bankruptcy legislation in terms of collection of monies owed to employees.

65. the *Act* state that employees may choose to take their accrued vacations after they have completed six months of continuous service. The employer should not have the authority to require an employee to take vacation in periods less than one week. The scheduling of vacations should be by mutual agreement between the employer and the employee, and the employer should not unreasonably deny employee requests to schedule vacations.
66. employers have the right to declare common anniversary dates for their employees for the purposes of calculating vacation entitlements, with the condition that no employee suffers a reduction of entitlement because of the common dates.

IV. ENFORCEMENT

PENALTIES

67. the *Act* include provisions to give the Ministry the power to impose escalating levels of monetary penalties on persons or companies who violate the *Act* repeatedly. Cabinet should have the authority to set the appropriate levels of these penalties. The Ministry should also have the authority to require employers to post bonds to cover unpaid wages when employers or officers of companies have a history of failing to pay wages due their employees.
68. the Ministry should have the authority to levy penalties against employers who otherwise meet the criteria for penalties for violations of the *Act*, after an arbitration on the same subject conducted under the provisions of the *Labour Relations Code*.
69. the *Act* give the Ministry the power to charge an appropriate rate of interest to wages and other compensation paid to employees or former employees of an employer who has violated the *Act* for the period since these monies became due to employees until they receive them. The Ministry should have the authority to fix the appropriate rate of interest according to principles in other relevant legislation. Employers who lose the use of funds through proceedings under this *Act* should also receive interest for the period when the funds are out of their control if a proceeding against them is unsuccessful.
70. The Commission recommends the Ministry should have the authority to collect the names of violators of the *Act* and provide this information to government agencies and members of the public. This information should be available through local offices of the Ministry, also on a provincial basis.

71. the Ministry should be given the authority and resources allocated to analyze data on complaints and violations of the *Act* to promote effective enforcement of the *Act* and education about it.

EDUCATION

72. The Commission recommends and urges the Ministry to develop a comprehensive strategy for educating employers and employees about the provisions of the *Act*.
73. the Ministry cooperate with employer, labour and other interested organizations to promote greater awareness of the *Act*.
74. the Ministry seek to work with other provincial and federal agencies, such as the Workers' Compensation Board, the Ministry for Small Business or the Federal Business Development Bank, and municipal licensing authorities to promote greater awareness of the provisions of the *Act*.
75. the Ministry expand its programs to communicate with immigrant and minority communities to promote greater awareness of the *Act*. Recruitment of staff to enforce the *Act* from these communities would assist in the Ministry's efforts.
76. the *Act* require all employers to post a basic statement of employees' rights under the *Act* in locations where it can be read by employees in the language or languages appropriate to the workplace. The Ministry will provide copies of these statements.
77. the Ministry call to the attention of the Ministry of Education and other competent education authorities the conclusion that young workers, including students, may not receive their rights under the *Act* and would benefit from education about their rights under the *Act*. It urges the Ministries involved to agree on the inclusion of information on employment standards in school curricula.

COMPLAINTS

78. a separate part of the *Act* be devoted to the complaint process.
79. the *Act* clearly state that employees, employers and third parties may file complaints with the Ministry and that the Ministry official charged with administering the *Act* (including an authorized representative) shall have the power to initiate an investigation of possible violations of the *Act* in the absence of a complaint. The *Act* should state clearly that the Ministry can audit an employer or group of employers when an individual complaint gives rise to a reasonable suspicion that a general pattern of noncompliance exists. When

appropriate the Ministry should have the authority to issue a complaint in its own name on behalf of employees affected by an alleged violation.

80. the Ministry should have the power to delay an investigation of a complaint pending the outcome of a proceeding in another tribunal. The Ministry also should have the right to dismiss a complaint if another tribunal has dealt with the substance of a complaint. These decisions by the Ministry should be subject to appeal under the procedures recommended in this Report.
81. complaints must be filed within 6 months of the date on which wages were to be paid or within 6 months of the date on which the subject matter of the complaint arose.
82. complaints under this *Act* be permitted to require payment of wages which became payable 24 months immediately preceding the date of the complaint or 24 months prior to the end of the employment relationship.
83. The Commission recommends if the previous recommendation is adopted, the law should provide for a staged implementation of these provisions to enable employers to establish record keeping systems consistent with the new requirements.
84. monies owing to employees in the form of overtime pay, vacation pay or statutory holiday pay when these wages have been banked are, for the purposes of collection, deemed to be earned on the date on which the subject matter of the complaint arose.
85. the Ministry continue to have the right to order the reinstatement of any employee who is discharged, suffers discrimination or a threat of discharge or discrimination for filing a complaint alleging a violation of his or her rights under this *Act*. An order of reinstatement should be subject to the appeal procedures contained in the *Act*. When an employee is not reinstated by a decision of the Ministry, or at the employee's own request, generous compensation should be granted to the aggrieved employee. In addition, the Ministry should have the authority to impose monetary penalties on employers who retaliate against employees for filing a complaint of a violation of the *Act*.

V. VARIANCES AND EXEMPTIONS

86. all provisions of the *Act* dealing with variances be combined in one Part. This Part should contain the following principles for the granting of variances: that a variance should not undermine the intent and protections for workers in the *Act*; that variances should be granted when the Ministry is satisfied that the employees affected are aware of the application and its possible effect on them;

that variances should only be granted when a majority of the employees covered by the *Act* agree; that variances should apply only to a single employer and that the Ministry should have authority to determine the extent of a variance; that all variances should contain time limits.

87. provisions for variances in Sections 10(2) and 32(4) of the *Act* be eliminated. Other provisions for variances on provisions of the *Act* not affected by this Report should be retained.
88. the Lieutenant Governor in Council have the authority to exempt a class of persons from all or part of the *Act* or regulations. Before granting an exemption, the Ministry should ensure that the views of employers and employees are available to the Lieutenant Governor in Council. Exemptions should last no longer than 5 years, but should be renewable.

VI. APPEALS

89. employment standards appeals should not be transferred to the Labour Relations Board. Instead a separate tribunal should be established.
90. the *Act* and Ministry policies ensure that all reviews of facts during an investigation by the Ministry should conform to the standards of natural justice.
91. the *Act* should encourage the parties to resolve disputes with the assistance of Ministry staff.
92. the following procedures prevail if Ministry officials are unable to resolve disputes by agreement, or if a complaint has been dismissed. The parties should receive a letter containing the following information:
 - The decision of the Ministry official responsible for the case;
 - The amount of compensation owing, if any, and the method of calculating that amount;
 - The availability of Ministry staff to assist the parties in settling the dispute;
 - A statement that if the matter is not resolved within 10 days, the Ministry will issue a “Confirmation of Decision” which can be appealed to a special tribunal;
 - An explanation of the appeals process.

If the matter is not resolved within 10 days, or either party informs the Ministry that it may wish to appeal, the Ministry official charged with the case should issue a “Confirmation of Decision”. The Confirmation should contain the following information:

- The decision of the Ministry official and the basis for it, written in plain language;
 - The amount and method of calculating compensation owing, if any;
 - A statement encouraging the parties to settle the complaint;
 - A statement that the parties have 15 days to appeal the “Confirmation of Decision”.
93. the Ministry official responsible for an investigation be given the authority to file the Confirmation of Decision with the Supreme Court when necessary. The authority of the Ministry to collect wages currently in the *Act* should be retained.
94. either party to a decision by the Ministry under the *Act* should have the right of appeal to an Employment Standards Tribunal. The Tribunal should be composed of a chair, a registrar, a number of part-time adjudicators located in major population centres in the province and a number of part-time members representative of the interests of employers and employees. Most decisions should be heard by single adjudicators, but the Tribunal chair should have the authority to strike three-person panels to hear cases when appropriate. All decisions of the Tribunal should be in writing and be readily available to interested persons. Decisions should be issued within 15 calendar days of the end of a hearing. Adjudicators should have the authority to issue interim decisions within 24 hours of the conclusion of a hearing and should issue full written decisions within 21 days of the conclusion of a hearing. Adjudicators should be knowledgeable about the principles and jurisprudence of the *Act*.
95. the requirements in Section 12(4)(b) of the *Act* be eliminated if the Ministry is given additional powers of enforcement.
96. the *Act* state that the decisions of the Employment Standards Tribunal are final and binding. Provisions for judicial review should be governed by principles similar to those found in Part 9 of the *Labour Relations Code*. In particular, the *Act* should state that the Tribunal has the authority to decide a list of specific issues arising under the *Act*, to interpret the *Act*, to permit the registrar to dismiss an appeal before a hearing. In addition, the law should encourage the parties to settle a complaint with the registrar before the completion of a hearing.

VII. TERMINATION

97. employees become eligible for severance pay after the completion of three months of service in the following amounts: one week’s pay after three months; two weeks’ pay after one year; an additional one week’s pay for each additional year of service to a maximum of eight weeks’ pay after eight years of service.

98. employers who are parties to collective agreements have the right to give notice of layoffs in lieu of severance payments.
99. interest earned on funds held by the Ministry in trust for severance payments either be paid to the employer responsible for paying the funds or be applied to severance pay paid from the trust.
100. the *Act* state that employers and employees who rely on hiring halls for the short-term dispatch and recall of workers not be covered by the termination provisions currently in Section 42.
101. the *Act* define “termination” and “temporary layoff” for purposes of group termination in the same terms as currently found in Section 41 of the *Act*. Further the Commission recommends that the Ministry have the authority to extend the 13-week limit of temporary layoffs when there is a clear indication that the employer has a reasonable prospect of resuming operations at the location affected by the termination notice. Notice periods for termination should run from the expiry of the temporary layoff. Employees on layoff when the notice of termination is issued should not suffer any loss of rights compared to employees who receive immediate notification of termination.
102. the *Act* give the Ministry the authority to extend the notice period for employees affected by group terminations upon application from the employer, to facilitate an orderly reduction or closure in the employer’s operations.
103. the Ministry have the authority to grant variances to employers who hire 50 or more employees on a short-term basis, provided that these variances should expire no later than one year after their issuance.
104. employees who accept severance pay are deemed to have abandoned reemployment rights with their employer and with other employers covered by the same collective agreement as their employer.
105. the *Act* state that employers are required to pay severance pay when they do not fulfil part or all of the requirements to give notice.
106. the Ministry have the authority to issue a variance for the provisions for group termination to deal with circumstances in which the terminations are caused by action of the government.

VIII. DIRECTORS’ AND OFFICERS’ LIABILITY

107. the government seek to enact legislation that would give employees’ unpaid wages the status of secured creditors in case of the bankruptcy of the employer.

IX. STRUCTURE OF THE ACT

This section's recommendation for the organization of the *Act* is informal.

- Part 1: Introductory Provisions
- Part 2: Hiring Employees
- Part 3: Hiring Children
- Part 4: Payment of Wages
- Part 5: Minimum Wage
- Part 6: Hours of Work
- Part 7: Annual Vacations
- Part 8: Statutory Holidays
- Part 9: Leaves
- Part 10: Termination of Employment
- Part 11: Group Termination of Employment
- Part 12: Filing Complaints
- Part 13: Investigating Complaints
- Part 14: Penalties
- Part 15: Appealing Decisions
- Part 16: Exemptions and Variances
- Part 17: General Provisions

X. MISCELLANEOUS

MATERNITY LEAVE (Section 52)

108. that Section 52 of the *Act* be repealed.

INDUSTRIAL CAMPS

109. the Minister of Skills, Training and Labour notify the Minister of Forests the existence of inadequate industrial camps in the silviculture industry and request that contracts for silviculture require that camps meeting WCB standards be provided when the work location requires such a facility. The Commission also recommends that the Ministry have the authority under this *Act* to require employers to provide camps on a site specific basis after receiving evidence of conditions and requirements for camps.

APPAREL

110. the provisions of the *Act* regulating special apparel be amended to permit an employer to reimburse employees for the cost of laundering or performing other maintenance on special apparel. These arrangements should be made with the

agreement of a majority of the employees affected. Employers should be required to maintain records of the agreement of employees and the amounts paid for inspection by officials of the Ministry.

111. the provisions of the *Act* covering “special apparel” should apply when an employer requires employees to wear a specified brand of clothing while at work.

CHILD EMPLOYMENT

112. the Ministry consult with the Office of the Public Trustee to ensure that its policies are adequate to protect the interests of child performers.

PAYMENT OF WAGES

113. Sections 6 and 7 of the present *Act* be amended to permit employers to deposit wages to an employee’s bank account and assign a portion of an employee’s wages to a third party pursuant to a collective agreement negotiated with a trade union as defined in the *Labour Relations Code*.
114. Section 11(1) of the *Act*, be amended to permit an employer to furnish employees with statements of wages for a pay period in an electronic format, but that an employee or an employee’s trade union acting on behalf of a member has the right to request and receive a written statement of wages.
115. the *Act* prohibit employers from charging employees for the employer’s business costs.

EMPLOYER PAYROLL RECORDS

116. there be one section in the *Act*, possibly with the Payment of Wages, which outlines all the requirements for maintaining employee records. This should include but not be limited to the following information:
 - employee’s name, occupation, social insurance number, residential address,
 - wage rate, (hourly, salary, commission or piece rate)
 - hours worked each day (hourly, salary, commission or piece rate),
 - benefits paid by employer,
 - each deduction made and the reason for it,
 - statutory holidays, dates taken and the amounts paid,
 - annual vacation, dates taken and the amounts paid,

- accumulated time off, hours earned, the amounts owing, dates taken and the amounts paid,
- gross and net wages for the pay period.

Payroll records should be in English, maintained in the Province at a principal place of business, for a period of at least three years.

117. Ministry officials be given powers in the *Act* to assist them in acquiring payroll or corporate records deemed necessary to conduct a thorough investigation. In addition, employers or employers' representatives who refuse to cooperate with the Ministry officials' requests for records should be subject to the penalty provisions of the *Act*.

REVIEW OF THE ACT

118. the *Act* contain a provision for review of the statute no longer than every three years. The review should include consultations with the employer and employee communities. The chair of the review process should not be from either community. The results of the review should be presented to the Minister responsible for the *Act* and made public after the Minister and Cabinet have considered it.

I. INTRODUCTION

This Report represents the results of the first comprehensive review of employment standards in the history of the province. The present *Employment Standards Act* was the result of the amalgamation of 10 other statutes in 1980. Since then, there have been a number of amendments to the *Act*, usually in response to decisions of the courts on a single aspect of the statute. In addition, entitlements have been improved from time to time. The very complexity of the *Act* and the variety of interests affected by it means that the Legislature will not undertake a general review frequently.

The review of employment standards had two phases. The Mandate of the Commission directed that three issues be considered on an expeditious basis: legislative amendments necessary to deal with the repeal of Section 2(2) of the *Act*; the legislative amendments necessary to transfer employment standards appeals to the Labour Relations Board; the changes required to Part 5.1 made necessary by a court decision. All three of these issues were discussed extensively, with the result that the Commission sought permission from the former Minister of Labour and Consumer Services, the Honourable Moe Sihota, to postpone the review of the changes in the law connected with the appeals procedure. Mr. Sihota agreed to the request. As a result, the Commission submitted an Interim Report on June 2, 1993. After receiving the Report, the government introduced the *Employment Standards Amendment Act, 1993* (Bill 65) to deal with the two remaining issues for expeditious treatment in the review process. The Legislature passed Bill 65 on June 28, 1993 and the whole *Act* became effective on January 1, 1994.

The second phase was a broad review of employment standards. It was not possible to consult widely on the matters treated in the Interim Report. The Commission proposed a program of public meetings to the Minister to ensure that all points of view were heard. The Minister accepted this recommendation. Extensive consultation was especially important because of the long period during which employment standards were not considered by the Legislature or the public. Strictly speaking, few workers or employers now active in the province have ever

had the opportunity to address the issue of employment standards generally, and not many interested parties have contributed to individual elements of the law.

Consequently, the preparation of the recommendations in this Report had a number of stages. To stimulate participation in the review, *Standards for a Changing Workplace*, a discussion document which highlighted 5 major areas of employment standards was published and distributed widely. Following the dissemination of the document, public hearings were scheduled and advertised throughout the province. A list of the dates and locations of the public hearings is attached as Appendix 1. A total of 22 individuals and 410 organizations appeared at these hearings, an impressive display of interest in the *Act* and confidence in the process of public consultation. Approximately 136 individuals and 460 organizations contacted the Commission in writing. Workshops for categories of employees who presented special problems for regulation (agricultural workers, persons with disabilities and domestic workers) were held with other stakeholders representing a wide variety of points of view. The Commission also met with representatives of the staff in the Ministry of Labour and Consumer Services¹ who work with the *Act* to receive their views on enforcement. When necessary, reviews of published materials on subjects of interest to the Commission inadequately covered by these other sources of information were carried out. The Commission and Advisory Committee met a total of 32 times, including the 14 public meetings, to discuss a wide range of issues in employment standards. During and after the meetings, this Report was drafted.

In general, the Commission concluded that the public was satisfied with the current system of regulating employment standards, with one possible exception, arrangements to vary hours of work. This subject was raised by employers and is treated in the body of this Report.

¹ The Commission was appointed by the Minister of Labour and Consumer Services. Before the Commission completed its work, the Ministry was reorganized and became the Ministry of Skills, Training and Labour. During the entire period of the Commission, the Employment Standards Branch was charged with enforcing the *Employment Standards Act*. There was no permanent Director of the Branch until two weeks before this Report was presented to the Minister. In this Report, references to "the Ministry" refer to the Ministry responsible for enforcing the *Act*, under its various names. There are no references to the Employment Standards Branch or any other subordinate unit within the Ministry, and no recommendations address the organization of the Ministry to enforce the *Act*.

In other words, the role of the government as guarantor of the minimum standards of employment for all employees was not seriously questioned. The role of the Ministry as the enforcer of the *Act* was praised more than it was criticized. No intervenor pointed to another model of an employment standards statute that was superior to that of British Columbia. There were many suggestions that this province might emulate another jurisdiction in a specific area of regulation and concern among employers that the law not be unduly restrictive, but there were no suggestions that another type of statute be enacted in this province.

Because of the lack of previous reviews of employment standards, the list of suggestions for changing the *Act* was extensive. A few general themes emerged. Many persons who studied the law and attempted to work under it pointed out that it is almost unreadable in parts. For example, the order in which subjects are presented is illogical. Furthermore, even simple concepts, such as general holidays, are buried in regulations, rather than in the body of the *Act* and are virtually incomprehensible, even to those familiar with the *Act*. Many features of the law and the regulations seem out of touch with the contemporary realities of British Columbia workplaces. Thousands of violations of the *Employment Standards Act* occur each year, a subject addressed in this Report. While it is impossible to determine the causes of all violations or the motives of persons who fail to observe the statute, the structure and presentation of the *Act* are clearly a factor contributing to the number of violations.

Some matters raised by the public went to the heart of the protection of employment standards, such as the addition of new standards for inclusion in the *Act*. Other issues were highly significant to small numbers of employees or employers. After reviewing the materials presented, it became clear that a number of basic principles would be necessary to guide the recommendations in this Report.

It should also be noted that fewer than 10 individual employees made presentations at the public hearings and they often were accompanied by their employers. However, most of the individuals who wrote to the Commission, were workers and 93 labour organizations presented briefs concerning the conditions faced by unorganized workers in the province. Advocacy groups, especially women's organizations, provided valuable

insights from the employee perspective. In the end, however, direct and reliable information of employees' views on many subjects was not available.

A. PRINCIPLES OF THE REVIEW

Many suggestions for the regulation of employment standards were based on one of two underlying philosophies. The first might be labelled the "collective agreement for the unorganized". This approach calls for relatively detailed regulation of the employment relationship, incorporating some features found in collective agreements, including the use of seniority to make a variety of employment decisions, a wide range of fringe benefits and frequent use of third parties. The alternative view might be called the "basic standard for all", which implies that a limited number of conditions should be mandated for all employees, with few, if any exceptions, so that enforcement of the law should be relatively straight-forward.

The first view of employment standards legislation has a number of implications. The government must assume a heavy enforcement burden. Collective agreements regulate the employment relationship in some detail which usually generate disputes over the meaning of their provisions. The contracts include mechanisms for settling disputes. They also vary greatly in their entitlements and obligations, reflecting the nature of the workplace, the relative bargaining power of the parties and the market conditions facing the employer and employees. A major virtue of collective bargaining is that the parties can tailor the terms and conditions of employment to fit their needs and aspirations by mutual agreement. If the law replicates these conditions, the opportunities for misunderstandings and violations are relatively high, implying a burden on the government to secure enforcement. Simultaneously, numerous exceptions to reflect the conditions under which the parties work as well as their preferences will be necessary.

The basic standard for all models of employment law recognizes that there will be many differences, even some injustices, in workplaces. Society, acting through the government, determines the minimum acceptable limits for employment relationships. These should be raised from time to time, extending society's economic gains to those employees or groups of employees who are least able to obtain these benefits through their own bargaining power. Because these standards are basic, they should

not impinge on the actions of many employers and their employees. Exceptions to the scope of basic standards should be limited strictly, however. If violations do occur, they should be punished rather severely, at least for the frequent offender.

No decision maker should be a slave to abstract principle, but this Report leans toward the basic minimum model of employment standards in terms of entitlements. The labour force in this province is heavily unionized, and British Columbia is blessed with an abundance of natural wealth and energetic citizens. Most employees in this province should and do enjoy generous living standards. Therefore, the first principle is that law should concentrate on ensuring that those workers who do not share in this living standard are protected rather than attempting to enforce detailed regulation of the circumstances of a large proportion of the labour force.

The second principle for these recommendations is the needs of employees or employers in this province identified by individuals and organizations. Obviously, not all points of view can be accommodated in any piece of legislation. As this Report will indicate, there are some issues on which opinion is sharply divided among those who participated in the review process. However, the Report will attempt to address significant issues raised in the participation process, with special emphasis on subjects which had been a source of difficulty to employees or employers in the province. In general, recommendations do not favour changes based on legislation elsewhere when there was no demonstration that a problem exists or is likely to exist in British Columbia.

The third principle underlying recommendations in this Report will be the negotiated working conditions in the organized sectors of the British Columbia economy. Unfortunately, there are few sources of information about employment practices in the nonunion sectors. Historically, unions have led the way in extending the protections and benefits to Canadian employees. Many private firms, particularly larger employers, model their employment conditions on those negotiated by unions. Data are available on many terms and conditions of employment in the unionized sector, as the law requires employers to file their collective agreements with the Ministry of Skills, Training and Labour. Compilations of these agreements indicate conditions prevailing in a large segment of the British Columbia labour market and point the way to future developments. However, it

is necessary to recall that the organized labour force by and large enjoys conditions far superior to those provided for in the *Employment Standards Act*, and this Report will be sensitive to this fact.

As many participants in the review process have noted, British Columbia participates in a national and internationally competitive economy. The provincial government has declared its intention to make the province an attractive location for investment from and trade with the Pacific Rim nations. This does not mean and should not be taken to mean, that British Columbia's labour force should expect declining living standards. Most British Columbians compare themselves with other Canadians, and British Columbians are accustomed to enjoying terms and conditions of employment slightly above the average for Canada. The recommendations in this Report will recognize the influence of employment standards and conditions in other Canadian jurisdictions with a view to maintaining a small margin of leadership.

By and large, the participants in the review process, both employers and employees, acknowledged the traditional relationships between British Columbia and the rest of Canada. A few employers referred to minimum wages in the United States, for instance, to reinforce their arguments about the competitive environment in which they operate. They did not request that the British Columbia minimum wage be adjusted to the U.S. levels. Indeed, when adjusted for exchange rates, the U. S. federal minimum wage is only slightly below the current standard in British Columbia, and the Clinton Administration has announced plans to increase it further. Some suggestions for raising employment standards would have put British Columbia well above any other jurisdiction in North America or Europe, but the majority of recommendations from the public were within the general limits of employment standards in North America.

An important consideration for the recommendations in this Report is the present and future state of the British Columbia labour market. The continuing shift of employment from goods producing to service sectors is an important consideration. Service industries are more likely than goods-producing industries to employ persons on a part-time basis or other nonstandard work arrangements. Over the period 1975 to 1992, total part-time employment in B. C. grew by 114 per cent, while full-time employment increased slightly more than 43 per cent.

Beyond the shift to part time there seems to be an increase in the importance of workers with other types of nonstandard working arrangements, including individual employment contracts, casual work, home work, telecommuting, and the like. In 1989 it was estimated that over 30 per cent of Canadian workers were working on their own account, in temporary work, part-time or part of a year (Krahn, 1991), and in 1991 6 per cent of workers performed some or all of their regularly scheduled hours of work at home, a slight majority as a requirement of their jobs (Akyeampong and Siroonian, 1993). With a slightly expanded definition of nonstandard arrangements and the apparent growth in these types of work, these proportions are almost surely higher in 1993.

Recommendations on social policy should reflect general trends in such laws in Canada. In particular, legislation is less tolerant of the identification of individuals in categories or groups than it once was. In the past, for instance, employment standards legislation established levels of protection for women that were different from those afforded men. Obviously, this state of affairs is no longer acceptable. Similar changes are occurring for persons with disabilities. This Report should be sensitive to these developments. The public school system has integrated persons with various disabilities into classes with their non-disabled peers. Another recent change occurred in 1993 when the Provincial Government enacted Bill 63, extending coverage of the *Workers' Compensation Act* to virtually all workers in the province.

For a few subjects, the *Charter of Rights and Freedoms* is relevant to employment standards. The Commission has had the benefit of legal advice on the impact of the Charter on the regulation of employment standards. It is a truism that any recommendations should reflect the requirements of the *Charter*.

The International Labour Organization (ILO) is a source of guidance on social legislation. It produces model statutes for adoption by member countries. In the case of the ILO, when member states ratify these standards, these countries are bound to enact legislation incorporating the contents of the standards. Canada has ratified only 26 international labour standards, few of them relevant to this review. However, ILO standards are intended for use by member states as guides for minimum standards and can provide valuable examples of enlightened social legislation.

A number of organizations have requested that the scope of the *Employment Standards Act* be expanded to cover new issues and groups. In several cases, these subjects are covered in other jurisdictions by other legislation, such as human rights acts. The focus of this *Act* and this Report should be the regulation standards of employment. Other causes may be worthy of attention, and comment on several specific subjects will be offered, but the recommendations in this Report will be confined to job-related issues. Broader issues which may impinge on employment in a peripheral way but also affect other areas of government action should be addressed directly by the legislature in a comprehensive framework.

The application of these principles to specific issues occasionally leads to conflicting goals. The public or interested parties suggested changes which probably would violate the *Charter of Rights and Freedoms*, for instance. According to some parties, expanded coverage for the law would hinder the ability of British Columbia businesses to compete internationally, and so on. This review is the result of an effort that lasted almost 10 months to the day to balance these conflicting interests. After all of the consultation, the Report and its recommendations are the responsibility of a single Commissioner.

B. STATEMENT OF PURPOSES

The *Act* currently has no statement of purposes. Modern standards for drafting legislation include statements of purposes to guide the legislature, administrators and interested parties in understanding a statute. In addition, a statement of purposes should assist the courts or other tribunals in interpreting the law, especially those difficult cases involving conflicting rights. A purposes section of a statute should contain fundamental statements of the objectives the law seeks to achieve, without repeating the contents of the statute.

A statute such as the *Employment Standards Act* especially needs a statement of purpose, since it is to be read and used by many persons who lack formal legal training. They are entitled to a clear statement of what the *Act* attempts to accomplish. After hearing and reading hundreds of presentations about employment standards and spending many hours in discussions with other persons concerned with the subject, the Commission reached a number of conclusions in this regard.

This *Act* is about ensuring that employees in the province enjoy basic standards of compensation and conditions of employment in their workplaces. Not every employee will receive these basic standards, but exceptions should be limited and should not result in pressures on the standards of other employees. The law exists to benefit workers, but those protections should be fair to other actors in the employment relationship. To the extent possible, the law should encourage employers to treat their employees fairly and employees to reciprocate that treatment. The Commission heard many statements about unfair treatment of employees. It also heard many employers who expressed genuine concern about the welfare of their employees, while admittedly pursuing a profit. The law should support these mutually beneficial employment relationships.

Many difficulties in the application of the principles of employment standards can be avoided by communication between employers and their employees. Frank statements of the conditions of employment the employer expects, and the ability of employees to express their concerns without fear of retaliation should be a goal of the legislation. The Commission heard complaints about the procedures for settling disputes under the *Act*, and any statute such as this one should provide for the least expensive and most rapid procedures possible for resolving differences in these times of increasing legalism and expense in dispute settlement.

This statute should also promote the prosperity of the province by improving the abilities and contributions of its workers. These goals can be accomplished by encouraging stable employment relationships so that employers and employees can invest in training and obtain experience necessary to improve their performance.

The Commission received many statements about the difficulties faced by many British Columbians, especially women, in balancing family responsibilities and their jobs. Many employers recognize these responsibilities and accommodate the needs of their employees. However, the current law provides little assistance either to employees or those employers who want to assist their employees. The law should recognize these problems and contribute to their solution.

The intent of the Commission's recommendations is to contribute to the achievement of these purposes.

The Commission recommends that a Statement of Purposes be added to the *Act*. The Commission proposes the following purposes:

To ensure that employees in British Columbia receive basic standards of compensation and conditions of employment;

To promote the fair treatment of employees and employers;

To encourage open communication between employers and employees;

To provide rapid and equitable resolution of disputes over the application and interpretation of this *Act*;

To foster the development of a productive and efficient labour force in British Columbia that can contribute fully to the prosperity of the province;

To contribute to the ability of employees to meet work and family responsibilities.

II. COVERAGE BY THE ACT

General Statement

Among the most controversial issues surrounding the review of the *Act* were coverage by the legislation. Labour and advocacy groups argued that some or all categories of workers now excluded from coverage under the *Act* should receive protection. Employers and other groups sought the continuation of the current exclusions or even occasional expansion of the list of exclusions. As it now exists, the *Act* contains three mechanisms by which groups of workers are excluded: by the definitions in the *Act*, by regulation passed by Cabinet or through a variance for individual work sites or occupations.

By a conservative estimate, members of over 80 occupations are exempt from coverage of part or all of the *Act* by the Regulation alone, affecting thousands of employees. They range from lawyers to domestic workers, from students to actors. In some cases, the logic for an exclusion seems apparent. For many other groups, there was little or no obvious rationale for the lack of coverage. Later in this Report, exemptions in the Regulation are discussed in detail. Without an exhaustive search of Ministry records, it was impossible to determine how many groups were excluded by the issuance of variances, and there was considerable uncertainty about gaps in coverage due to the definitions in the *Act*. The Report also deals with the process for issuing variances and suggests transitional procedures for examining existing variances.

One of the basic principles of this Report is that coverage should be more inclusive. To reiterate the intent of that statement, minimum standards legislation should apply as broadly as possible, and exclusions from coverage should be based on factors inherent to the work performed, not merely inconvenience to the employer. The two definitions in the *Act* which are particularly important to the coverage under it are “employee”, and “work”.

The Definition of “Employee”

A significant issue under the definition of employee is the use of so-called “contractors” to evade coverage by the law. The Commission received numerous submissions that employers classify persons as contractors for this purpose. One employer

even wrote to the Commission to explain how beneficial it was to him to convert his employees to contractor status because he did not have to pay Workers' Compensation assessments, Canada Pension Plan taxes or Unemployment Insurance premiums. These abuses are not confined to small private sector employers. The Commission of Inquiry into the Public Service and the Public Sector found that over 1400 persons under contract to the Provincial Government legally were employees. The provincial government has now incorporated them into the public service where appropriate. Other examples were found in the building janitorial services and construction industries. It appears that this practice is widespread in the private sector and is likely to expand further.

These practices deprive employees of their rightful protections under the law. Therefore, the definition of "employee" should be expanded to reflect the prevailing judicial view of employee status. The long established definition of an employee in the common law is relevant in this respect. The distinction between an employee and a contractor turns on: control, ownership of tools; chance of profit and risk of loss. First stated in 1947, these standards have been refined and applied frequently since then and should be included in the definition of employee in this *Act*. (See Christie, *et al.*, 1993, esp. pp. 9-23). It is quite probable that many persons employed as "contractors" could obtain a declaration that they are employees from the court. However, the workers who rely on the *Employment Standards Act* are unlikely to be aware of these rights or be able to enforce them effectively.

Because the extension of the definition of "employee" is likely to be controversial in some industries, the authority of the Ministry to make declarations to that effect should be stated clearly in the revised statute.

The Commission recommends that the Ministry be given the power to declare persons to be employees for the purposes of the Act, subject to appeal to the Employment Standards Tribunal.

The Commission recommends that the Act should clearly state that persons meeting the traditional common law tests of employee status are employees under the Act.

Another aspect of this same issue is the concept of “dependent contractors” developed to determine which workers should be covered by labour relations legislation and collective agreements. The *Labour Relations Code* permits the treatment of dependent contractors as employees for purposes of certification or inclusion in bargaining units which also include employees.

The Commission recommends that dependent contractors as the term is used in the *Labour Relations Code* be included in the definition of “employee” in this Act.

This recommendation does not represent a sharp departure from previous policies. Section 105(d)(ii) of the *Act* permits the Lieutenant Governor in Council to declare that part or all of the *Act* should apply to persons declared to be dependent contractors as defined in the *Industrial Relations Act* (now the *Labour Relations Code*). This mechanism appears not to have been used, however. The concept of the dependent contractor has been examined extensively by the courts in a variety of contexts.

It should be emphasized that this recommendation also implies that legitimate independent contractors normally should be excluded from coverage under the *Act*. The distinction between employees under an expanded definition, dependent contractors and independent contractors will raise questions in the minds of those affected and the Ministry officers charged with enforcing the *Act*. Present statutory language anticipates reliance on the Labour Relations Board. There could well be instances when the status of a contractor is important to employment standards, but not to the Labour Relations Board. Although the employment standards system might also accept the judgment of the Labour Relations Board when it is available, the Ministry should have the authority to act independently.

The Commission became aware of considerable confusion about the status of part-time employees under the *Act*. Several groups appeared to argue vigorously that these employees should be covered. The Ministry’s interpretation of the existing language is that they are already included. Future misunderstandings on this point can be avoided by an explicit statement in the definition of “employee” to include persons employed on a part-time basis.

The Commission recommends that the definition of “employee” in the Act state explicitly that part-time employees are included.

Current Ministry policy includes persons who are on leaves of absence as employees under the *Act*. This matter has not been controversial, but for purposes of clarity, this principle should be stated in the text of the *Act*. “Leaves of absence” should include persons who are subject to recall under collective agreements as well as other types of leave.

The Commission recommends that the definition of “employee” include persons on leaves of absence and persons with the rights of recall under collective agreements.

Definition of
“Work”

The existing definition of “work” in the statute is adequate, but lends itself to misinterpretation. British Columbia is one of the few jurisdictions in the country with a definition of this term in its employment standards legislation. In light of the changing locations and circumstances of work in the economy, the definition should remain, but be clarified. The present definition of “work” is:

the labour or service an employee is required to perform for an employer and includes the time the employer is required to be available for his(sic) employment duties at a place designated by the employer but does not include the time spent by an employee in his own living accommodation, whether on or off the employer’s premises.

This statement leaves room for different views on its application to home work and telecommuting. Fortunately, in a review of the statute, it is not necessary to resolve these differences, merely to recommend what the policy should be.

There is ample evidence of the growing importance of homework in our society. A national sample of workers conducted by Statistics Canada found that 6 per cent of Canadian employees work at home, the majority because of a

requirement of their jobs (*Siroonian, 1993*). A large sample of private sector employees found that very few persons worked on a regular basis at home, but one-third of the sample worked overtime at home. More importantly, almost half of the sample reported that they found working at home appealing, and female respondents were much more likely to find these arrangements appealing (*Higgins, et al., 1992b*). Precise data are lacking, but it appears that between several hundred and 3,000 persons work at home in British Columbia in the garment industry. That number may be increasing due to international competition.

The policy implications of these facts are clear—persons who work at home should be covered by the *Act*. The growth of home work presents significant regulatory problems, since it will be especially difficult for Ministry officials to find workplaces, let alone violations of the law. To alleviate this problem, employers who employ persons at home on a regular basis should be required to notify the Ministry of the location and number of employees in home work situations. The restrictions on the requirement should exclude situations in which an employee takes work home to complete from time to time, perhaps on an overtime basis as the *Higgins, et al.* survey found. But the law should require employers whose employees work exclusively at home to notify the Ministry. A similar system has been in place in Manitoba for a number of years.

The Commission recommends that the definition of “work” in the Act state clearly that it includes home work. Employers who assign work to employees to be performed in their residence or the residence of another person should be required to provide the Ministry with the particulars of this work situation, including the names of employees, their social insurance numbers, their rate of pay and the location of the home work site.

Another source of confusion in the present definition of “work” is on call status. The Commission received many submissions that employees who were on call should be considered to be at work for the purposes of the *Act*. Employers pointed out that advances in communications technology give employees considerable freedom to pursue normal activities while on call. The intent of the present definition seems to be that when the

employer designates both a time and a place for employees to be on call, they are at work for purposes of the *Act*, unless the employee is told to be in his or her residence. That policy is still reasonable. Employers and employees both benefit from the availability of cellular telephones and paging systems which permit employees to carry out many activities while being available for a call from the employer. Only a little more than 25 per cent of the collective agreements in the province have any provision regulating on call status (*Negotiated Working Conditions*, 1991). Some young persons reported that fast food chains in particular are very demanding in this regard, but the pattern of abuse is not so great to warrant restrictions for all employers.

The Commission recommends that the definition of "work" state that employees are considered to be at work when they are on call and in a location designated by the employer, unless the location designated is the employee's residence.

Domestics

Numerous groups appeared before the Commission to urge that domestic workers be covered by the *Act*. Domestic workers came to describe the circumstances they and other workers encountered. The Commission sought advice from agencies which refer live-in domestics to employers but there were no replies. There was also prominent media coverage of the requests for coverage of domestics at the Vancouver public hearing of the Commission.

Even among advocates for inclusion of domestic workers, there was some misunderstanding of the dimensions of this issue. The Interpretation section of the Regulation defines a domestic as follows:

a person

- (a) employed to provide cooking, cleaning, gardening, maintenance, chauffeuring, sitting, nursing, tutoring or other personal services, and
- (b) who resides in the private residence of his employer where the services referred to in paragraph (a) are provided.

To use a common terminology, this definition covers "live-in nannies", but not "live-out nannies".

Section 3(2)(b) of the Regulation currently sets the minimum wage for a domestic, as defined in the Regulation, as \$48 per day. The definition of day in the Act is a 24-hour period ending at midnight. While the minimum wage for domestics is obviously set on the basis of an eight hour day, there is no requirement that an employer limit work to eight hours, and the Commission heard evidence that many domestics work longer hours. Section 9(1)(r) of the Regulation exempts domestics from Part 3 (Hours of Work) of the Act, except for Section 35.1.

The result of the current regulations is that live-out nannies are covered by the Act just as any other worker in British Columbia not affected by other exemptions. Live-in nannies are covered by all provisions of the *Employment Standards Act* except hours of work and the minimum wage, specifically, provisions of the Act that regulate overtime pay, maximum hours of work, split shifts and the like. It appears that many persons, including some live-out nannies, are not aware of the extent of current protection, leading to an assumption that there are numerous instances where the law is not observed for these workers.

The overwhelming majority of live-in domestics are immigrants who enter Canada under programs administered by the Federal Government, based on the assumption that there are not enough Canadian residents to fill positions for which living in is a condition of employment. These programs have a long history. Between 1981 and 1992, workers were admitted under the Foreign Domestic Movement (FDM) program. Since then, the process has been regulated by the Live-in Caregiver (LIC) program. The basic elements of the program are that domestic workers may be admitted to Canada under special permits valid for two years. During that period the immigrants must work as live-in domestics. At the end of the two-year period, they can apply for landed immigrant status and reside permanently in this country.

A domestics' advocacy group estimated that between 4,000 and 5,000 domestic workers admitted under the FDM program were living in British Columbia in 1991. Data from Canada Employment and Immigration indicate that over 97 per cent of them are women, and over 75 per cent were members of visible minorities. In British Columbia, the majority appear to be from the Philippines; in Central Canada, they are more likely to be from the Caribbean. Prospective employers must apply to a Canada Employment and Immigration Centre (CEIC) for a

permit to hire a live-in domestic. CEIC imposes conditions on prospective employers. For example, both employers must be working, preferably outside the home. They must have children under the age of 15 years or elderly or disabled persons residing with them. They are required to provide a private room and must earn an income sufficient to support a live-in domestic. Employers must agree to pay a monthly “validation wage” to domestics which is 22 times the daily minimum wage in the province of employment (\$1056 per month in British Columbia since April 1, 1993), with \$275 deducted for room and board. If the application is approved, prospective employers typically rely upon an agency to select candidates outside of Canada and match applicants for the positions with employers in the province. These agencies charge a fee to the job applicants outside of Canada. This does not appear to violate the letter of the *Act*, which prohibits employment agencies from charging fees to job applicants in the province.

Although the Federal Government administers the LIC program, it does not take responsibility for the well-being of domestics after they arrive in Canada. A form is provided for use by the employer and the domestic worker setting out the terms and conditions of employment. The standard form declares that it is not a contract of employment and not enforceable by Employment and Immigration. The Federal Government does not enforce either the validation wage or the recommended amounts for room and board. An information package (in English and French) is given to employers setting out their responsibilities under the LIC program, pointing out that domestics admitted to Canada are covered by employment standards legislation in the province where they reside. There are recommended amounts employers should charge for room and board.

Spokespersons for domestic workers universally stated that a majority of their employers in the province were fair and even generous to them. However, the structure of this employment relationship is prone to abuse, even by benign employers. The employees are new to Canada, living with a family and isolated from their compatriots or friends. Virtually all are women of colour. Implicitly, employers tend to regard them as members of the family who should adapt their lives to the rhythm of the employer’s life. Surveys by advocacy groups have shown that a majority of live-in domestics work more than 50 hours per week.

Many live-in domestics reported that they do not receive two days off per week. Others testified that they were asked to do work that falls outside of the definition of domestic, such as washing cars. The quality of living quarters can vary greatly. Domestic workers testified to the Commission that they lived in children's bedrooms or laundry rooms, that they were forced to buy food to prepare their own meals, despite paying for room and board.

The case presented for greater protection for live-in domestics was compelling, and the principle of broader coverage should apply to this category of workers.

The Commission recommends that regulations 3(2)(b) and 9(1)(r) be eliminated so that live-in domestic workers are covered by the minimum wage and hours of work provisions of the *Act*.

In addition, special measures are appropriate for the protection of these workers.

The Commission recommends that employers should be required to present a live-in domestic worker with a contract of employment at the commencement of the employment relationship. The contract should set out clearly the terms and conditions of employment, including duties to be performed, hours of work, days off and the like.

Such agreements would be useful in informing both parties about their mutual expectations, thereby avoiding future misunderstandings. They would also help the Ministry with enforcement of the *Act*.

The Commission received evidence that some employers do not understand their obligations to provide adequate living accommodations for live-in domestics. A minimum standard should include a separate bedroom which provides privacy to the employee, ready access to a bathroom, and the like. To prevent excessive charges for rent, the Ministry should have the authority to approve charges.

The Commission recommends that the Ministry should have the authority to approve living accommodations for domestic workers for whom living in a private residence is a condition of employment and the rent charged for these accommodations.

Enforcement of this regulation can be coordinated with the Workers' Compensation Board, which has recently assumed responsibility for regulating domestic workers under the *Workers Compensation Act* and the *Workplace Act*. There are other workers, discussed elsewhere in this Report, for whom living on the employer's premises is a condition of employment. No evidence was received to indicate that there are any deficiencies in the living quarters available for them. However, should problems come to the attention of the Ministry in the future, legislation or regulations may be drafted to cover workers other than domestics, should the need arise.

Elsewhere in this Report, the regulation of "sitters" is discussed. In general terms, the intent of the recommendation on sitters is that persons who care for children for no more than 15 hours per week should not be covered by the *Employment Standards Act*. This is intended to cover casual "babysitting" provided by school age children and adults. There is a risk that some employers might attempt to escape the regulation of hours of work for their live-in domestics by converting them to sitters or other categories of residential workers after the end of a regular work day.

The Commission recommends that the *Act* should ensure that domestic workers are not "converted" to other categories of employee by their employer for the purpose of evading the hours of work provisions in the *Act*.

This provision would not prohibit domestic workers from working as sitters for other employers. If they work as sitters for their primary employers after the end of a normal working day, hours worked as sitters or other caregivers should be added to those worked as domestics.

There may be occasions when a domestic is not actually required to work during the day, for instance during the period when

children are at school. In effect, the employer may wish to establish a split shift. Current provisions of the *Act* are adequate to cover most situations of this nature, but the definition of “work” discussed in this Report would enable live-in domestics to leave the employer’s premises if they are not required to actually perform services. If the employer requires them to remain in the residence, they should be paid accordingly. Similarly, many employers may find that some form of compressed work week is suitable for domestics. The provisions of the *Act*, including the system of granting variances, should be sufficient to deal with these circumstances.

Agriculture

Coverage of agricultural workers was one of the most controversial and complex issues presented to the Commission. Representatives of labour and employers were at odds in their recommendations. The labour market in agriculture is unique in many ways.

Agriculture is a large and important industry in British Columbia. Approximately 29,000 persons are employed there, of whom 23,000 work full time (Statistics Canada, *Labour Force Annual Averages*, 1992). An estimated three-quarters of all hired workers are in the Fraser and Okanagan Valleys in fruit, vegetable and floriculture production. Smaller numbers work in the livestock sectors, and they are more uniformly distributed throughout the province. The fruit, vegetable and flower sectors tend to have high seasonal variation in their demand for labour. In commodities such as livestock, mushrooms, poultry and hothouse crops, permanent employment relationships appear to exist. Overall, peak employment in the industry is 50 per cent higher than mid-winter levels. The Workers’ Compensation Board estimates that over half of all hours worked in agriculture occurs in stable year-round employment (*Workers’ Compensation Board of British Columbia*, 1991).

The backgrounds, skills and mobility of farm workers vary considerably. Precise data are lacking, but informed opinion in the industry is that the labour force in the Fraser Valley is dominated by Indo-Canadians and Chinese-Canadians. In the Okanagan Valley, large numbers of French Canadians are employed. From the Commission’s contact with the industry, it appears that many workers in the Fraser Valley are recent immigrants with limited ability to speak or read English.

Statistics Canada found that approximately 13,000 women were employed in agriculture in 1992, about 44 per cent of the agricultural labour force.

As a group, farm workers are among the lowest paid workers in Canada. In this province, the Commission heard evidence that some persons employed in agriculture earn a steady and comfortable living, with a stable employment status. Many, however, appear to eke out marginal incomes by Canadian standards. In 1986, approximately 18 per cent of all persons who worked in agriculture in Canada had family incomes below the poverty line, higher than any other industry except personal services (20 per cent) (Gunderson, *et al.*, 1990). The average income for persons employed in agriculture in British Columbia in 1990 was \$12,980, compared to \$24,801 for all occupations. Workers in the crop harvesting occupations earned an average of \$8,380 for the year. Even the 900 persons employed for the full year in harvesting earned a mere \$17,187, approximately half the provincial average (Statistics Canada, *Employment Income by Occupation*, 1993).

There are approximately 20,000 farms in the province, of which between 5,000 and 6,000 are registered with the Workers' Compensation Board as employers. Within the agricultural sector, there is a range of economic conditions. Representatives of employers pointed out genuine success stories, such as blueberries and hothouse crops, among the commodities produced in the province. On the other hand, recent trade agreements have undermined the position of strawberry producers and may affect segments of the dairy industry. Growers in the horticultural sector believe they can succeed in an international marketplace by selecting the proper niches despite strong competitive pressures.

In the Fraser Valley, labour contractors are significant factors in agriculture. Growers who need labour on a short-term basis deal with contractors who transport and supply relatively large numbers of workers on short notice when necessary. These contractors must be registered with the Ministry. No farm labour contractors are known to operate in other regions of the province.

The *Act* and the Regulation to it have an important part in determining the structure of the farm labour market. Section 3(2)(b) of the Regulation establishes a minimum daily wage

(currently \$48) for farm workers unless they are paid on an hourly or piece rate basis. Sections 3(4)(a)-(n) contain piece rates for harvesting 14 crops, ranging from apricots, to mushrooms to strawberries. These rates are based on a survey done in 1980 and were adjusted to match increases in the minimum wage since then. Regulation 9(1)(p) excludes farm workers from the hours of work provisions of the *Act*.

The result of the Regulation's provisions on payment of wages is that farmers can pay their employees under one of four arrangements: an hourly rate subject to the requirement of the minimum wage; a minimum daily wage, based on eight times the legal minimum wage (although the Regulation does not contain a maximum number of hours), on piece rate according to the schedule in the Regulation or on a piece rate that yields at least the minimum wage. In practice, the Regulation seems to encourage reliance on piece rates for seasonal work. Some farmers believed that they had to pay piece rates, although the Regulations does not impose such a restriction.

Part 9 of the *Act* establishes a system for the regulation of farm labour contractors. Section 60 defines a contractor as an "employer" for purposes of the *Act* when employees are engaged in most agricultural operations. Farm labour contractors must hold a license issued by the Ministry. Conditions for the issuance of a license are not onerous. The applicant must satisfy the Ministry as to his or her character, demonstrate a knowledge of the *Act*, and post a bond. An annual fee is charged for the license. If a farmer contracts with an unlicensed contractor, he or she is deemed to be an employer for purposes of the *Act*. Contractors must maintain or be able to produce various types of payroll data while their employees are working. Some farm labour contractors are active in other industries, supplying workers when the demand for farm labour is low.

There were 69 farm labour contractors registered with the Ministry in 1993. Turnover among contractors is high. Only 7 have been licensed continually since 1981 when the system started. Few workers complain to the Ministry about their conduct. Contractors who are the subject of complaints seldom seek to renew their licenses, although Ministry officials believed that they were still active in other firms. The staff of Employment and Immigration Canada (EIC) receives numerous complaints from workers about contractors' failure to pay wages, incorrect records of earnings and other matters connected with

the administration of the Unemployment Insurance (UI) program. During the Commission's work, one contractor was charged with falsification of employment records required by EIC and law enforcement officials stated that other investigations were underway.

Most farm labour contractors provide transportation for their employees. The Ministry cooperates with the RCMP in checking vehicles each spring. Roadblocks are set up in the Fraser Valley, and contractors' vehicles are stopped for safety inspections. Ministry officials check for valid contractors' licenses and try to ensure that children under the age of 15 are not working. On the latter point, Ministry staff report that they do find children below the legal age for work on the vehicles, but the children say they are going to the fields to be with their parents or to play, not to work. The Ministry lacks the staff to verify these statements. Contractors and farmers complained that when the RCMP finds a violation of vehicle safety regulations, it pulls the vehicle off the highway immediately, leaving a group of workers standing beside the roadway.

Stated briefly, representatives of farm employers urged that the basic elements of the present system be retained. Employers defended the use of piece rates and labour contractors. They advocated retention of a piece rate system not directly linked to the minimum wage, although horticultural employers in particular admitted that the existing schedule of piece rates is outdated. They suggested that a tripartite body be established to revise piece rates from time to time. Evidence from their own members and research done in California indicates that piece rates increase worker productivity. The agricultural community stated that many workers in their industry lack the language and other skills to enable them to compete successfully for other jobs in the provincial economy. Many of these workers are elderly and could not succeed in an employment system based on a standard wage rate. One of the major advantages of the piece rate system from the employer's perspective was stated only in passing—the sharp reduction in the need to supervise the labour force.

Employers, and the contractors themselves, advocated retention of the farm labour contractor system. Producers pointed out that their requirements for labour vary greatly, some on a seasonal

basis, but others on a weekly or daily basis. In some parts of agriculture, a grower may have two or three permanent employees, but require ten to twenty persons for one or two days to fill a seasonal order. Other growers need large crews for two to four weeks in the harvest season, other smaller crews for cultivation, but almost no employees for several months of the year. Contractors, who can supply the required number of workers at the farm on short notice, are an important element in the success of the industry. The contractors pointed out that they transport workers to their jobs, relieve farmers of the need to keep employment records and provide continuity of employment to individual workers. Growers suggested that farm labour contractors be encouraged to improve their qualifications to eliminate some of the problems in that sector.

Labour and advocacy groups vigorously urged the Commission to abolish all of the special provisions in the *Act* covering agriculture. They recommended that the piece rate system in the Regulation be eliminated and that farm workers be covered by the minimum wage and hours of work provisions of the *Act*. If employers face particular difficulties with the requirements in the *Act* governing hours of work, they could apply for variances just as other employers do.

The piece rate system in particular creates numerous problems. Many contractors do not pay their employees until the farmer pays them for the work done, causing violations of Section 4 of the *Act* that requires workers be paid semi-monthly. Growers or contractors control the measurement of amounts harvested, such as the scales for weighing crops, and the units of measurement used by growers do not always correspond to the units in the Regulation, so that workers have no effective way of verifying that they are being paid for the amounts they pick. Labour groups alleged that workers often receive less than the amounts specified in the Regulation, although no evidence or examples were presented to the Commission. The piece rate system creates problems with UI. Workers have complained that they worked without pay in return for false statements of earnings for purposes of establishing their eligibility for UI. In the opinion of labour groups, the contractor system fosters many of the abuses of workers in the Fraser Valley, including underpayment of workers and abuse of the UI system. Workers who threaten to

complain are told that they will not be hired by any contractor if they bring their problems to the authorities.

Minimum Wages

Despite the income data for agriculture as a whole, there were several sectors which claimed that their employees made more than the minimum wage. The Commission heard several representatives of the dairy industry who explained the arrangements they have with herdsmen. They are permanent employees, often living in a residence on the farm provided by the employer and paid on a monthly basis, generally \$2,000 or more. Blueberry growers estimate that 60 to 70 per cent of their workers earn more than the minimum wage. Labour representatives pointed out, however, that the labour contractor system in the Fraser Valley raises difficulties in determining what wages workers actually receive. Growers know what they pay the contractors for work performed and can only estimate how much of that money flows to the workers.

When all of the evidence has been analyzed, the impact of the present system for wages in agriculture is the following: a large group of workers, 29,000, dominated numerically by visible minorities and women, whose earnings are among the lowest of all workers in British Columbia are denied the most basic employment standards protection, a minimum wage for their work, a minimum wage that currently represents 40 per cent of the average weekly earnings for the province. In other words, a group most in need of such protection is outside the scope of the law in this area. In 1994, this situation should not be tolerated in this province. It would also be grossly unfair to deny the right to minimum standards to thousands of workers, the vast majority of whom support themselves and their families, to retain the participation of workers who are past the normal retirement age or who lack the ability to produce at an acceptable level. Some of these workers may have to leave agriculture. Others should be encouraged to improve their productivity. In the contemporary British Columbia economy, no interest group's long-run interests are served by protecting low wage ghettos from minimum wage protection. By their own statements, large segments of the British Columbia agricultural sector are already meeting this standard. In other sectors, a large proportion of workers earn more than the current minimum wage, so that the number of workers directly affected should not be large.

The Commission recommends that the exemption of farm workers from the minimum wage provisions of the Act, currently contained in Section 3(2) and 3(4) of the Regulation be eliminated.

There was considerable concern raised by employer representatives that the Commission might make piece rates illegal. The horticultural industry suggested that a tripartite committee be established to set minimum wages for individual crops. The recommendation on minimum wages does not affect the legality of piece rate payment systems in any way, although it will do away with the rates that were substitutes for the minimum wage. Many arrangements exist for determining compensation besides rates based on time, i.e., commissions, flat rates, distances travelled and the like. Section 26 of the *Act* makes it clear that all these arrangements are legal under the *Act*, as long as the hourly compensation is at least equal to the legal minimum. This also is consistent with the treatment of piece rate compensation in other jurisdictions (*Christie, et al.*, 1993). This recommendation will not affect many of the commodities produced in the province that have never relied upon piece rates. It will also encourage other producers to improve the skills of their labour force, as many growers are doing. Continued reliance on piece rates, which may stimulate productivity in the short run, only encourages reliance on a low skilled, poorly managed labour force in the longer run.

The record keeping systems used in the Fraser Valley have created problems in the enforcement of even the current provisions of the *Act*. When workers harvest a crop, they receive one-third of a ticket or chit, with the other segments going to the grower and the contractor, respectively. A worker is not identified on the chit, and it is almost impossible in some cases to find out whether an individual worker actually performed a particular task. This issue will be discussed in more detail in the section of the Report below dealing with farm labour contractors.

A special problem for agriculture is the time period over which a calculation must be made to verify that the minimum wage has been paid. Section 26(b) of the *Act* states that when wages are paid on a flat rate, incentive or other method, hourly rate is to be calculated by dividing the amount paid by the number of

hours during a pay period. That system works for stable employment relationships, but not necessarily for seasonal work. To emphasize the obvious, coverage by minimum wage legislation does not mean that each worker must earn the minimum for each hour he or she works. If workers are employees of farm labour contractors as now defined in the *Act*, their employment would be stable enough to permit compliance with the minimum wage by dividing wages paid by the total number of hours worked during a pay period. If workers are engaged directly by a farmer, the calculation would be the lesser of the period of employment or two weeks, i.e., a standard pay period.

The Commission recommends that the calculation of effective wage rates be based on the lesser of the period of employment or two weeks for seasonal farm workers hired directly by producers.

Hours of Work

Employers from agriculture emphasized repeatedly that their industry does not lend itself to regular work schedules. Weather, growing cycles and markets all impose rhythms on work that are essentially outside of the control of a grower. They argued that the current exemption from the hours of work provisions of the *Act* must be retained. Representatives from labour replied that these conditions should not deprive workers of their rights under the law.

All provinces in Canada currently exempt at least some workers employed in agriculture from the regulation of hours of work. While the reasons for these exemptions are not stated, an examination of the ways in which hours of work are regulated may suggest some justification for this situation. For most workers, their right to overtime pay is the most significant aspect of hours of work regulation. However, Part 3 of the present *Act* also includes notification of the starting and finishing times of work, periods free from work, minimum daily pay and hours free from work. All these provisions are designed for conventional work settings. Some seasonal work is accommodated under Part 3, but Section 9 of the Regulation contains exemptions for 26 groups of workers from Part 3, including farm workers.

Based on the evidence received by the Commission, the biggest regulatory problems with hours of work in agriculture occur in the highly seasonal parts of the industry. The parties appear to have developed acceptable methods for dealing with the special nature of their production cycles in areas such as livestock, hothouse crops and the like. Most workers appear to work schedules that are consistent with the requirements of the *Act*. For the highly seasonal commodities, such as tree fruits and berries, many provisions of Part 3 would pose a considerable burden. Moreover, the public policy purpose of imposing overtime pay premia is to encourage employers to hire more workers. Seasonal variations in the demand for agricultural labour already tax the supply of labour, and the Commission is convinced that workers expect to work extra hours during the busy seasons to increase their incomes. For the protection of the health and safety of workers and to discourage long work days, there should be a maximum number of hours per day to be worked. If the minimum wage is imposed, then some employers should be encouraged to ensure that their workers are only employed when they can be productive, so that the temptation to keep them for excessively long days in the fields will be reduced. However, a minimum standard will still be desirable in some situations, and the Commission considers that 10 hours a day and 60 hours a week to be the upper limits of acceptable employment practices. If employers wish to exceed these limits, then they should be placed under the hours of work provisions of the *Act*.

The Commission recommends that farm workers be exempt from the hours of work provisions of the *Act*, with the following exceptions: employers who accept this exemption shall not allow their employees to work more than 10 hours per day or 60 hours per week.

Farm Labour
Contractors

Farm labour contractors are a common feature of the labour-intensive parts of agriculture in North America (see Vaupel, n.d.). In the Fraser Valley, many growers who employ as few as one or two permanent workers also need many workers for a short period of time, in some cases for only a single day. At other times of the year, their needs rise gradually as the harvest progresses and then diminish as it is completed. Contractors

relieve producers of the need to recruit and pay workers and complete paperwork for a very brief employment relationship.

Workers gain under this system too. Farm labour contractors have an obvious interest in maximizing the total period of employment for individual workers who may work on the premises of many individual growers during a calendar year. Moreover, UI Regulation 16(4)(3)(f) specifies that a worker employed in agriculture must work for seven days in a year for a single employer to receive credit for employment that qualifies for UI. As a result, a harvest worker might work steadily for several months, i.e., working every day, but for many different growers, and still not be eligible for Unemployment Insurance after the end of the harvest because he or she had not worked seven days for a sufficient number of employers. Thus, farm labour contractors provide workers with the continuity of employment they need to obtain for Unemployment Insurance.

Despite the advantages of the farm labour contractor system, there are disturbing indications of abuse. While workers do not often complain to the Ministry about violations of the *Employment Standards Act*, complaints filed with EIC allege failure to pay wages promised by the contractor, falsification of records of earnings for UI and the like. Workers who do complain to federal authorities report that they fear loss of employment by their own employer and other contractors if their identities are known. Officials of the Ministry who investigate complaints against farm labour contractors and Employment and Immigration investigators agree that piece rate records are almost impossible to verify. The use of tickets or chits by workers, contractors and growers makes it impossible for the authorities to decide if a particular worker worked in a given location on a specified date. The only requirement to record who was present as an employee of a contractor on a grower's property is found in Section 65 of the *Act*. Thus, if an employee complains that he or she was not paid the specified rate for picking a crop after the end of the harvest, it is difficult, if not impossible, to verify the claim.

The current situation is exploitative of workers and leads to violations of this *Act* and other statutes. Both provincial and federal officials suggested that an improved system of record keeping which involves growers would enable them to enforce both the *Employment Standards Act* and other legislation. This should remove many of the temptations of employers to avoid

their responsibilities in the payment of wages and reporting of earnings so that workers can claim the Unemployment Insurance to which they are entitled. Section 65 of the *Act* requires contractors to provide producers with a payroll list on request, but there is no reason or incentive for the producers to request the records. In fact, there are disincentives for these requests if the producer suspects any illegal conduct.

The Commission recommends that farm labour contractors be required to maintain records containing the following information: the name and social insurance number of each employee, the location and type of work performed each day; the number of hours worked and rate of pay for each day. These records shall be retained by contractors for a minimum of three years. A contractor engaged by a producer shall provide the producer with a copy of these records at the earlier of the end of each semi-monthly pay period or at the completion of a contract. The producer shall retain copies of these records for three years. Violations of these provisions should be subject to penalties under this *Act* and as well as the requirement under Section 68 of the *Act*, that producers will be deemed to be employers for the purposes of collection if they deal with unlicensed contractors.

The evidence the Commission received of workers being paid less than the piece rates specified in the Regulation, not being paid any wages by contractors and other abuses is too strong to permit recommendations to stop with the call for better record keeping. In addition to problems with payroll records in this industry, the Ministry has found that registered farm labour contractors tend to have a brief existence, which increases the difficulties in recovering wages owed to workers. This problem is not unique to agriculture. In the construction industry, many contractors and subcontractors may work on a single project. Some subcontractors are established to bid and work on one job. Collections of any kind can be difficult. The *Workers Compensation Act* contains a mechanism for dealing with this problem in the collection of assessments. Section 51 of that *Act* provides that when there are multiple contractors working on a project, their workers may be deemed to be employees of the general contractor or the owner of the project. This liability serves to encourage persons contracting for work to ensure that their contractors or subcontractors pay Workers' Compensation Board assessments or are bonded against any default.

It should be emphasized that most farmers who rely upon farm labour contractors would be employers under the *Act* except for Section 60, which defines the contractors as employers. Other recommendations in this Report will strengthen the link between employers and persons whom they engage for work. The present regulatory scheme for farm labour contractors provides inadequate protection for workers. Since producers benefit substantially from the services of contractors, they should share the responsibility for ensuring that workers in this industry receive the basic rights of any employee—to be paid the wage for which the employer contracted.

The Commission recommends that the *Act* retain the designation of farm labour contractors as employers, but that persons who engage the services of farm labour contractors be liable for unpaid wages for work done on their premises and not paid by farm labour contractors.

Because of the important role that farm labour contractors play in the agricultural labour market, it is important that they be aware of the legal requirements to which they are subject. At present, the Ministry examines them only on their knowledge of this *Act*. They should be able to demonstrate knowledge of other relevant legislation, including the health and safety regulations issued by the Workers' Compensation Board, motor vehicle safety regulations and the UI regulations.

The Commission recommends that the Ministry examine applicants for farm labour contractor licenses on all relevant statutes and regulations to which they are subject, including the Workers' Compensation Board health and safety regulations, motor vehicle safety regulations and Unemployment Insurance regulations.

It is an unnecessary risk to workers, to say nothing of humiliation, that they should be left standing beside a highway when a contractor's vehicle is found unsafe during an inspection performed while the vehicle is transporting workers to their jobs. Improved coordination between the RCMP and the Ministry of Transportation and the Ministry charged with enforcing this *Act*, should make it possible for vehicles to be

inspected in advance and be able to show a certificate of inspection when spot checks are made. The Ministry could still participate in the inspections to ensure that children were not being taken to work, that farm labour contractors are properly licensed and the like.

The Commission recommends that the Ministry cooperate with other agencies of the provincial government and the RCMP to improve the system of inspecting farm labour contractors' vehicles.

Professionals

Section 7 of the Regulation excludes members of 16 occupations and professions from coverage by the entire *Act*. In addition, persons serving as trainees, for instance, articulated students, are also exempt under these acts. The logic of these exclusions is obscure. All of the groups listed in the Regulation are governed by an act of the provincial legislature. However, other occupations or professions governed by acts are not included in the Regulation. For example, Chartered Accountants are exempt, but Certified General Accountants are not. Optometrists are included in the regulation, while psychologists are not mentioned.

Perhaps one area of logic in the exclusions is that most professionals covered by the acts are traditionally self-employed, and the professional bodies regulate some elements of practice. Even this view is no longer accurate, as the number of licensed professionals who are employees is now substantial, and some features of the *Employment Standards Act*, Part 2 (Wage Protection) or Part 7 (Maternity and Parental Leave) for instance, may be important. It is also true that the work of many professionals has elements of independence that distinguishes them from other employees.

These anomalies were identified in the discussion document, *Standards for a Changing Workplace*, and it should be noted that there were no submissions on this point, aside from a comment by an employer that geophysicists work beside engineers in some industries and should also be excluded.

Nevertheless, there is no compelling reason for continuing these blanket exclusions. The principle of equality before the law is

violated substantially by Regulation 7. Professionals who are self-employed, including members of partnerships, are excluded from coverage by the *Act* because they lack employee status. Members of these professions and occupations who are employees under the *Act* should receive the benefits of its protections. However, the nature of their work, including the autonomy that many enjoy, the traditions of training students found in many professions, point to a continued exclusion from the hours of work provisions of the *Act*.

The Commission recommends that Regulation 7 be eliminated and a person who is qualified to practice a profession under an *Act* of the Legislature that applies solely to, and governs the practice of, that profession be covered by all parts of the *Act* except that part which regulates hours of work.

Persons with Disabilities

The appropriate role for the *Employment Standards Act* in addressing the problems of persons with disabilities was one of the most difficult issues the Commission faced. The conditions of persons with disabilities in this country and this province cry out for attention. For decades, Canadian society has left charitable organizations and public agencies or families to assist these citizens in dealing with their disabilities. Too little attention has been paid to promoting their integration into the mainstream of Canadian society. The question before the Commission is not whether something should be done, but which statute or arm of government should assume responsibility.

The Premier's Advisory Council for Persons with Disabilities has compiled compelling data on the circumstances of persons with disabilities in Canada and British Columbia. Aside from Federal employment equity legislation, Canada is the only G-7 country without a legal duty to accommodate persons with disabilities. Partly as a result of this lack of government action, the unemployment for persons with disabilities is 30 to 50 per cent greater than for persons without disabilities. Moreover, half of all Canadians with disabilities are not even in the labour force, so they are not included in calculations of unemployment rates. A total of 5.4 per cent of employees with disabilities in "mainstream" jobs report that their jobs include accommodation for them. The Council cited data in a national study that

estimated the cost of disabilities in this country at \$20 billion annually. Well over half of this cost is borne by Canadians with disabilities, in the form of reduced income, lack of employment and opportunities to use their abilities to the greatest extent possible.

The Premier's Council and a number of other organizations and individuals who appeared before the Commission urged that the *Employment Standards Act* be amended to include the duty on employers to accommodate persons with disabilities. They further pointed to two provisions in the existing *Act* and Regulation that are discriminatory toward persons with disabilities. Employers emphasized the administrative difficulties and cost in meeting such a requirement, especially for small employers. They also reminded the Commission that the *Human Rights Act* prohibits discrimination against persons with disabilities, and the Supreme Court of Canada has in effect imported the duty to accommodate into human rights legislation.

The *Act* and the Regulation now mention persons with disabilities in two ways. Section 105(3)(c) gives the Ministry the authority to authorize that an employer or a class of employers the right to pay "a handicapped employee" less than the minimum wage, when it is considered that the lower wage will "ameliorate the handicapped employee's condition or benefit the employee". Section 8(2)(d) of the Regulation exempts persons with disabilities from coverage by Parts 3 to 10 of the *Act* and the minimum wage and general holiday provisions when they are receiving therapy or engaged in a therapeutic work program. The effect of Section 8(2)(d) is that persons employed in these work settings, many of which would be known as sheltered workshops, lack protection of the *Act* completely except for the collection of wages.

The duty to accommodate attracted the most attention in representations to the Commission. Apart from the general suggestion that the duty to accommodate be incorporated in to employment standards legislation, there were divisions within the community of persons with disabilities. Some groups, in particular organizations representing workers with disabilities, urged that employers be required to accommodate workers who became disabled by any cause, i.e., including accidents that were

nonwork related or due to illness. Groups concerned with the well being of persons with disabilities that are primarily congenital wanted the duty to accommodate extended to persons who were not members of the labour force when they acquired their disability.

Some labour organizations wanted a hierarchy of duties to accommodate, beginning with employees, then to workers or former workers, who would be followed by persons who were not workers or former workers. Advocates of the duty to accommodate could not point to any employment standards law that included this obligation for employers. Other jurisdictions have comprehensive statutes dealing with persons with disabilities, such as the Americans with *Disabilities Act*, or regulations issued pursuant to human rights legislation.

The Commission also heard from a number of persons who are active in rehabilitation programs. They universally supported coordinated efforts to integrate or re-integrate persons with disabilities into the labour force. Successful programs may involve several government agencies, both federal and provincial, insurance carriers, rehabilitation agencies, employers and unions, among others. The type of accommodation required varies considerably, ranging from physical adaptations of the workplace to the addition of new technology, such as computer equipment, to work schedules adjusted to the needs for rest or changes in physical activity required by persons with disabilities. Several firms in British Columbia, especially in the forest products industry, have started programs for the accommodation of persons with disabilities, in particular employees who have been disabled at work or in nonwork activities. Employers have been assisted by representatives of the labour movement or joint-labour management committees.

After considerable reflection, the Commission has decided not to recommend that a duty to accommodate persons with disabilities in the *Employment Standards Act*, despite the strong case for legislative action made by the groups representing these persons. Several reasons led to this decision. Two other statutory frameworks would be more appropriate for this action by the government, human rights legislation or comprehensive statutes establishing rights for persons with disabilities. In the case of human rights acts, a reasonable interpretation of the Supreme

Court of Canada decision in *Alberta Human Rights Commission v. Central Alberta Dairy Pool* (1992) S.C.R. 489 is that the duty to accommodate already exists in British Columbia, in that the Court read it into all human rights statutes in Canada that prohibit discrimination against persons with disabilities (Taras, 1992). In the introduction to this Report, the principle was stated that employment standards legislation should avoid regulating subjects already treated by other statutes or which are more logically covered there. That principle applies to this subject. One of the major arguments for including the duty to accommodate in the *Employment Standards Act* seems to have been dissatisfaction with the administrative processes and remedies available under the *Human Rights Act*. If that is the primary motive, then the solution should lie in amending that *Act*.

Proponents of the duty to accommodate could not point to a single example in another jurisdiction where this requirement was located in employment standards legislation. That fact probably reflects the judgements of legislatures that the problems of persons with disability are broader than the workplace. To cite one example, if physical accommodations are to be made for workers with disabilities, how should these be integrated with accommodations for other persons with disabilities who use the same facilities, such as customers or the public?

Organizations representing workers with disabilities preferred that their members be given the highest priority. It should be noted that the *Workers Compensation Act* in this province and other provinces does not include a duty on employers to accommodate workers who incur disabilities as the result of accidents in the course of their employment. If injured workers are to receive priority in accommodation, itself a major social choice, that issue might be addressed first through workers' compensation legislation.

Finally, the Commission notes the need for coordination of activities by public and private agencies to achieve the integration of persons with disabilities into the labour force. The Commission concluded such coordination would be best undertaken by an agency with more specialized expertise in rehabilitation and accommodation.

The matter should not end here. The case for action to integrate persons with disabilities into the mainstream of the British Columbia economy is a strong one.

The Commission recommends that the government establish an interagency committee to prepare proposals for action by government and the private sector to promote the accommodation of persons with disabilities in British Columbia.

The present provisions of the Act and Regulation demand changes. Section 105(3)(c) of the Act is patronizing to persons with disabilities. Even worse, it does not assist them. In 1991-1992, only one variance was issued under this provision. If persons with disabilities are participating in the economy, they should receive at least the minimum wage.

The Commission recommends that Section 105(3)(c) be repealed.

Much the same argument exists for Section 8(2)(d) of the Regulation. The effect of this Section is to deny coverage for virtually all persons with disabilities who work in sheltered work shops, irrespective of the abilities of the employees or the economic circumstances of their employers. The Commission has been told that some organizations taking advantage of this exemption are competing directly in the market place and that some focus on productive activities and provide very little training or therapy. A theme of this Report is to eliminate this type of general exclusion from the Act. In addition, the Commission received legal advice that Section 8(2)(d) is a *prima facie* violation of Section 15 of the Charter of Rights and Freedoms. The elimination of Section 8(2)(d) should not preclude the possibility that conditions of employment may have to be adapted to the needs of employees with disabilities. Indeed, that is the thrust of the duty to accommodate policies. In particular, the Commission learned that changes to conventional work schedules may be important aspects of accommodation. Therefore, the Ministry should have the power to issue variances to organizations which employ persons with disabilities for the purpose of providing training, rehabilitation or education.

The Commission recommends that Section 8(2)(d) of the Regulation be repealed, but that the Ministry be given the authority to issue variances to the Act to employers with operations that provide rehabilitation, education or training to persons with disabilities. Variances should be granted under the procedures recommended in this Report, which would include consultation with employees affected and, if necessary, organizations representing their interests.

Education

The Regulation contains numerous exemptions that apply to employees in the education sector, broadly defined. Employers in this context include school boards, independent schools, municipalities and regional districts, universities, colleges and technical institutes, churches and the provincial government. Some of these organizations would be surprised to find themselves included under a discussion of education, but the only purpose of grouping them in this Report is convenience to the reader.

Students

Section 8(1) of the Regulation exempts from coverage by the Act students who are employed in the school where they are enrolled, students enrolled in a secondary school engaged in work study programs and students enrolled in occupational training programs under the direction of an instructor employed by the Ministry of Education. Under Section 8(2) students enrolled in registered and practical nursing programs are also excluded from the Act. A variance was recently issued to all universities, colleges and learning institutes to enable students employed by the institution where they are enrolled to vary the minimum daily pay. Section 7 of the Regulation which excludes articling students in several professions, is reviewed with the section on professions in this Report.

The Ministry of Education has advised the Commission that it does not consider students who work at their schools to be “employed” as defined by the statute. Students who work under supervision in a work study program are not employees — the work experience is an extension of an educational program and may involve raising money for a team, putting on a dance and the like. The Ministry recommends that both exclusions be retained. The Ministry also advised that there are currently no

programs operating in the Province that are under the direction of an instructor employed directly by the Ministry of Education. Therefore, this exemption does not affect any student in the British Columbia school system.

The Commission recommends that the exclusions for students currently contained in Regulation Section 8 (a) and (b) be retained, but (c) be eliminated.

The exclusion for student nurses should be retained. These students work in helping and observing roles in hospitals under the supervision of their instructors and hospital staff. This is a traditional method of education for these professions and the Commission does not recommend any change.

Some students are employed by post-secondary institutions where they are enrolled to provide service to the institution and to assist them in paying for the costs of their education. Student work arrangements must be adapted to course schedules as well as the overall provision of service by the employer. Many of these persons are covered by collective agreements. The major difficulty under the *Act* seems to be the requirement for minimum daily pay. Students may work for one or two hours between classes, meeting a need of the employer and filling a gap in their own days. In other circumstances, they may work on an hourly basis when they have free time, being responsible only for the completion of a particular task. These arrangements are mutually beneficial and should be supported in the Regulation without the need for a series of variances for each institution in the province.

The Commission recommends that students in post-secondary institutions in the province employed by the institution where they are enrolled should be excluded from the minimum daily pay provisions of the Act.

Non-academic Staff

Section 9 of the Regulation excludes a number of occupations from the application of the hours of work provisions of the statute, including: noon hour supervisors, teachers' aides, supervision aides, persons to provide training in a trade,

vocation, hobby, etc. by municipalities, regional districts or the government and motor vehicle operators. The exclusion for motor vehicle operators applies to drivers transporting persons on school-related activities. A parallel exemption applies to the transportation of persons to and from church. Section 13 of the Regulation excludes school janitors from Sections 27, 32, 33 and 35 of the *Act*, covering various aspects of scheduling.

The Commission received a number of submissions on these exclusions. School boards requested that they be retained or even expanded slightly. The rationale for their submissions was that many persons are hired as teachers' aides or noon hour supervisors for a specific item of work, and it would not be possible to schedule them for a minimum of four hours. The case for noon hour supervisors is particularly compelling. In some districts, crossing guards are hired to work for limited periods when they are needed, which may not total 4 hours in a day. As more children with disabilities are put into "mainstream" classes, the need for teachers' aides has grown. Children with specific needs may not be able to work with an aide for more than an hour per day, and there are often a small number of children with a particular problem in a single school or area. Thus, scheduling for four hours is not possible.

The union which represents most of these persons when they are unionized supported the exclusion, fearing that if they were regulated by the hours of work provisions employers would seek to replace them with volunteers. A second union which represents school board employees wanted the exemptions removed, on the grounds that employers should be encouraged to schedule more hours for each employee.

Several bus operators contacted the Commission to point out the special circumstances for charter bus drivers, including those employed by school districts to transport athletic teams and their fans to games or students on excursions in other communities.

After reviewing the submissions and applying the principles used to recommend exemptions and coverage in this Report, the Commission concluded that there should be no change in the present exclusions. The limits on scheduling flow from the nature of the work performed and are not amenable to correction by scheduling by the employer. Many of these persons are covered by collective agreements, and no pattern of abuse was found. There are exclusions for charter bus drivers

who are not employed by schools in Sections 13 and 14 of the Regulation. No change in their status is recommended. It may be useful for the parties to derive more general definitions of persons who are employed to provide instruction or other services to students than the statements now in the Regulation. For instance, crossing guards technically may not be exempted from coverage by the hours of work provisions because they are not mentioned there and new categories of persons may be employed to assist children who are not teachers under the relevant collective agreements and education legislation.

The Commission recommends that the Ministry consult with the parties in education to draft more general definitions of the categories of employees who should be excluded from the hours of work provisions of the *Act*.

Academic Staff

Section 9(c) of the Regulation excludes teachers employed by school districts and independent schools from coverage by the hours of work provisions of the *Act*. Instructors in vocational, recreational and occupations programs provided by regional districts, municipalities or the government are excluded by Section 9(d). Section 9(v) excludes university faculty from hours of work. Teachers in public and independent schools, faculty and administrators in colleges and technical institutes and university faculty are also excluded from Section 4 (when wages are paid) under Sections 12(a)-(c) of the Regulation.

The Commission received no requests for change in the exclusions in Sections 9(c), (d) and (v) of the Regulation. There is no pattern of abuse, and the rationale for the exemption is founded in the nature of the work. Teachers negotiate for their hours in the classroom and traditionally control their out of class time themselves or under a collective agreement. The Commission received representations from university faculty asking that the hours of work exclusion be retained. Therefore, no change in these exemptions is recommended.

There was controversy surrounding tutors employed by the Open Learning Agency (OLA) and the exclusion of college teaching staff from the hours of work provisions. The OLA requested that tutors and senior tutors be added to the list of occupations excluded from hours of work under Section 9(1)(w)

of the Regulation. Their union opposed the request, but suggested narrow language for the exclusion if one was granted. On a broader basis, the union which represents faculty in colleges and technical institutes requested that the existing exclusions be removed and replaced by variances to apply to individual employers and areas or departments within employers. In other words, different regulatory conditions might apply to different subject areas within a college or institute. The employers did not approach the Commission.

After reviewing the submissions received and the broader principles in this Report, the Commission recommends modest changes to the status quo. However, the request raised by the union representing college faculty should be noted. The current exemptions are indeed broad and may not work equally well in all settings. The Commission's recommendations on exemptions anticipate that employee groups or even employers should be able to request their removal from any exclusions according to procedures established by the Ministry. If this recommendation is accepted, college faculty should have the opportunity to plead their case in an organized fashion and make a submission to Cabinet. In the meantime, the parties at OLA seem in agreement that tutors and senior tutors be excluded from the hours of work and payment of wages provisions of the *Act*.

The Commission recommends that Sections 9(1)(w) and 12(c) of the Regulation be amended to include the following language: "a senior tutor or tutor who is employed by the corporation as defined in the *Open Learning Agency Act*."

The organization representing university faculty in the province requested that the exemption of their members from the payment of wages provisions of the *Act* be removed. The body representing the three university presidents opposed this application.

This issue puts the Commissioner into a conflict of interest situation. The government is reminded that he is a member of one of the constituent bodies of the organization representing the three faculty associations. None the less, university faculty should have the right to have their suggestions heard along with other citizens. The recommendation on this point will have to be judged on its merits as well in light of the conflict of interest.

The issue separating the university faculty and presidents is payment of wages. Section 4 of the *Act* requires wages to be paid semi-monthly. Teachers in the public and independent schools and college and institute faculty did not request a change in their status, presumably because they have various arrangements for payment over the summer months. The Commission learned that of the three provincial universities now in existence, two pay faculty semi-monthly, despite the exemption. Only the University of British Columbia pays its faculty on a monthly basis. The organization representing the three university presidents stated that a “significant increase in costs” would be caused by the proposed change and suggested that it be left to bargaining.

The Commission is well aware that university faculty are not a group greatly in need of protection under this *Act*. However, the effect of the present exemption, granted at some time by Cabinet, is that only one employer is affected. The source of the exemption is not known, but may have originated when university faculty were paid only for 9 or 10 months per year, a practice that ended in Canada decades ago.

Applying the principles used with other exemptions and variances, it is inappropriate to retain an exemption that applies to only one employer and lacks a current rationale in terms of the employees’ work. If the University of British Columbia or any future university in the province concludes that Section 4 should not apply to its faculty, it should have the right to apply for a variance to apply to a single employer and be judged by the standards that apply to other requests for variances.

The Commission recommends that the exemption in Section 12(b) of the Regulation be deleted. The attention of the government is drawn to a conflict of interest in this recommendation.

Artists

Under Section 8 (2) of the Regulation currently in force, Parts 3-10 of the *Act* other than section 35.1 and the regulations that establish the minimum wage and general holidays do not apply to “an artist, musician, performer or actor.” The rationale for these exclusions is not always apparent. For instance Part 6 of the *Act*, which regulates child labor, is included in the exemption

although some performers are children. On the other hand, the part of the *Act* covering farm labor contractors has no relevance to these employees and is included in this exemption. Currently the only protection for artists under the *Act* is the collection of wages.

In 1993, the Honorable Darlene Marzari, Minister Responsible for Culture, struck an Advisory Committee on the Status of the Artist. The Committee presented a comprehensive brief to the Commission on the status of performers. Some of its recommendations were echoed by representations from unions that represent performing artists. A fundamental issue to the status of artists under this *Act* is their status as employees. Artists' representatives reported that many of their constituents work as employees or as contractors at various stages of their careers, or even simultaneously when they fulfil more than one function in an artistic endeavour. Performers such as dancers, or symphony musicians, can be employees for extended periods of time.

This Report addresses the concerns of artists regarding their employment status above. If artists or other workers meet the traditional tests of employee status, although they are engaged as "contractors," the *Act* should protect them. Artists who produce works for sale and subsequent use, such as composers, painters or film makers, normally would not be employees, even under an expanded definition. If they are employees while they are producing these works, they should be free to negotiate the terms under which their artistic products are sold, but their wages, hours of work and the like should be covered by the *Act*, just as other artists and employees should be covered. Because of the special circumstances of artists, sensitivity may be necessary in deciding who are employees and who are independent contractors. Organizations representing artists, employers and other interested parties should be asked to assist in the formulation of policies covering these employees.

Some artists' representatives suggested that artists not be covered by Parts 3 and 7 of the *Act*, other than Section 35.1 (Special Apparel) and the regulation governing general holidays when artists were working under a written contract covering hours of work, overtime, maternity or parental leave and the like. There is no obvious reason to put artists at such a disadvantage in their employment relationships. Bill 65 removed similar provisions governing collective agreements. A preferable

system is to cover artists by the *Act*. The Minister's Advisory Committee gave evidence about the low incomes and job security of many artists. These persons should enjoy the same protections as other workers, unless the special circumstances of their work make a variance appropriate. Artists under the age of 15 should be covered by the child employment provisions of the *Act*.

Part 10 of the current *Act* covers employment agencies. Some agencies which book artists may fall within the definition currently in the *Act*. They should be subject to the same regulation as other employment agencies. Again some adjustment in the application of that Part of the *Act* may be necessary to accommodate artists' special circumstances, and these can be addressed through the variance provisions of the *Act*.

The Commission recommends complete coverage of actors, performers and musicians by the *Act*. Special circumstances of some artists can be addressed through the variance system. The Ministry should develop policies dealing with the employment status of artists to guide them and their employers.

Fishers

The Commission received representation about the status of workers in the fishing industry under this *Act*. Some of the issues in the industry are new. Recent litigation in Ontario has clarified the constitutional position of fishers, i.e. persons who actually work on vessels. It is now settled law that fishers come under provincial jurisdiction. Previously, the parties acted on the assumption that fishers were covered by federal legislation.

Fish are a unique resource, and their characteristics has a profound effect on the fishing industry. Not only does the value of fish caught fluctuate in an international market, but producers cannot be sure where fish are located prior to the opening of any season. Nor can they confidently predict the size of the catch from one year to the next. Fishing seasons can be extremely short, so that workers may labour for long hours compressed in a few days or weeks and then wait long periods for another run of fish.

Workers in the fishing industry fall into four categories: fishers, tendermen, campmen and shoreworkers. The Fish Processors

Bargaining Association estimated that there are approximately 14,500 fishers in the province, 400 tendermen, an undetermined number of campmen and about 6,000 shoreworkers.

This industry has many unusual or even unique features in its employment relationships. Fishers normally work for shares of the catch rather than wages or commissions. The proceeds from the catch are shared between the crew and the owner according to a mutually-determined formula. In the past, fishers have been classified as “co-adventurers”, rather than employees. A major issue is the identity of the employer. In some respects the master or owner of the vessel is the fishers’ employer. Yet the master is compensated on the same basis as the crew, i.e. according to the value of the catch. Many, though not all, vessels have a permanent connection with a processor, which can stand in the place of an employer. However, the processors do not exercise the same control over the operations of a vessel and its crew as employers in more conventional settings. Crews on fishing vessels are often union members and bargain collectively for the price of their catch and a few other conditions that affect their working lives. Although the current system of employment relations has a long history, change is under way. The *Workers Compensation Act* has been extended to cover them, and Mr. Stephen Kelleher has been appointed by the provincial government to recommend a legal framework to regulate unionization and collective bargaining for fishers.

Working conditions of other employees in the industry have parallels in other parts of the provincial economy. Tendermen work on vessels to collect and transport newly-caught fish. They are employees of the owners of the vessels, but their work fluctuates according to the size and timing of the catch. They may be on packing vessels for a number of days waiting for the opening of a season, but not working in the conventional sense of the term. Campmen work in camps along the coast as brokers, who purchase fish and arrange for them to be transported to processing plants. They are not usually employed by processing companies. Shoreworkers are employed by processing companies to process fish. Their employment relationship is quite conventional, but their work is highly seasonal.

The Fish Processing Bargaining Association requested that fishers be exempted from coverage by the *Employment Standards Act*, while the United Fishermen and Allied Workers Union

requested that all workers in the industry be covered by the *Act*. This issue should be resolved within the general framework of this Report, which favours coverage over complete exemption, with the possibility of formulating specific exemptions to reflect the nature of the work performed. It is not clear that either the existing definition of “employee” in the *Act* or the expanded definition recommended in this Report would cover fishers, although the *Act* as it now exists would cover tendermen and has long covered shoreworkers. However, Mr. Kelleher will recommend a definition of employee for purposes of establishing a legally-regulated system of collective bargaining for fishers. In the interests of consistency across labour legislation, the same definition should be incorporated into the *Employment Standards Act*.

The Commission recommends that the *Employment Standards Act*, cover fishers who work on vessels with remuneration by the value of the share of a catch, relying on the definition of “employee” in labour relations legislation covering the fishing industry. Coverage under the *Employment Standards Act* for employees should not put fish processors into the status of employers under that *Act*.

Some elements of employment standards legislation, e.g., hours of work, minimum wage, annual vacations and general holidays do not fit easily into a work system that is so seasonal with the unique features described above. The employment status of fishers makes termination provisions much less relevant for them than for other workers. However, other aspects of legislation, such as maternity and parental leave or payment of wages, can be as relevant to fishers as to other workers.

The Commission recommends that Fishers should be exempt from coverage by the sections of the *Act* currently found in Parts 3, 4 and 5, as well as new provisions governing statutory holidays and minimum wages.

Campmen are currently excluded from the provisions of the *Act* regulating hours of work (Part 3) by regulation 9(1)(g), although some may not be employees as defined in the *Act*. It is not clear how relevant minimum wage requirements are for this group of

workers, but there is no compelling reason for their exclusion from the protections of the *Act*.

The Commission recommends the exemption from the regulation of hours of work for campmen should be continued. However, their commission payment system should not deny them this minimum standard of compensation. Campmen should be covered by the minimum wage provisions of the *Act*, so that the calculation of minimum wage is averaged over an appropriate number of days as determined by regulation or variance. The regulation should also take into account the variability of their work schedules. The term "campmen" is obsolete and should be replaced by "fish camp worker" in the regulations.

Tendermen are now exempt from the parts of the *Act* regulating hours of work by Regulations 9(1)(f) and 9(1)(m). The extreme fluctuations in the volume and flow of their work point to the continuation of this exemption.

The Commission recommends that the exemption of tendermen from the provisions of the *Act* regulating hours of work be maintained. Provisions requiring the payment of a minimum wage should be maintained, but calculated over an appropriate period of time as established in the regulations. The term "tenderman" is also obsolete and should be replaced by "tender vessel worker" in the regulations.

There are difficulties with establishing eligibility for annual vacations and general holidays for this group of workers. Various mechanisms for triggering eligibility have been suggested. Consistent with other recommendations in this Report, the most simple method for granting this entitlement should be used.

The Commission recommends tendermen should receive the appropriate entitlement for statutory holiday and annual vacation pay as an addition to their regular pay cheques.

Residential Workers

The Regulation defines a number of occupations where work is done in a residential setting. These are: domestics, live-in homemakers, night companions, resident caretakers, residential care workers and sitters. This Report dealt with the status of domestics, and they will not be discussed at this point. All the workers named are excluded from Part 3 of the *Act* (Hours of Work and Overtime) except sitters who are exempt from the total *Act*. Live-in homemakers must receive a minimum daily wage, calculated as 8 times the minimum hourly wage. Section 18 of the Regulation states that when residential care workers are required to remain on the work site for a day, i.e., 24 hours, the employer must schedule an 8 hour rest period, for which they are paid the greater of two hours (at straight time) or all hours worked.

Common features of jobs in this category are: long periods in which the employee is on duty perhaps with intermittent requirements to perform specific functions, difficulty in separating working time from “on call” time and the origins of the jobs as “in service” to families in private homes or in a residential care facility.

There are several bases for the distinctions among these workers. “Live-in homemakers” are employed by agencies or businesses that provide homemaking services. These employees provide homemaking services on a 24-hour per day live-in basis. “Night companions” are employed in a private residence where they have access to sleeping accommodation and provide care and attention to “a disabled person” no more than 12 hours out of 24. “Residential care workers” supervise or care for persons in a group home or “family type residential dwelling” and are required to reside on the premises during their employment. They house clients with mental, physical and social problems requiring care in small group settings. “Sitters” are employed in a private residence solely to care for a child or a disabled person. These persons may not be employed by an agency.

The decentralization of the health care delivery system which is now underway is likely to cause an increase in the number of persons employed in home care and residential care facilities. The current status of this sector of the health care industry is that a mixture of agencies provide these services. Some are private and obtain funding from donations and client fees. The Ministry of Health funds about 120 health care agencies, of which 50 per cent are parties to collective agreements.

Government funding for agencies with collective agreements is based on labour and administrative costs which could include overtime requirements of the *Act*.

Representatives of the health care industry requested that the current exclusions be maintained and even extended in various ways, in particular a reduction in the minimum daily pay requirement. The industry also requested that numerous variances issued by the Ministry covering hours of work be maintained. There were suggestions that terminology in the present Regulation be changed to reflect current usage. The definition of “day” creates problems when employees work past midnight and thus are on duty for parts of two days, although they may work only 8 to 12 hours. It was suggested that the definition be changed to apply to any 24-hour period beginning with the starting time of an employee’s shift. The Commission heard from labour groups that these workers should be treated in the same fashion as all other employees. They stated that it is a myth that employees in residential settings can sleep through the night without interruption and that the current exemptions have allowed employers to avoid proper scheduling of their staff.

Live-in
Homemakers
and Night
Companions

Employees in these categories work in private residences, the former on a 24-hour basis and the latter for 12 hours in a situation where the client generally requires some care during the day. Homemakers receive a minimum daily wage, and night companions should be receiving at least the minimum wage for each hour worked, although they would not be eligible for overtime rates. These employees are adjuncts to the health care system, and the costs of this care are borne by government agencies, the Workers’ Compensation Board, insurance companies and private individuals.

Employees who are required to be in residence should be protected against unlimited demands on their time. This argument was applied to domestic workers earlier in this Report. However, live-in homemakers are employed under a requirement that they be available 24 hours. Part of this problem flows from the lack of incentive by the employer to distinguish between work and non-work time, admittedly complex in some work settings for these employees.

Live-in homemakers should be entitled to treatment as similar to other employees as possible. Other recommendations in this Report would eliminate the minimum daily pay for farm workers and domestics. The time has long past when persons employed in the health sector, broadly defined, are expected to subsidize their clients or the taxpayer. Within the general framework of this Report, the most reasonable way of dealing with live-in homemakers is to require that they are paid a normal wage for the normal work day, including premium pay to a maximum of 12 hours. For the night time period, the arrangement now found in Section 18 of the Regulation has been found to be workable, with a pro-rata adjustment for the longer period off duty. The Province of Manitoba has a similar system, although it is more restrictive on the parties' ability to determine their own work schedules.

The Commission recommends that the exclusion of live-in homemakers from the hours of work provisions of the *Act* continue, but that they be paid for 12 hours per 24 hour period according to the requirements for premium rates. For the remaining 12 hours of the day, they should be paid the greater of 3 hours or time actually worked at their regular rate.

The Commission recommends that the term "live-in homemaker" be changed to "Live-in Home Support Worker".

The status quo for night companions and residential care workers does not require a change. As the Regulation now stands, they are covered by all provisions of the *Act*, except hours of work. The distinction between work and rest periods for residential care workers is covered by Section 18 of the Regulation. The industry prefers the term "night attendant" to night companion to describe the work done.

The Commission recommends that the term "night companion" in the Regulation be replaced by "night attendant".

The change in the definition of “day” recommended by the health care industry is appropriate with the changing conditions under which persons in all industries work.

The Commission recommends that the definition of “day” in the *Act* be changed to establish the beginning of a day for the purposes of scheduling work should begin with the commencement of an employee’s shift.

The Commission recognizes that these recommendations will force some changes in the administration of health and social services in the Province. The government may wish to implement them in stages to permit the parties to adapt to them. However, these recommendations are made in conjunction with other recommendations to facilitate the adoption of compressed work weeks. In some workplaces where employees have been scheduled for 24-hour service, 12 hour shifts may be preferable. Representatives of the industry referred to a large number of variances covering subjects such as minimum hours of work and shift schedules, and these recommendations do not affect those variances. Recommendations on the transition to a revised statute include the treatment of existing variances.

Sitters

A sitter is defined as a person employed in a private residence solely to provide the service of attending to a child, or to a disabled, infirm or other person, but does not include a nurse, therapist, domestic, homemaker or an employee of a business providing that service or a day care facility. The Commission heard that the intent of this section was to exclude the occupation traditionally known as “babysitter” provided by school age children and adults.

The Commission also learned that some live out domestics think that they are not covered by the *Act* because they or their employers believe that they are sitters as defined in the *Act*. Recommendations in this Report concerning domestics raised the matter of the relationship of their work with sitters. The intent of these recommendations is to ensure that they cannot be converted to the status of “sitters” at the end of the regular working day. The Report does not intend to extend coverage to

persons providing services for children, parents or immediate family members on a casual basis. Minimum standards of employment should be available for employees who provide personal care services on more than casual basis. The same distinction used for newspaper carriers and part-time employees, i.e., 15 hours per week, is appropriate to separate casual and regular work.

The Commission recommends that a person who is employed in a private residence not on a commercial basis and solely to provide care for a child, an elderly person or a disabled person for 15 hours or less per week be excluded from the provisions of the Act.

Resident
Caretakers

In the Regulation, resident caretakers are defined as employees living in an apartment building and employed as caretakers, custodians, janitors or managers of that apartment building, where the building has more than 8 suites. They are exempt from the hours of work provisions and have special minimum wage provisions based upon the number of suites in their care. The history of the method for establishing these rates has been lost. Ministry officials clearly outlined the problems they are encountering with administering the entitlements for these workers. Many apartment owners and strata councils hire only couples, expect work from both, but pay a single salary. Some employees reside in one building, are required to look after others but are only being paid for the building in which they reside.

It is reasonable to expect that employees in the province should be entitled to know their scheduled hours of work. Like other employees who may be expected to reside in the workplace, resident caretakers should not be expected to be “on-call” for the residents in the building. If an employer wants extensive coverage by a couple, it can define the hours of work for each employee and post those hours for the residents’ benefit. Interruptions in the employee’s scheduled time off should be subject to the same consideration as other workers.

The Commission recommends that resident caretakers be covered by the *Act* including the hours of work and overtime provisions. Employees who are required to live on the employer's premises should be entitled to a rest break of a minimum of 8 hours in addition to their regularly scheduled hours of work. They should be entitled to 2 hours pay or pay for the number of hours of work caused by the interruption in the rest period, whichever is greater. The hours worked during the scheduled rest period are to be added to the hours worked during the scheduled shift for the purposes of calculating overtime pay. A notice of the hours of work, including days off, for each employee who is on duty should be posted in a location for residents' information. A copy of this notice should be given to the employee. The Ministry shall have the authority to approve rental charges levied against the compensation of resident caretakers.

OTHER GROUPS

Taxi Drivers

The Commission received briefs from a number of representatives of employers in the taxi industry. In addition, several former drivers who had been involved in a dispute with an individual company came forward to express a different point of view. The thrust of the briefs from the employers was that the industry should be exempt from the overtime provisions of the *Act*, in addition to exemptions that currently apply. According to the owners, they were restricted in the fares they could charge by the Motor Carrier Commission, while the industry operates on a commission basis, making it doubly difficult for an employer to control the actions of its employee who is always away from direct supervision. They referred to a number of claims for overtime pay from drivers or former drivers. One owner stated, "It is impossible to make a living working eight hours a day." The driver delegation pointed out that many companies now have computer-based dispatch systems that enable them to monitor the location and activities of their drivers. The low income reported by the owners was due to an excessive number of taxis sent out by the employers.

There was some confusion about the procedure for setting taxi fares. Section 26 of the *Motor Carrier Act* provides that carriers, i.e. taxi companies, must file their tariff schedule with the Motor

Carrier Commission. It is highly unusual for the Commission to reject a proposal filed with it. Fare schedules for taxis operating strictly within a single municipality normally are determined by the municipality. This situation is uncommon, since most taxi companies must cross municipal boundaries to operate efficiently.

Some misunderstanding was also evident about the method of payment for taxi drivers. In a discussion paper dated September 23, 1993, the Motor Carrier Commission identified four methods by which drivers are paid: by the hour, a commission on fares collected, a revenue split with some expenses shared and taxis rented by drivers for a shift. The Commission expressed its disapproval of the rental system, but did not state any preference for the other three methods.

Regulation 13(2) presently exempts taxi drivers from coverage by Sections 27 (Notice of hours of work); 32 (Eating periods and periods free from work) and 33 (Split shifts) of the *Act*. The industry would like this exemption extended to Section 30 of the *Act*.

From the evidence presented to this Commission and the Motor Carrier Commission, it appears that taxi drivers must work long hours to have any hope of earning even the minimum wage, to say nothing of any higher rate. It would be perverse to exempt a group working under such conditions from legislation that establishes basic standards. In effect, the operators control the fare structure, although they compete with public transportation, private vehicles and the like. As a result, there are market limits on their fares. The operators also control the number of drivers who are at work at any time and determine the method of payment to drivers. The Motor Carrier Commission found that there are too many taxis operating in the Lower Mainland and Victoria. The combination of these circumstances has produced a system which appears exploitative for the drivers, who appear to number about 5,000.

Under these circumstances, blanket exemptions are inappropriate. Among other jurisdictions, only Ontario specifically exempts taxi drivers from overtime pay provisions. Other jurisdictions grant exemptions for workers operating on a commission basis.

The Commission recommends that taxi drivers should be covered by all provisions of the *Act*, including sections 27, 32 and 33.

It is true that there are special circumstances in this industry, but to this point, the impact of these conditions has fallen heavily on the drivers. Clearly, the role of taxis in transportation systems is not the same throughout the province and may vary among urban areas. Operators reiterated the need for 10 or 12-hour shifts to provide adequate service to the public. This group may be well-suited for the application of the system of compressed hours of work schedules discussed elsewhere in this Report. There may also be justification for the issuance of variances for other provisions of the *Act* on a case by case basis.

Newspaper Carriers

Regulation 8(g) of the *Act* excludes “a person, other than a person engaged in bulk delivery, who sells or delivers a newspaper direct (sic) to a household or customer” from coverage by all provisions of the *Act*. Presumably, this exemption was inserted when newspapers were delivered by teenagers working after school. In many communities in the province, the labour force engaged in delivering newspapers has changed with the growing popularity of morning editions. The Commission received submissions from a number of interested parties concerning the 8(g) exemption.

According to an organization representing publishers of community papers in the Interior, school-age persons still deliver newspapers in smaller communities, often with the help of their parents, siblings or friends. This organization urged that the exemption be retained. A major urban publisher described its carriers as independent contractors who buy newspapers from the publisher at a wholesale price and sell them to subscribers on routes established by the company. These routes are designed to be serviced in a maximum of two hours. Some of its contractors also deliver competing daily publications. Price structures are geared to the population density on a route and other factors that affect the ease of delivery. There are allowances if papers are not available within a reasonable time in the morning. The publisher believes that a majority of its 1700 contractors do this work as a second job.

The Commission also received information from a union which represents workers employed by newspapers in a variety of positions, and several carriers. The union described carriers in metropolitan areas as persons working at difficult and sometimes hazardous jobs from economic necessity who do not receive vacation, maternity leave or other protections of the *Act*. Carriers pointed out that publishers can deduct amounts from their compensation without explanation or right of appeal. They do not receive holiday pay and may not be compensated for waiting time when papers arrive late. Their contracts can be terminated or altered at any time by the publisher without any right of appeal.

The principal response to these representations lies in the earlier treatment of coverage by the *Act*. If carriers are truly independent contractors, as the publishers have indicated, they are exempt from coverage on that basis, so there is no need for any exemption in the Regulation. If, on the other hand, they are not independent contractors, they should not be completely exempted from the protections of the *Act*. It may well be that the demands of newspaper delivery would require variances in the application of the *Act*, were the carriers to be covered. In the smaller communities of the province, newspapers are still delivered by young people after school. The law traditionally has exempted them from coverage, and it would be a burden on all concerned to extend coverage to this group and then force applications for variances. It appears that an exemption for carriers who work 15 hours a week and who normally attend school would cover this group. Both conditions are necessary, since some of the morning delivery routes serviced by adults could be completed in less than 15 hours. The definition of newspaper in the *Act* is adequate and should be retained.

The Commission recommends that the exemption for newspaper carriers from coverage by the *Act* in Section 8(g) of the Regulation be removed except for carriers who attend school and work no more than 15 hours per week. The definition of newspaper in the Regulation should be retained.

Security
Personnel

Section 9(1)(n) of the Regulation exempts “a person employed exclusively as a watchman or caretaker, unless his employer is a private security agency” from coverage under the hours of work provisions of the *Act*. The text of this exemption is misleading. The Commission learned that its purpose was to exempt persons employed as security personnel in camps, mines or other facilities in remote areas. These individuals guard these installations when they are closed. The purpose of the exemption is consistent with the intent of the *Act*, since these individuals normally are alone and thus are on duty 24 hours a day in some sense.

As the exemption now reads, however, it can be taken to include security personnel in office buildings, public facilities and the like. Moreover, it would put security firms at a cost disadvantage compared to building owners who hire their own security staffs. The policy should be that security personnel are covered by all of the *Act*. The Ministry has the authority to grant variances for persons responsible for security of remote facilities for the reasons stated above.

The Commission recommends that the exemption in Section 9(1)(n) of the Regulation be deleted. The Ministry should allow employers of security personnel in camps and other facilities in remote areas the opportunity to apply for variances to exempt these persons from the hours of work provisions of the *Act*.

Fire Fighters

At present, persons hired to fight forest fires (and their support workers) are exempt from Regulation 9(1)(y) from the hours of work and overtime provisions of the *Act*. In British Columbia forest fires are fought by employees of private contractors, employees hired by the Protection Branch for the entire fire season and covered by a collective agreement, employees of other provinces or American states, and employees hired by government for casual or short-term work under the Forest Fire Fighter Compensation Regulation(FFFCR).

It is the Ministry’s understanding that the intent of this exemption was originally to exempt only those persons hired under the FFFCR, however, this is not how the provision reads. The Ministry of Forests has requested that all employees who

fight forest fires be covered by the hours of work and overtime provisions with the exception of Section 27 of the *Act*. Section 27 requires an employer to notify employees of their shift schedules and changes in schedules. This is not possible during emergency situations as is the case for forest fires.

The Commission recommends that Regulation 9(1)(y) be eliminated and that a person hired as a forest fire fighter or ancillary worker to fight forest fires or provide services to forest fire fighters, including persons within categories of employment referred to in the Forest Fire Fighting Compensation Regulation be covered by the *Act* except for the requirement of the notice of the hours of work.

III. TERMS OF EMPLOYMENT

A. MINIMUM WAGE

The Commission's public hearings received more representations about the minimum wage than almost any other subject. Not only were the submissions numerous, there were fundamental differences about the role of minimum wages in our society. Employers from the hospitality sector and small business persons were especially concerned about this subject and made many appearances to urge that the present minimum wage not be increased, to explain the impact of recent increases in the minimum wages on their businesses and to suggest reductions in the minimum wage for certain groups. They pointed out that the minimum wage had risen by 33 per cent in the past three years, a period when the economy was expanding slowly and many employers were affected by the imposition of the Goods and Services Tax. Other groups representing workers, women and the poor pointed out that the current minimum wage (\$6.00 per hour) is barely adequate to support a worker, and quite inadequate to sustain a worker with a family, in today's economy. Conservatively, they claim a minimum wage of \$9.00 to \$10.00 per hour is necessary to assure a basic standard of living for workers with families. This perspective implicitly focuses on those workers who earn just above the minimum wage, since there is little evidence that very many workers attempt to live independently at the minimum wage, especially when some form of social assistance is available.

The Commission has not interpreted its mandate to recommend a particular level for the minimum wage for 1994. The minimum wage is a major instrument of social and economic policy, and its level, variations and the process for determining the appropriate level of the minimum wage are significant issues for government. Thus, recommendations on this subject are interrelated.

The Appropriate Minimum Wage

Given the interest in the minimum wage, it is surprising how little information exists on who receives these wages, the impact of the minimum wage on compensation and the effects of raising the minimum wage on employment. The last topic is a complex one requiring sophisticated research techniques, but the first two call for rather simple data collection.

One controversial aspect of the minimum wage is who actually receives it. Statistics Canada conducted a Labour Market Activity Survey from 1986 to 1990. Data from the 1989 survey, when the minimum wage in B. C. was \$4.50 for adults and \$4.00 for persons under 18 years, revealed that 3.2 per cent of employed workers, about 45,000 persons were earning the minimum wage. Half of those workers were between 15 and 19 years old, two thirds of whom were females. The survey found that about 30 per cent of low wage earners reported just one family member was working. By contrast 46 per cent reported two family earners and 22 per cent, three or more family members holding a job. There was no information on the level of compensation of the other family members who were employed. About 60 per cent of low wage workers were employed in the service sector in the 1986 survey. Agriculture also employed a relatively large proportion (Akroyd, 1993).

The Commission heard many employers argue against raising the minimum wage and that differentials be retained or established. Yet when asked, very few of these employers actually paid the minimum wage. A few started workers there and then gave a raise a few weeks later. Most who discussed this point paid between \$6.00 and \$7.00 per hour. Their concern about the higher minimum wage was the impact an increase would have on those rates slightly above the minimum, as workers would expect to receive an increase approximately the same as any rise in the legal minimum. One exception to this generalization is the restaurant industry, where some of the more expensive restaurants pay their servers the minimum wage with the expectation that they will earn much more in gratuities. The major gap in knowledge is the link between the minimum wage and other rates of pay. National data from 1991, when the minimum wage was \$5.00 in British Columbia, indicated that 5.6 per cent of full-time male workers, and 8.2 per cent of full-time female workers earned less than \$10,000 per year, and 5.7 per cent of males and 11.5 per cent of females earned between \$10,000 and \$15,000 for working between 49 and 52 weeks (Statistics Canada, *Earnings of Men and Women*, 1991).

Thus, after looking at hourly wage rates and family income data, it is safe to assume that between 5 and 10 per cent of full-time British Columbia workers earn more than the minimum wage, but less than \$8.00 per hour, and that about 60 per cent of these are female. A relatively small number of persons earn the

minimum wage, and most of them are under 19 years of age. If only full-time workers are considered, there should be few persons under 19 years of age included in this group. However, some part-time workers receiving hourly wages in this range would prefer full-time employment. There is evidence that low wage earners frequently rely on welfare during the course of a year (Akroyd, 1993).

As Appendix 2 and 4 indicate, the purchasing power of the adult minimum wage has varied considerably in the last 24 years. The high period was in 1972-1977, when the value of the minimum wage was approximately \$8.00 in 1992 dollars. After that, the value of the minimum wage sank steadily through 1986, as the minimum did not rise between 1981 and 1986. By 1992, the minimum wage in constant dollars was lower than it was in 1981. Comparing the minimum wage with other compensation levels in the economy yields much the same result. Between 1970 and 1979, the 40 hours' work at the minimum wage was equal to about half of average weekly earnings. By 1990-1992, the same number of hours was about 40 per cent of average weekly earnings. Appendix 3 demonstrates much the same trend occurred in other provinces during the 1980s. Minimum wages rose slowly or not at all during and after the 1982-1983 recession, so that by the beginning of the 1990s, the minimum wage was equal to approximately 40 per cent of average weekly earnings in all regions of the country.

There is evidence that increasing the minimum wage reduces employment, although the magnitude of the relationship is uncertain. In a review of the evidence on the relationship between minimum wages and employment prepared for the Canadian Association of Administrators of Labour Legislation, a policy specialist in the British Columbia government found that Canadian and American studies indicated that a 10 per cent increase in the minimum wage causes a short-term decline in employment of 1 to 2 per cent (Akroyd, 1993). Recent research in Ontario concluded that raising the minimum wage to 60 per cent of the average weekly earnings (an increase of 13 percentage points) would raise the unemployment rate for women and young workers between 1.8 and 2 per cent (Cousineau, *et al.*, 1992). The latest research done in the United States found that increases in the minimum wage of 10 per cent may cause no declines in employment (Ehrenberg, 1992). Most of the U.S. and some of the Canadian research focuses on the impact of changes

in the minimum wage on unemployment among teenagers. This has not been identified as a problem in British Columbia, although the unemployment rate among Canadians in the 15-19 year age category is high.

Academic research currently available typically addresses the impact on employment of increases in the minimum wage in the order of 10 per cent. There are no estimates of the effects on employment levels of increases in the minimum wage of 25 or 30 per cent, but the Commission has concluded that such changes would cause significant reductions in employment, especially in small businesses and the hospitality sector. The Commission heard from restaurant owners who explained how they had reduced employment by eliminating hostesses or bus persons after the minimum wage rose in this province. An Ontario study concluded that labour accounts for about 30 per cent of the restaurant industry costs (Ernst and Young, 1992). The emphasis on declines in employment must be balanced by the increases in the incomes of low wage workers when the minimum wage rises. Over a longer term, the immediate employment effects of raising minimum wages are dissipated, since some persons' income rises and others' falls.

It is also necessary to point out that the purchasing power of the current minimum wage is now substantially below the levels of the 1970s and approximately 10 per cent less than 1980. Low paid workers in British Columbia felt the effects of the 1980s recession long after other workers had benefitted from the recovery.

The Commission recommends that the government consider further increases in the minimum wage, but only after careful consideration of the effects of these changes on employers, low-wage workers and the economy generally.

Variations

Currently, British Columbia is one of three provinces which allow for the payment of a lower minimum wage for young workers, i.e. \$5.50 for persons under the age of 18. Ontario, one of the provinces with a youth wage, has announced plans to phase it out. Five other provinces have eliminated this wage in recent years, evidently out of concern that such discrimination

based on age violates the *Charter of Rights and Freedoms* (Akroyd, 1993). The Commission's legal advice confirmed this view. Many employers in the hospitality industry urged that the youth wage be retained, but did not address the issue of the *Charter*. Labour and women's groups urged that all workers receive the same minimum wage. The Commission also received letters from a number of students in the Abbotsford area who work after school. They asked why they should be paid less than their fellow workers who were 18 and older. The Commission had a concern about the extent to which society and the government should be encouraging work by persons under 18, most of whom are still in school. This issue was not raised by the public. Section 34(2) of the *Act* relaxes the requirements covering other workers for a minimum time at work for students who are working on a school day. A study of youth employment found that over half of all persons who were between 15 and 19 years of age were employed in some fashion, and a survey of 160 high school students in the Lower Mainland carried out during the school year revealed that 58 per cent (93) were currently employed, and 13 per cent were holding more than one job (Scott, 1993).

It is outside the mandate of this Commission to examine the issue of youth employment. There is concern that students are leaving school without adequate preparation for employment, and part-time employment may address this problem. It is also possible that life styles and current economic conditions are encouraging students to work to the detriment of their studies. The study of student employment in the Lower Mainland generated a small set of responses from parents. When asked about the effect of employment on their children's school work, their opinions were about evenly divided on the positive and negative effects of the part-time work (Scott, 1993).

The Commission also received representations from the business community requesting that a "training wage" be established, i.e. an exception to the minimum wage for newly-hired workers. The differential suggested was not great, i.e. a reduction of \$0.50, and the consensus among small employers was that it should be retained for a maximum of 90 days. Based on the questions asked by the Commission of presenters, it was not clear just how many employers would take advantage of the training wage were it available. Labour groups and women's organizations opposed any deviation from the general minimum

wage. Only one province, Nova Scotia, currently has a training wage.

The training wage proposal raised some questions about administration and equity. Admittedly, turnover is high for many jobs paying around the minimum wage. Would a worker be expected to work for a reduced wage more than once? Would the worker's status be different if he or she had been trained by an employer, resigned and then returned to a similar job with another employer in the same industry?

The final proposed variation on the minimum wage was a differential rate for workers who receive gratuities. Employers from the more expensive segment of the restaurant industry pointed out that their servers may make as much as \$25 per hour, including tips. Typically, they receive the minimum wage from the employer, and the remainder of their compensation occurs through gratuities, which Section 1 of the *Act* excludes from the definition of wages. Ontario has a reduced minimum wage for employees who serve alcohol in licensed establishments, and Quebec has a special rate for employees who receive gratuities.

Restaurant owners and their representatives suggested this change frequently, and the Commission probed into practices in the industry itself. The Commission learned that servers frequently share gratuities with other members of the staff, such as the host or hostess, the bus person and cooks. Some owners stated that they would never interfere with the distribution system for their employees. The Commission also learned that major restaurant chains impose a distribution formula on employees, deducting a fixed proportion of each server's bills for the shift to be given to non-serving workers. Other restaurants have a dress code for their employees and deduct the cost of clothing from gratuities, a practice that would not be legal if gratuities were treated as wages. It appears to be common practice for restaurant employers to deduct the bills of customers who leave the establishment without paying from these gratuities.

A union representing hotel and restaurant workers pointed out that some hotels do not pay the staff all of the money they collect as gratuities for banquets and other group functions. It

was not clear just who does receive this money. Representatives of the hotel industry stated that some of their members share the gratuities with management in the banquet department, although no one seemed to know what was the normal practice. The union position was that the law should require all monies collected from customers as gratuities to be remitted to the staff.

The following recommendations address variations to the minimum wage. They are based on an assumption that the minimum wage will remain at a level consistent with other jurisdictions, i.e. about 40 to 50 per cent of average weekly earnings. If a government were to decide to raise the minimum to a higher level as recommended by a number of groups in the province, then the policy on variations should be liberalized. In other words, there are two alternatives present for the minimum wage, maintain levels in the range that have historically prevailed with few, if any, exceptions, or increase the minimum to a much higher proportion of average earnings with a number of exceptions to reflect the economic realities of some industries or labour markets. As recently as 1960, there were 40 minimum wage orders in British Columbia, and other jurisdictions tailored minimum wage levels to regional, industrial or occupational conditions. Since then public policy has moved in the direction of a single minimum wage, although Quebec in particular retains separate schedules for industries which employ large numbers of low wage workers. Such a system may have to be revived in this province if there is a decision to increase the minimum wage substantially above the levels outlined above.

While there may be economic arguments in favour of a lower minimum wage for young workers, there are also doubts about the legality of such a policy. Moreover, if the *Employment Standards Act* is to set the true minimum standards for employment, exceptions to those minima should be granted only in compelling circumstances. In addition, few employers, even those who have taken advantage of the youth wage, indicated that it was an important consideration for them. Some said that they would hire older workers if the reduced wage were not available. Employing workers older than 18 years may be a good result in a time of relatively high unemployment among adults. The removal of the youth minimum wage may have a positive impact on young adults, i.e., persons in the 19-24 age bracket who must compete for jobs with workers under 18 working for a lower wage.

The Commission recommends that the minimum wage for employees under 18 years of age be eliminated.

The concept of a training wage is an appealing means of easing the entry of workers into the labour force. But in practice, most employers use the current minimum wage as a training wage. Many told the Commission that they hire workers at the minimum and then give a raise after a trial period of a few weeks or months.

To reduce the minimum wage for a large number of workers who receive gratuities, large or small, would create the risk of serious injustice for many persons. The Commission was disturbed by what it learned about the control that some employers have over gratuities, especially in the less expensive restaurants, where gratuities are presumably smaller.

The current regulations effectively exempt members of several professions and a number of occupations from coverage by the minimum wage provisions. These groups are addressed separately elsewhere in this Report. Similarly, the regulations provide for minimum daily wages for live-in homemakers, domestics, farm workers and horticultural workers, as well as residential caretakers. These groups are addressed separately in this Report.

The Commission recommends that there be no exemptions to the minimum wage, as long as the minimum wage bears approximately the same relationship to the average industrial wage as has prevailed historically.

The Process of
Minimum Wage
Determination

There are two models for setting the minimum wage used in Canada. The first, is used by British Columbia, the federal government and four other provinces. Discretion to set the minimum wage rests with the Cabinet, which acts from time to time based on whatever advice and information it regards as appropriate. The second model is based on a tripartite advisory body, usually called a minimum wage council or board, usually

chaired by an official of the ministry of labour. The council advises the government on changes to the minimum wage, based on factors such as the cost of living, economic conditions and the like. The council or board was once the norm in Canada, as far back as the 1920s, but a number of jurisdictions abandoned it for reasons that do not seem to have been recorded. The tripartite council is consistent with International Labour Organization conventions on the subject, which have emphasized the need for consultation with employer and employee representatives since the 1920s.

Looking back on the past two decades of minimum wage determination in British Columbia, several facts stand out. First is the erratic nature of movements in the minimum wage. The rate was increased approximately 10 per cent in June 1974, another 10 per cent each in December 1975 and June 1976, for a total of about 30 per cent (\$2.25 to \$3.00) in a period of three years, when the cost of living rose approximately 22 per cent. The rate remained unchanged between January 1976 and July 1980, when it was increased 12 per cent, with another 8 per cent increase in December 1980, while the cost of living was increasing 36 per cent. The December 1980 rate (\$3.65) was unchanged until February 1987, when it was increased approximately 10 per cent to \$4.00. During that period, the cost of living rose about 30 per cent, and the unemployment rate averaged over 11 per cent. There then followed a series of annual increases in 1988, 1989 and 1990 and then two more increases in 1992 and 1993. Obviously, there were other economic factors that might affect minimum wage decisions, especially the high rate of unemployment in the 1982-1988 period and the recovery in the late 1980s. But the pattern has been that the level rises several times in a relatively short period and then is stable for several years.

The result of this pattern has been a decline in the buying power of the minimum wage stated above and a sense among employers in 1993 that they are facing substantial and unpredictable increases in an important cost. As an additional factor, employers told the Commission that they would prefer to have minimum wage increases take effect either in the late winter or early spring, before the beginning of the busy season for the hospitality industry, or in the fall, after the end of that season. They were also resentful about the short notice they had

received about recent increases, which gave them little time to plan their operations in light of the new cost structure.

A second fact about the determination of minimum wages is the lack of data on the impact of a change or a decision not to change. As noted above, basic labour market data on low wage earners are not available. There seems to have been no effort to determine the impact of increases in the minimum wage on employment or incomes, the two crucial policy variables underlying decisions on the minimum wage.

Finally, there is a lack of integration with other social policies. For instance, persons supporting themselves on wages at or near the minimum wage are often eligible for some form of social assistance. Yet there seems to be no information about the links between these two important tools of social policy for assisting low-wage workers. Minimum wage policies have had little effect in reducing poverty or raising family incomes. (Gunderson, *et al.*, 1990; Christie, *et al.*, 1993). Although there has been a reduced minimum wage for persons under 18 years of age, no information on the impact of part-time employment, on academic performance, post-graduation adjustment to the workplace and the like have been generated.

The Commission recommends that the *Act* include a requirement for a tripartite committee chaired by a qualified person outside the government to review the minimum wage at least every two years. This committee should consult with all ministries of the government concerned with labour markets, economic development and social assistance prior to making a recommendation. In addition, it should examine the impact of possible changes in the minimum wage on workers, employers and the economy generally. The committee should have the power to recommend that changes to the minimum wage be made or not made, although final authority to implement changes should rest with the Cabinet.

The Commission notes that this committee depends on changes to the *Act*. However, in the interim, the government may wish to consider seeking advice from a tripartite committee if it plans changes to the minimum wage, other than those recommended in this Report.

B. LEAVES
FROM
WORK

The only provisions for unpaid leaves in the existing statute cover maternity and parental leaves. The Commission received suggestions that the length of these leaves be extended slightly, but on the whole the current entitlements reflect prevailing standards in Canada and harmonize with Unemployment Insurance benefits. Taken as a whole, only Quebec among the provinces has more generous standards for maternity and paternity leave than British Columbia, and the differences with Quebec are slight.

Bereavement
Leave

There are no protections for workers who have other legitimate reasons for absence from work. One of the most pressing causes for absence is the death of a relative. It has long been the custom in this country for many employers to grant their employees a brief leave to grieve, attend funerals and deal with the other consequences of the death of a family member. In this province 90 per cent of all collective agreements provide for bereavement leave, generally three days (*Negotiated Working Conditions, 1991*). Six provinces and the federal jurisdiction now require employers to provide bereavement leave. The most common entitlement is three days of unpaid leave for the death of a member of the immediate family, although the federal jurisdiction and two provinces include one day of paid leave. Three provinces have eligibility requirements related to the length of employment or proximity to the date of the death of a family member. The definitions of "family" vary somewhat, but all include spouses (including common law), children (natural and adoptive), parents and siblings. Because of the changing nature of Canadian families, including multigenerational family units, or common law relationships, and since most bereavement leaves are without pay, the law should be expansive in its definition of families.

While employers resisted the imposition of any additional benefits, employer organizations also asserted that their members normally accommodate employees in these circumstances. In establishing the principle of bereavement leave for the first time in this province, the Commission recommendations fall in the mainstream of standards in other jurisdictions.

The Commission recommends that the *Act* grant all employees the right to three days of leave without pay upon the death of a member of the employee's immediate family. The "immediate family" should include grandparents, parents (natural and adoptive), children (natural and adoptive), spouses (including common law), siblings, and other persons permanently residing with the worker.

Family Leave

The changing circumstances of the provincial labour force has created pressures for other categories of leave, in particular family responsibility leave. The Commission received numerous requests to recognize the special problems of workers who combine their jobs and family responsibilities. The overwhelming majority of these are women. They are faced with their own illnesses, plus the requirements of child care. The growing proportion of women with children in the labour force has increased the number of workers facing these tensions. As the labour force ages, more workers also carry responsibilities connected with the care for aging parents.

At present, only Quebec provides for family responsibility, a rather astonishing fact in the 1990s. While that provision is part of a larger social policy favouring families in Quebec, that province has also been a leader in other areas of social legislation. In this province, 24 per cent of collective agreements provide for paid family leave and 77 per cent contain provisions for unpaid personal leave. The Quebec law provides 5 days per year of unpaid leave to permit employees to meet obligations related to the care, health or education of their children. There are other conditions for eligibility in the Quebec act which seem to complicate its administration. Elsewhere in this Report, there is a recommendation that employees be permitted to bank overtime when their employers agree. When this practice is followed, the banked time could be added to any legal entitlements for family leaves.

The Commission recommends that the *Act* include the right to 5 days a year of unpaid leave to meet responsibilities related to the care, health or education of children or the care and health of members of the immediate family.

Jury Duty

Many persons who appeared before the Commission were surprised to learn that employees who are called to jury duty lack any protection of their job rights while they are performing a civic duty. Briefs from labour organizations and employer groups both suggested that this situation be rectified. Four provinces provide this protection in the *Jury Act*, but no such provision exists in British Columbia. Some flexibility may be necessary in the case of small employers who face the absence of an employee with special skills. If the courts do not recognize the impact of this situation, the employer should have the right to apply for a variance to deal with it in a way that does not undermine the employee's job security, for instance by reassignment upon a return to work. In addition, the *Jury Act* in this province provides for stipends for jurors which are ludicrously low, barely enough to pay for out of pocket expenses in a metropolitan centre. This situation undermines the integrity of the justice system and should be rectified by the Attorney General.

The Commission recommends that the *Employment Standards Act* include a provision that employees called to serve on a jury have the right to return to their jobs after the end of their jury service. When this provision causes special hardship to an employer, the employer should have the right to request a variance to meet the needs of its operations without undermining the protection of the employee. The Minister should urge the Attorney General to provide adequate reimbursement for jurors so that persons of all income levels and types of employment have the opportunity to serve on juries without undue financial hardship.

C. STATUTORY HOLIDAYS

Treatment of "general holidays" in the *Act* and Regulations is confusing at best. There is no separate part of the *Act* devoted to this subject. Nine "General Holidays" are listed in the Section 1 of the *Act*, which contains definitions, a location where only the most knowledgeable reader would think to look. S. 105(2)(c) gives Cabinet the power to make regulations requiring employers to give their employees a general holiday with pay and to establish the conditions for payment. Regulation 4 establishes the eligibility for general holidays, with separate treatment for continuous and noncontinuous operations.

Regulation 5 exempts several groups of employees from coverage by the regulation, and Regulation 6 sets out the requirements for employer record keeping.

A number of problems with this arrangement were identified. Employers and staff of the Ministry find Regulation 4 virtually impossible to administer consistently. The conditions are complex and stated in language that experts, let alone workers and employers, find difficult to understand. There is no single location in the *Act* where this subject is treated. The record keeping requirements are not simple, and the exemptions are inconsistent.

Holidays with pay are one of the most traditional benefits accorded to working people. The province of Saskatchewan established the first statutory requirements in Canada for paid holidays in 1947. Many employers have long extended this benefit to their employees, although the number and the conditions for payment vary. There is a general pattern in employment standards legislation for the number and eligibility for paid holidays. Three provinces (Alberta, British Columbia and Saskatchewan) and the federal government provide for nine holidays; Ontario and Quebec provide eight; Manitoba, seven and the remainder five or six. All jurisdictions include New Year's Day, Good Friday, Labour Day and Christmas Day as paid holidays. Only Newfoundland excludes Canada Day. Other widely celebrated days are Victoria Day, Thanksgiving Day and Remembrance Day. Virtually no one in British Columbia refers to these days as "general holidays". While there are historical reasons for using the present terminology, in the interests of better communication, a change should be made in the statute to conform to normal usage.

The Commission recommends that a part of the *Act* be devoted to this subject, setting out the major conditions, i.e., the holidays to be celebrated, the conditions under which employees shall be paid for these days, and the arrangements for paying employees who work on these days. The *Act* should refer to paid holidays established by law as "Statutory Holidays".

At present, the entitlement in the *Act* for general holidays is the equal of any in Canada, and no compelling reason for adding to

that entitlement was presented. If other holidays were to be added, Boxing Day and a mid-winter holiday in February are the logical dates. In the present economy, this policy would impose an additional cost on employers at a time when they are poorly prepared to bear that cost. Employers in the service sector and in continuous operations in resource industries would be especially affected. If additional costs are to be imposed on employers at this time, the benefits from these changes would be better concentrated on categories of employees who are most in need of protection. The addition of statutory holidays will benefit many persons who are already well compensated. At some future time, however, the government may wish to change the present entitlement.

The Commission recommends that the *Act* should give Cabinet the authority to change the statutory holidays listed in it.

All jurisdictions establish some pre-conditions for eligibility for holiday pay. Presently, the regulations provide that an employee is eligible only after the first 30 days of employment and must have worked 15 of the previous 30 days (meaning calendar days). The Commission heard that there is confusion about the application of these regulations, especially with regards to part-time workers. In addition, part-time employees might work regularly for a single employer, or even more than one employer, without ever becoming eligible for a paid holiday, apart from the general confusion about coverage for part-time workers mentioned earlier in this Report. In the interest of fairness to all workers, as well as simplicity in the regulatory process, the *Act* should expand eligibility.

The Commission recommends that the *Act* should require that all persons who have completed 30 days of employment are eligible for a paid statutory holiday. Employees who have worked less than the standard work week in the preceding four weeks should receive their holiday pay on a pro-rated basis.

The regulations regarding pay for work on holidays must be simplified. The Regulations outline different methods of

payment depending on how many days the business operation is open during a week. This distinction was made in a time period when very few businesses operated 7 days a week. This is no longer the case.

Currently, in the *Act*, employees who normally are scheduled for the day but do not work are paid for the holiday and given the time off or, if the holiday falls on a non-working day, the employee is entitled to a regular working day off with pay.

If the business operation is open 6 days a week or less and employees are scheduled to work the holiday, they receive 1.5 times their regular pay, plus another day off with pay for all work of 11 hours or less and double time for all hours after 11. In addition, the employee is entitled to another regular working day off with pay before the employee's annual vacation or termination of employment, whichever occurs first.

If the business operation is normally open 7 days a week employers can choose one of two methods of payment: if the employee works on the holiday they can be paid straight time for the first 8 hours and overtime premiums according to Section 30 of the *Act* and, be given another regular working day off with pay before the employee's annual vacation or termination of employment, whichever occurs first or, employees can be paid 1.5 times for all work of 11 hours or less and double time for all additional hours plus a day's pay.

Some employees are exempted from the overtime provisions of the *Act*. They are, however, entitled to payment for working on a holiday of 1.5 times for all hours worked on the holiday or to be given another regular working day off with pay before the employee's next annual vacation or termination of employment which ever occurs first.

The difficulty in understanding how payment should be calculated was brought to the attention of the Commission by many people including Ministry staff. In addition, the growth in the 7 day-a-week business operations warrants eliminating the distinction between them and those operations which are open less than 7 days-a-week. The intent of special compensation for working a holiday is to provide adequate incentive for

employers not to schedule work on holidays unnecessarily so that employees and their families can enjoy leisure together.

The Commission recommends that employees who do not work on a holiday but would have normally been scheduled, receive the day off with pay, or, if it was the employee's normally scheduled day off, the employee receives another day off with pay. Employees who are scheduled to work on a statutory holiday should receive 1.5 times their regular rate of pay for all work of 11 hours or less. They should receive double time for work after 11 hours. They should also receive another day off with pay at straight time, to be taken before the employee's annual vacation or termination of employment, whichever occurs first. The Commission further recommends that those employees exempted from the hours of work and overtime provisions of the statute receive the same entitlements as other employees for statutory holiday pay.

From time to time, employers and employees seek to move the day on which they will observe a general holiday, usually from mid-week to a Monday or Friday. When both employers and employees wish to alter the date on which a holiday is celebrated, these changes should be allowed without having to receive prior approval from the Ministry. Where no collective agreement exists, the employer and the employees should be able to agree to the change, with the requirements that employees' rights under the law are not diminished and the employer retains a record to show that the employees did agree. If the Ministry receives a complaint and the employer cannot show agreement by the employees, the employer should be liable for premium pay for all hours worked on the holiday, as well as for another day off with pay for employees affected.

For business operations covered by collective agreements, the Regulations allow that employees in the same workplace not covered by a collective agreement can have the date on which a holiday is celebrated altered to conform to the same day as the unionized employees. Most collective agreements provide systems for addressing these situations and in changing the day for celebrating the holiday. They should continue to operate without interference.

The Commission recommends that parties under a collective agreement be able to alter the date on which a holiday is celebrated. Where no collective agreement exists, the employer and the employees may agree to alter the date, on the condition that employee rights are not diminished. The employer must retain a record for three years showing that the employees agreed to the change.

Regulation 5 currently exempts managers and employees engaged primarily to harvest fruit or berry crops from coverage by the general holiday provisions. The logic for excluding managers is that they have some power to control their own hours of work. However, structural changes in the economy have blurred the distinction between managers and their subordinates somewhat. In some organizations, managers are asked to do nonmanagerial work at times when their staff would be entitled to premium pay.

The Commission recommends that the current exemption in the Regulation for managers be retained, but should apply only when individuals are acting in a managerial capacity.

The Regulation currently exempts fruit and berry harvest workers from the general holiday provisions of the Regulation. The logic for this exclusion is not obvious. During the harvest these workers are likely to work on the holidays, as do other workers in seasonal industries. None of these categories of workers is excluded, even such obvious possibilities as persons working in the harvest of grain or the hospitality sector.

The Commission recommends that the exclusion in Regulation 5(e) for workers engaged primarily in harvesting fruits or berries be eliminated.

D. PART-TIME WORKERS

The growing importance of part-time workers in the province was mentioned briefly in the Introduction to this Report, but the subject merits further discussion. In 1992, 17 per cent of all workers employed in British Columbia worked part-time

(defined as less than 30 hours per week), a higher proportion than any other province except Manitoba and Saskatchewan (Statistics Canada, *The Labour Force*, 1992, 1993). About one-quarter of all part-time workers were “involuntary”, i.e., persons who were working part-time because they could not find full-time work. The proportion of involuntary part-time workers was three times higher in 1992 than in 1975 (*B.C. Stats*, July 1993). Women are about three times more likely to be working part-time as men, and they were twice as likely to be working involuntarily as men (Carson, 1991).

The expansion of the part-time labour force is due to several factors. A 1986 study by Statistics Canada found that between 1975 and 1986, 80 per cent of the growth in part-time work was due to structural changes in the economy, primarily the shift of employment to the service sector (Coates, 1988). This finding suggests that the increasing number of part-time workers is likely to continue. On the other hand, the rise and fall of the proportion of part-time workers in the 1980s indicates that part-time work goes up as the economy weakens and contracts with a revival of the economy. An important fact in this province, however, is that as the economy recovered, the proportion of part-time employees did not fall to earlier levels, especially for persons working part-time involuntarily.

It also is clear that much of the growth in part-time work is due to employees' preferences. About three-quarters of part-time employees are in that status voluntarily, so they and their employers obviously find these arrangements mutually beneficial. However, two recent studies of large samples of persons employed in the public and private sectors revealed that many more persons, especially women, would like to work part-time. In the private sector, over 40 per cent of all women found part-time work appealing, while 11 per cent of the men favoured these arrangements (Higgins, *et al.*, 1992a). The public sector study found much the same results, except that a higher proportion of men (20 per cent) found part-time work appealing (Higgins, *et al.*, 1992b).

Data on the characteristics of part-time workers in Canada are equally clear. Part-time workers are younger than the labour force as a whole, 29 years versus 36 years in 1986. (Coates, 1988). Three-quarters of part-time workers are female. A quarter of all part-time workers are students (Statistics Canada, *Labour Force Annual Averages*, 1992, 1993). About 27 per cent of part-time

workers are employed in retail trade, another 25 per cent in education/health/welfare and 22 per cent in consumer services (Krahn, 1991). Two-thirds of women working part-time and one-quarter of the men are married (Coates, 1988). Wages paid to part-time employees average about 75 per cent of those paid to persons employed full-time (Economic Council of Canada, 1991; Coates, 1988).

The federal government appointed a Commission chaired by Joan Wallace of Vancouver to inquire into part-time work in 1982. The Wallace Commission found that the lack of pension and other fringe benefit coverage was the most important issue raised by part-time workers and their advocates. Although employers resisted any proposals to extend fringe benefits to part-time workers, a study commissioned by the Commission revealed that over 75 per cent of employers would not change hiring patterns if they were compelled to provide part-time workers with the same benefits as full-time workers (Wallace, 1983). Research done since then revealed significant differences in benefit coverage provided to part-time and full-time employees. Responses varied among the surveys and the type of benefits and the number of hours worked, but seldom did more than half of part-time workers, even those employed 30 weeks or more have coverage by fringe benefits.

From a public policy perspective, these facts lead to the conclusion that, while the incidence of part-time work will move with the economy, these arrangements are likely to grow in the years to come. Part-time employees work in industries where employment standards can be important. The majority are women employed for hourly rates of pay below those of full-time workers. More persons want to work part-time, and their choices probably will be influenced by their conditions of employment.

The Wallace Commission recommended that part-time employees be covered by pension and fringe benefit plans where the employer provided benefits for full-time employees, with certain conditions. The conditions excluded persons under the age of 25, those working less than 8 hours per week, those with less than one year of employment with their employer and those whose participation would be impractical. Seasonal workers were to be allowed to participate or paid in cash in lieu of coverage (Wallace, 1983). Subsequently, a Parliamentary Committee made similar recommendations in 1985 and the

Economic Council of Canada echoed these recommendations in 1990 (Economic Council, 1990).

Coverage of part-time employees by private pension plans is now the norm in Canada--eight provinces, including British Columbia, require inclusion of part-time employees. Most jurisdictions have extended coverage to part-time employees in their public services, although there are no data on the details of this coverage.

After considering the importance of part-time employees to the provincial economy, their vulnerability in the labour market and the strong probability that these patterns of employment will grow, the Commission has concluded that they should have much the same rights to fringe benefits as other workers. However, some restrictions will be necessary to avoid needless administrative costs for employers and conflicts with other legislation. There should be tests of attachment to the labour force and the employer, and the purpose of the coverage should be the protection of workers, not the generation of extra income. Therefore, employees who are not eligible for coverage should not be eligible for payments in lieu of coverage. The minimum attachment tests should have two dimensions — the proportion of the normal work week during which an employee works and a period of attachment to a particular employer. A reasonable standard for hours worked would be on the order of two shifts per week. Statistics Canada classifies persons who work less than 30 hours per week as part-time. Nationally, approximately two-thirds of part-time employees appear to work more than 15 hours per week. The *Pension Benefits Standards Act* establishes tests of eligibility for inclusion in private pension plans. Rights established under the *Employment Standards Act* should not interfere with pensions under that *Act* in any way.

Turnover is considerably higher among part-time employees than full-time, so it is appropriate to establish a minimum period of eligibility. Persons employed on a purely seasonal basis should not be eligible for coverage — there is a cost to the employer and relatively little benefit to the employee. Persons who are employed continuously for six months have demonstrated a degree of attachment to the same employer that should lead to fringe benefit coverage. Finally, it should be clear that coverage for part-time employees should be on a

proportional basis, i.e., a person working for one-half of the normal work week would first be eligible for inclusion in a group plan, and the employer would pay 50 per cent of the amount it pays for full-time employees. When the premium is shared equally between full-time employees and the employer, the half-time employee would receive one-quarter of the premium.

The Commission recommends that employees who work 15 hours or more for an employer continuously for 6 months or more should be eligible for proportional coverage by all nonstatutory fringe benefits available to full-time employees, except for pensions. Eligibility for pensions will be regulated by the *Pension Benefits Standards Act*. Part-time employees will be responsible for paying the costs of fringe benefit coverage not borne by employers. Employers should have no liability to pay wages in lieu of fringe benefit coverage for employees who are not eligible or who choose not to accept coverage. The Ministry should have the authority to grant variances to this requirement under appropriate circumstances.

E. HOURS OF WORK

Aside from minimum wages, no subject came before the Commission more often than hours of work. Employers presented most of the briefs on the subject, and their theme was constant — flexibility. They pointed to customers' demands, especially in the service sector, the expansion in extended hours of operation and their employees' desire for compressed work weeks. A common request was that employers and their employees should be free to work out their own arrangements for work schedules, free of any interference from the law. A number of employer spokespersons also wanted relief from the present minimum daily pay standard, which requires payment for a minimum of 2 hours if an employee reports for work and 4 hours if the employee actually begins to work, unless there is inclement weather or other reasons beyond the employer's control. Others wanted the elimination of the double time premium from the law.

Labour and advocacy groups were less vocal on this subject but firm in their position. Several urged that the standard work day

and week be reduced. They resisted any efforts to permit employers to impose nonstandard work schedules on employees. There were vigorous statements in support of the principle of the 8 hour day and 40 hour week.

Apart from work schedules, many employers requested that they be permitted to bank overtime. In fact, this practice is in wide use, although it may technically violate the law. Employers stated that their employees preferred to have access to a banking system. Employees also brought to the Commission's attention an anomaly in the *Act*. The effect of Section 32, as it is now written, is that an employer is not required to give employees a meal break if the employees remain on pay status. In other words, an employee might work 8 hours without time off to eat, although he or she might be able to eat some kind of meal in between work assignments. This practice appears to be common in some parts of the restaurant industry, where employees work near prepared food.

Work Schedules

The *Act* as it is now written is based on the assumption that the normal work day is 8 hours and the normal work week is 40 hours. Section 28 sets out that standard, and Section 30 requires employers to pay overtime after 8 hours of work, at the rate of 1.5 times the regular wage up to 11 hours and double time for work in excess of 11 hours. Time and one half is paid for work after 40 hours in a week and double time for work after 48 hours in a week. Other provisions in the *Act* reinforce these principles.

Section 31 of the *Act* permits the Ministry to authorize a variation in the overtime wage provisions when the hours of work are averaged over a period longer than a week or less than 5 days of work in a week when the conditions requested are not inconsistent with the intent of the *Act*, that is a compressed work week. In 1991-1992, almost two-thirds of all variances, 236, were issued under Section 31, as noted in the discussion of variances in this Report. Another 34 variances, slightly over 10 per cent of the total, concerned changes in the minimum daily pay (also known as "call in time").

Before addressing the specific issues raised about this part of the *Act*, the philosophy of the Commission about the freedom of the

parties to contract out of the law should be stated. In the Introduction to this Report, the Commission noted that, with the exception of one issue, employers and employees accepted the need for legal minima in employment standards. The exception was hours of work. Employers who wanted the right to agree with their employees on alternate work schedules, without reference to the law, were in effect asking the Commission to abolish legal standards for hours of work. Without a union or an employment standards statute, there are significant power imbalances between employers and employees. The Commission received numerous communications from individual employees who were acutely aware of their vulnerability, asking for help from the Commission and the law in offsetting imbalances of power. This is not to say that most employers do not consider the wishes of their employees in scheduling work or making other business decisions. But the Commission has also received ample evidence that some employers will exploit their power to the limits the law allows. The Commission rejects the notion that employers should be free to enter into private agreements with their employees that circumvent the minimum standards in the law. Instead, the law should promote basic social goods, including leisure time for employees, the opportunities for parents to spend time with their children and the possibility for all citizens to engage in social activities.

If minimum standards are to remain, these should also be consistent with the realities of the modern workplace. The Commission was convinced that exceptions to the so-called standard work week of 8 hours per day and 40 hours per week are frequent and likely to become more common in the future. Employers repeatedly stated that their employees wanted compressed work weeks and urged them to secure variances. There is ample objective evidence to support these statements.

In addition to the variances granted by the Ministry, a large proportion of the collective agreements in the province provide for compressed work weeks. In the unionized sectors of the province, 35 per cent of collective agreements have some provision for a compressed work week. In the mining industry, this figure rises to 85 per cent, and it is 70 per cent in public administration. The industrial category with the lowest incidence of compressed work weeks is manufacturing, where the proportion of collective agreements is 25 per cent. (*Negotiated*

Working Conditions, 1991). A large national sample of Canadian employees employed by relatively large organizations (major corporations and government agencies) revealed that 29 per cent work other than a standard work day. In the public sector 17 per cent of the employees worked a compressed work week. More significantly, approximately two-thirds of all respondents found a compressed work week appealing, a figure that did not differ for men and women and across all levels of the organizations. (Higgins, *et al.*, 1992a). A more representative survey conducted by Statistics Canada found that 11 per cent of the work force worked over 9 hours per day on a regular basis and another 13 per cent worked a varying schedule. A total of 15 per cent worked other than a Monday-Friday schedule, and another 24 per cent worked a varying schedule (Siroonian, 1994).

The norm for employment standards legislation in this country is to establish the 8 hour day as standard. There is some variation in the length of the standard work week, ranging from 40 in two other provinces and the federal code, to 48 in one province. The Commission found no compelling argument to change the current standards in the law. Similarly, the minimum daily pay provisions and overtime rates in the *Act* are of long standing, and no argument, other than the desire of some employers to save labour costs, were presented in support of a change. The Commission does not recommend any change in these standards.

If the law should set basic social standards, even in the face of demands from workers and employers for nonstandard work schedules, the dilemma for policy makers is how to reconcile these conflicting notions. The model chosen by the Commission is the same one recommended in the Interim Report to the Minister in 1993 for the unionized sector and adopted in Bill 65, now found in Section 31 (3) of the *Act*. A similar framework was recently passed by the federal government with support from both the employer and employee communities. This model sets the periods over which work schedules must be averaged. If these averages do not exceed the standard of 8 hours per day or 40 hours per week, the employer is not required to pay overtime rates.

In the unionized sector, the law sets standards for collective agreements. The practice in the Ministry for some time has been

to approve certain work schedules routinely when the average of hours worked over some period of time falls within the 8 and 40 hour limits. This policy can be reinforced in the statute. Because nonstandard work schedules can have a profound impact on employees' lives, there is still a need to assure that a substantial majority of employees approve of the variance. However, if the proposed schedule falls within the limits in the statute, the process for granting a variance should be virtually automatic. As with other variances, there should be time limits on variances granted.

The Commission recommends that employers and employees have the ability to schedule compressed work weeks when they consist of a sequence of days at work and days from work that forms a pattern that repeats over a period not exceeding 8 consecutive weeks and under which employees are scheduled to work an average of not more than 40 hours and not less than 35 hours per week at the employees' regular wage and apply over a period of at least 26 weeks. Employers shall be required to submit evidence to the Ministry that at least 65 per cent of all employees affected by the proposed schedule approve of it. Evidence of employee approval shall be in a form prescribed by the Ministry. These variances of the daily and weekly hours shall have a time limit, but be renewable. Employers should post a notice of the variance in each workplace in a form and language accessible to employees affected.

Banking of
Overtime

The practice of banking overtime is one that the law should permit. Over 50 per cent of all collective agreements in the province allow banking. It increases flexibility for both employers and employees. The important principle involved is that credit for overtime worked must be at overtime rates. Some employers appeared to assume that banking would take place at standard wage rates. In that case, there would be little incentive for any employer ever to pay overtime wages. If banking is permitted, there should be provision for standardizing practices within a work group if the employer's operations require this restriction. There is some legitimate concern about the length of time employees should be allowed to accrue credit in the overtime bank. As mentioned in the annual vacations, the

Bankruptcy Act limits the preferred claim of an employee to \$2,000 and secondly to wages earned during the 6 months immediately prior to the bankruptcy.

The Commission recommends that the *Act* permit the banking of overtime when both the employer and employees agree. The Ministry should have the authority to determine the procedures by which the agreement of employees will be established. All agreements to bank overtime should state explicitly that credits are to be earned at overtime rates. The employer may stipulate that credits from the overtime bank are taken in time off or monetary compensation for individual employees or groups of employees. The Ministry should inform employers and employees who adopt this system of the implications of bankruptcy legislation in terms of collection of monies owed to employees.

Meal Breaks

The imprecise language in Section 32 is not a major issue, but one that should be resolved. Employers are not required to schedule breaks, although that is the intent of the *Act*. The Commission heard that restaurant kitchen personnel in particular frequently are scheduled to work eight consecutive hours without a break, in the expectation that they will take a few minutes at a slow time in their work day and prepare something to eat. Occasionally employees in other work settings may be asked to work through their meal breaks when an emergency arises. The Commission believes that the principle that employees should have time free from work to eat a meal on a normal work shift does not warrant discussion or defense. The most flexible way of dealing with this issue is to require employers who do not grant a meal break to pay double time for the half hour period when the meal break should have been scheduled. This should serve as an incentive to schedule time off.

The Commission recommends that employees who do not receive a meal break of at least 1/2 hour within a period of 5 hours shall receive double time for 1/2 hour of their time worked to compensate for the lack of a meal break.

F. ANNUAL VACATION

The *Act* treats several aspects of annual vacations. Section 36 requires an employer to “give to each of his(sic) employees” an annual vacation after the completion of each year of employment. The entitlement is 2 weeks after one year of employment and 3 weeks after 5 years of continuous employment. The employee has the right to take a vacation no later than 10 months after the anniversary date of employment and shall not be required to take the vacation in increments of less than one week.

Section 37 deals with vacation pay. The employer is obligated to pay an employee 2 per cent of wages for each week of entitlement. This pay is due in one payment to the employee at least 7 days before the beginning of an annual vacation. If employment ceases, the money accrued comes due with the final payment to the employee.

A number of labour and advocacy groups suggested that the annual vacation entitlement be increased, generally to 3 weeks for the first two years of employment, rising to 5 weeks after 10 years of service. Employer groups resisted any suggestion that the level of vacations be raised.

Administrative problems are common. The Commission was told that employers seldom pay out vacation pay a week before the employee takes the vacation. Many salaried employees receive their regular salary while on vacation, technically a violation of the law. Because this practice suits the needs of both parties, few complaints are ever received. In 1992, the Ministry did receive over 6,000 complaints (approximately 35 per cent of the total) of violations of Sections 36 and 37. Most of these complaints sought to collect vacation pay owed to employees whose employer was in bankruptcy or was behind on payment of wages. Many employers asked the Commission to simplify the record keeping caused by annual vacations. Vacations entitlements are based on the date an employee commenced employment, so that the employer must calculate entitlements separately.

The Commission also heard many persons state that the law should permit employees to take vacations in increments of less than one week. In fact, Section 36(3) of the *Act* merely states that an employee may not be required to take vacation in periods of less than one week. Obviously, this provision is widely misunderstood. In addition, the Commission learned that some

employers require their employees to take vacations at particular times, presumably to suit the employer's convenience.

In reviewing the employment standards for vacations in other jurisdictions, the norm is 2 and 3 weeks, with some variation in eligibility. In general, however, working conditions in British Columbia include longer vacations than three weeks. A survey of collective agreements published by the Ministry of Labour and Consumer Services in 1991 revealed that 95 per cent of all collective agreements provide for 4 weeks' vacation. The proportion was comparable in the private sector, private services and trade, finance and real estate, the sectors most comparable to the employers directly affected by this *Act*. For the entire sample of collective agreements 79 per cent provided for a 4 week vacation after the completion of 9 years of service or less. (*Negotiated Working Conditions, 1991*). These patterns prevail for much of the economy and indicate the practice of many nonunion employers. The Commission concluded that the *Act* should reflect the pattern of employment practices in the province by increasing the entitlement for annual vacations.

The Commission recommends that employees who have completed 10 years of continuous service should receive 4 weeks of vacation with pay. Other entitlements in the *Act* should remain unchanged.

The Commission was concerned about the number of employees who do not receive their vacation pay, or only receive it after filing a complaint with the Ministry. The present system requires the employee to wait as long as 10 months after vacation pay is earned before it can be used. If a firm is in financial difficulty, this entitlement clearly is at risk. A convenient way of avoiding this problem is to require that employers credit an employee's vacation pay as the entitlements are earned, i.e., by keeping a running account of time or money which is included with the employee's regular pay cheque. The employee can choose to let the entitlement accrue or take the money at his or her convenience. Similar practices are already quite common. In the construction industry, employees receive vacation pay in each pay period. Employers from all sectors pay part-time employees in the same fashion. Employees who prefer to receive their normal pay cheques while on vacation can claim their vacation pay in that way, although an additional payment might be due

to cover overtime worked in the previous 12 months. When employees are concerned about receiving vacation pay because of the financial state of their employer, they can claim their vacation pay as it is earned. The “running bank” system should begin after a (brief) period of eligibility to avoid calculations for casual employment. To avoid excessive liabilities for employers and to encourage employees to take their vacations, there should be a maximum period for the accrual of vacation pay.

Elsewhere in this Report, there is a recommendation that employees should have the right to claim unpaid wages over a period of two years. It would be consistent to put a similar limit on the accrual of vacation pay and banked overtime. This restriction will permit employees who wish to save their vacation pay for a long or expensive vacation to do so, while limiting their risk in the case of business failure. Employees should be warned that there is some risk in letting time off accrue for two years. If an employer is forced to declare bankruptcy, the preferred claim of an employee is limited first to \$2,000 and secondly to wages earned during the 6 months immediately prior to the bankruptcy. The balance of an employee’s claim receives much lower priority in claims against the employer’s assets. The *Bankruptcy Act* provides that holiday pay pertaining to work performed more than 6 months before the bankruptcy has a lower priority than other wages.

This Report also recommends in another section that employees be permitted to bank overtime. The running bank system proposed for vacation pay could be combined with overtime credits so that employees will know how much pay or paid time off is due them from both sources at the end of each pay period.

The Commission recommends that employees shall be credited with vacation pay as it is accrued, either by payment with other wages or as a credit of paid time owing to the employee. This entitlement shall begin after an employee has completed five continuous days of employment. The employee shall have the right to choose when to receive the vacation pay, to a maximum period of two years. The Ministry should inform employers and employees who adopt this system of the implications of bankruptcy legislation in terms of collection of monies owed to employees.

Confusion about the right of employees to determine when to take their vacations should be clarified, without changing the

intent of the present wording of Section 36(2). The employee has the right to choose how long the vacation should be, and the employer cannot require an employee to take a vacation of less than one week. Furthermore, the employer should not be able to dictate when an employee takes a vacation. Ideally, this will be by mutual agreement. No doubt this arrangement works well in most circumstances. The law should intervene to prevent abuses.

The Commission recommends that the *Act* state that employees may choose to take their accrued vacations after they have completed six months of continuous service. The employer should not have the authority to require an employee to take vacation in periods less than one week. The scheduling of vacations should be by mutual agreement between the employer and the employee, and the employer should not deny employee requests to schedule vacations unreasonably.

With the adoption of the running bank system of vacation entitlements, the issue of anniversary dates for the calculation of these entitlements becomes much easier to resolve. The most simple system would be for employers to declare one or more common anniversary dates for employees. Employees can be moved to a common anniversary date and their benefits prorated to that date. The same process would be repeated after completing 5 or 10 years of service.

The Commission recommends that employers have the right to declare common anniversary dates for their employees for the purposes of calculating vacation entitlements, with the condition that no employee suffers a reduction of entitlement because of the common dates.

IV. ENFORCEMENT

While members of the public expressed satisfaction with the Ministry's performance in enforcing the *Act*, there were many suggestions to improve observance of it. These suggestions focused on heavier penalties for repeat offenders and a more active role for the Ministry in educating employers and workers about the *Act*. Many persons who appeared before the Commission reported violations of the *Act* that had occurred because employers did not understand their obligations and workers who were not informed of their rights. This situation should be addressed, especially since the remedies are not expensive or especially controversial.

Penalties

Members of the Ministry staff reported that they spend a large proportion of their time dealing with a handful of employers who repeatedly violate the *Act*. The provisions of Section 103 of the *Act*, which specifies that violations of several sections of the *Act*, and permits fines for violators, is ineffective because the Ministry must seek prosecution under the *Offenses Act*. The Ministry historically has had concerns about asking Crown Prosecutors to take up these cases when their attention is on other areas of law. Some employers disobey the law because of their ignorance of its provisions or even fall into violations when their financial circumstances decline. Others know the requirements of the law and its current appeal mechanisms very well. They fail to follow its provisions, prolong investigations and often settle with claimants just before proceedings in the Supreme Court begin. They treat workers' money as a form of cheap credit. At present, there is no way for the Ministry to penalize such persons, since they technically comply with the law at the end of the investigation process. However, there are no disincentives against employers who repeat this process. When the Commission raised this issue with representatives of the employer community, they agreed that such conduct ought to be penalized. Unsurprisingly, labour representatives agreed. The model of penalties levied under Section 75 of the *Workers' Compensation Act*, i.e., of the order of \$1,000 to \$10,000, was proposed. It should be emphasized that there was no desire to impose penalties on the occasional or first-time offender. Officers of the Ministry who enforce the *Act* agreed that if the

government could deal with a small number of repeat offenders effectively, the Ministry would have much more time for proactive programs to promote observance of the law. Since violations of the *Act* frequently involve nonpayment of wages to workers, the Ministry should also have the power to require bonds of employers who have violated the law repeatedly.

The Commission recommends that the *Act* include provisions to give the Ministry the power to impose escalating levels of monetary penalties on persons or companies who violate the *Act* repeatedly. Cabinet should have the authority to set the appropriate levels of these penalties. The Ministry should also have the authority to require employers to post bonds to cover unpaid wages when employers or officers of companies have a history of failing to pay wages due their employees.

Since the enactment of Bill 65, Section 2 of the *Act* provides in effect that allegations that an employer has violated both the *Act* and a collective agreement must be pursued through the applicable grievance procedure. However, under arbitral jurisprudence and the *Labour Relations Code*, arbitrators have no power to impose penalties for violations of a collective agreement. They are limited to remedies that compensate employees or employers for losses suffered. This situation might leave unionized employers outside the scope of penalty provisions in the *Employment Standards Act*, not a fair result. The most straightforward way to deal with this problem is to permit arbitration proceedings to occur under their normal rules. If the employer is found to have violated the collective agreement, this may determine that the *Act* has also been violated. If there is ambiguity on that point, the usual complaint procedure to establish a violation of the *Act* would apply. But the Ministry should not be ousted from its authority to levy a penalty.

The Commission recommends that the Ministry should have the authority to levy penalties against employers who otherwise meet the criteria for penalties for violations of the *Act*, after an arbitration on the same subject conducted under the provisions of the *Labour Relations Code*.

As the law now exists, employers who fail to pay their employees retain the funds during any delay in the filing of a

complaint or an appeal. In effect, they receive an interest free loan from employees who have been denied their legal rights. This situation is a further incentive to violate the *Act* by the small number of unscrupulous employers. Equity demands that employees who have not had the use of funds to which they are entitled by law should be compensated. The Ministry could establish the appropriate rate of interest, perhaps based on the system in the *Court Order Interest Act*. While enforcing the *Act*, the Ministry may find it necessary to attach assets of an employer pending the outcome of an appeal. When an appeal is successful, the employer involved should also receive interest on any funds to which it did not have access during the appeal.

The Commission recommends that the *Act* give the Ministry the power to charge an appropriate rate of interest to wages and other compensation paid to employees or former employees of an employer who has violated the *Act* for the period since these monies became due to employees until they receive them. The Ministry should have the authority to fix the appropriate rate of interest according to principles in other relevant legislation. Employers who lose the use of funds through proceedings under this *Act* should also receive interest for the period when the funds are out of their control if a proceeding against them is unsuccessful.

At present, Ministry files contain information on persons or employers who have violated the *Act*. However, there is no system for providing this information systematically to interested parties, including provincial ministries and agencies, who may wish to check the record of an employer before contracting for services or the like. Prospective employees may wish to know the record of an employer under the *Act* before accepting employment. Presumably, the Ministry is obligated to provide information on violators on request under the provisions of the *Freedom of Information and Protection of Privacy Act*. It did not seem necessary to publicize the names of violators widely, especially since most violations involve small amounts of money. However, a properly organized data bank would enable interested parties to check on organizations which have violated the *Act* in each region, much as Better Business Bureaux provide such information. This information should be available at no charge and with a minimum of procedural requirements. It should be possible to arrange for the data to be provided over the telephone, for instance.

The Commission recommends the Ministry should have the authority to collect the names of violators of the *Act* and provide this information to government agencies and members of the public. This information should be available through local offices of the Ministry, also on a provincial basis.

The Commission attempted to gather systematic information on the pattern of violations. Unfortunately, the Ministry's records were limited in their scope. Data are available on the sections of the *Act* under which complaints are filed. Ministry officials can identify the sectors in which most violations occur, but there is no information on a provincial level to permit systematic enforcement or educational programs.

The Commission recommends that the Ministry should be given the authority and have resources allocated to analyze data on complaints and violations of the *Act* to promote effective enforcement of the *Act* and education about it.

Education

The Commission received many submissions requesting that the Ministry undertake more active educational programs directed at employers and workers about their obligations and rights under the *Act*. After discussing these suggestions with the Ministry staff and examining data on work load, it became apparent that under the current structure of the *Act* and the responsibilities of the Ministry to enforce other statutes, a substantial expansion of educational programs would be impossible. However, the Commission and the staff believe that the addition of penalty provisions outlined above will reduce the number of complaints under the *Act* and simplify the Ministry's investigations. Resources saved in enforcement should be available for education which in turn should reduce the number of violations and complaints. One objective of this Report is to make the revised *Act* simpler and more understandable. If these objectives are met, the Ministry's educational activities should be more effective. The period after amendments to the *Act* provides many opportunities for the Ministry to launch new educational programs. Currently, it appears that educational activities depend on the talents and energies of Ministry staff more than

any strategy formulated by management within the Ministry. There are over 100,000 employers subject to the provisions of the *Act*. About three-quarters have fewer than 10 employees, and maybe are unable to afford specialized advice to assist them in observing the law. The Commission concluded that many employers violate the *Act* through ignorance of its requirements. There should be a comprehensive effort to promote observance of the law. This strategy would reduce the number of complaints and avoid violations which are never reported to the Ministry.

The Commission recommends and urges the Ministry to develop a comprehensive strategy for educating employers and employees about the provisions of the *Employment Standards Act*.

Employer organizations with whom the Commission met suggested that they could take a more active role in informing their members of the law's requirements. Labour councils now act as informal advisers and advocates for unorganized workers who believe that their rights under the *Employment Standards Act* have been violated. Advocacy groups and ethnic organizations already have a role in distributing information about the *Act*, and their contributions could be increased.

The Commission recommends that the Ministry cooperate with employer, labour and other interested organizations to promote greater awareness of the *Employment Standards Act*.

Many other organizations have contact with employers as they start operations. All companies must obtain business licenses, for instance. Virtually all employers must register with the Workers' Compensation Board, and many new companies rely on advice from provincial and federal agencies which promote small business development. Since these organizations have direct access to employers, especially new or small employers in which management might otherwise be unaware of the provisions of the *Act*, they offer inexpensive opportunities to provide information on employment standards.

The Commission recommends that the Ministry seek to work with other provincial and federal agencies, such as the Workers' Compensation Board, the Ministry for Small Business or the Federal Business Development Bank, and municipal licensing authorities to promote greater awareness of the provisions of the *Employment Standards Act*.

It is a fact of the British Columbia labour market that many of the workers in some industries are immigrants and members of visible minorities. These workers and employers drawn from these groups warrant special attention for educational programs. Few of the Ministry staff who enforce the *Act* are drawn from the ethnic groups commonly found in occupations most affected by employment standards legislation. The educational efforts of the Ministry would be enhanced by reliance on a staff that more accurately reflects the ethnic composition of the work force in the industries most concerned with regulation. Educational materials should be prepared in languages other than English.

The Commission recommends that the Ministry expand its programs to communicate with immigrant and minority communities to promote greater awareness of the *Act*. Recruitment of staff to enforce the *Act* from these communities would assist in the Ministry's efforts.

There were proposals that workers receive copies of the revised *Employment Standards Act* or that copies of the *Act* be posted in workplaces. These ideas had merit, but would be difficult to implement in practice. Even in a simplified form, the *Act* is likely to be lengthy and technical in places. Workers or employers for whom English is a second language and others with limited educational backgrounds would not find it useful to rely directly on the *Act*. To translate the *Act* into other languages would be expensive and create legal problems. However, it is possible to inform workers of their basic rights under the *Act* succinctly in the language most comfortable for them in their workplaces. The Ministry could prepare materials and provide them to employers.

The Commission recommends that the *Employment Standards Act* require all employers to post a basic statement of employees' rights under the *Act* in locations where it can be read by employees in the language or languages appropriate to the workplace. The Ministry will provide copies of these statements.

The Commission heard many suggestions that the contents of the *Employment Standards Act* be included in school curricula. In addition, it received information from students, teachers and parents that young workers are subject to many violations of the *Act*, most of which are never reported to the Ministry. Inclusion of material about employment standards for some or perhaps all high school students may be desirable, but there is a tendency for outside groups to pressure educators to include ever more topics in school curricula, without suggesting which topics should be dropped. While this review was under way, discussions between the Ministry of Skills, Training and Labour and the Ministry of Education were taking place about including employment standards in school curricula. This process should continue and receive high priority.

The Commission recommends that the Ministry call to the attention of the Ministry of Education and other competent education authorities the conclusion that young workers, including students, may not receive their rights under the *Employment Standards Act* and would benefit from education about their rights under the *Act*. It urges the Ministries involved to agree on the inclusion of information on employment standards in school curricula.

Complaints

Although the complaint procedure is heavily used, it is not well stated in the present *Act*, and there is reason to believe that workers, employers and the Ministry staff all suffer to some extent because of the current complaint process. In addition, some substantive improvements should be made.

At the outset, the process for filing complaints should be placed in the *Act* to increase its visibility and simplicity of presentation.

The Commission recommends that a separate part of the *Act* be devoted to the complaint process.

Procedures

Section 80 of the *Act* now states that a “complaint . . . shall be made” A careful reading of the Section indicates that third parties have the right to file complaints, and the Ministry does accept complaints from third parties. However, this right is not stated explicitly in the *Act*. In addition, the Ministry staff who enforce the *Act* become aware of patterns of violations by an employer or within an industrial sector. Under those circumstances, the Ministry should be able to investigate the employer or employers concerned and, if necessary, file complaints on behalf of employees and former employees who may not have been aware of their rights or who have neglected to file complaints for other reasons. Such complaints would be subject to the same restrictions as individual complaints. Section 82(2) of the *Act* authorizes the Director to initiate such an investigation in rather convoluted language. Since the *Act* affects unorganized workers and many small employers, the process by which complaints can be initiated should be stated clearly.

The Commission recommends that the *Act* clearly state that employees, employers and third parties may file complaints with the Ministry and that the Ministry official charged with administering the *Act* (including an authorized representative) shall have the power to initiate an investigation of possible violations of the *Act* in the absence of a complaint. The *Act* should state clearly that the Ministry can audit an employer or group of employers when an individual complaint gives rise to a reasonable suspicion that a general pattern of noncompliance exists. When appropriate the Ministry should have the authority to issue a complaint in its own name on behalf of employees affected by an alleged violation.

The *Act* currently permits the Ministry to decline to investigate a complaint where the same issue is before another tribunal. The impact of Bill 65 is to involve arbitration under collective agreements more than previously occurred. In addition, proceedings in the courts and other tribunals may bear on the outcome of a complaint under this *Act*. However, there may be

circumstances when the Ministry may wish to delay proceeding with a complaint pending the outcome of other proceedings. If another tribunal provides an appropriate remedy to the substance of a complaint, then the Ministry should have the power to reject a complaint, with such decisions being subject to appeal.

The Commission recommends that the Ministry should have the power to delay an investigation of a complaint pending the outcome of a proceeding in another tribunal. The Ministry also should have the right to dismiss a complaint if another tribunal has dealt with the substance of a complaint. These decisions by the Ministry should be subject to appeal under the procedures recommended in this Report.

The *Act* currently provides that a complaint must be launched within 6 months of the date of the last date when wages became payable or within 6 months of the date on which the subject matter of the complaint arose. The *Act* goes on to limit recovery of wages that become payable within the 6 months immediately preceding the date of the complaint or the last 6 months of employment when a complaint is filed by a former employee. The Commission heard numerous representations on the length of time for the filing of complaints and the period over which wages owing could be collected when a violation was found to have occurred. Labour groups were concerned that employees might not become aware of their rights within 6 months and that employees whose rights had been violated over a long period of time would be denied justice. Employers were concerned about the additional burden of record keeping and difficulties in presenting evidence in their defense that longer time limits for filing complaints might impose.

Logically, there is no reason to impose the same time limits for the filing of complaints and the period over which wages or benefits owing could be collected. Lengthy periods between an alleged violation and the filing of a complaint raise administrative problems to determine the validity of a complaint. Elsewhere in this Report, there are recommendations that there be educational activities to inform worker and employers of the *Act* and the rights and obligations it confers. Under these circumstances, to permit complaints more than

6 months after an alleged violation is unnecessary. There was no evidence that the present time limit causes substantial injustice, and a longer period might cause problems in enforcement.

The Commission recommends that complaints must be filed within 6 months of the date on which wages were to be paid or within 6 months of the date on which the subject matter of the complaint arose.

There are strong arguments for extending the time over which unpaid wages or benefits should be paid. In effect, workers have provided their labour to an employer on terms which fall below the legal minimum. The Commission heard that occasionally, these violations persist for periods well beyond 6 months. Labour groups suggested that the law permit the collection of monies owing over an indefinite period, i.e. to the date of the original infraction. Employers pointed to difficulties in enforcing such a requirement fairly when claims were launched for infractions allegedly committed in the remote past. The period for payment of wages and other claims is inherently a compromise. Employees or former employees have the option of taking their claims to the courts, where the time limits are much more generous. The goal of the enforcement procedure under this *Act* is to provide employees with a speedy collection process when monies are owed to them.

The Commission recommends that complaints under this *Act* be permitted to require payment of wages which became payable 24 months immediately preceding the date of the complaint or 24 months prior to the end of the employment relationship.

In some cases, the adoption of this recommendation will force employers to alter their record-keeping procedures. It would be unfair to begin enforcing such a provision immediately when employers may have conscientiously kept records covering the 12 months currently required in the *Act* and then destroyed them when their legal liabilities had expired.

The Commission recommends if the previous recommendation is adopted, the law should provide for a staged implementation of these provisions to enable employers to establish record keeping systems consistent with the new requirements.

Elsewhere in this Report, recommendations deal with banked overtime and a running bank for annual vacations. In both cases, there is a requirement that employees be notified of their entitlements to overtime or vacation on each paycheque and that employees should be informed of their circumstances in case of a bankruptcy by the employer. To further protect employees, banked overtime and annual vacation should be treated as owed to employees on the date of their most recent paycheque, not when the time was earned.

The Commission recommends that monies owing to employees in the form of overtime pay, vacation pay or statutory holiday pay when these wages have been banked are, for the purposes of collection, deemed to be earned on the date on which the subject matter of the complaint arose.

Rights of Complainants

Section 81 of the *Act* provides that the identities of complainants shall be kept anonymous except when names must be revealed in connection with a proceeding under the law or when the Ministry considers it to be in the public interest to reveal a complainant's name. The Commission received submissions from individual workers and labour organizations which represent the interests of unorganized workers who wish to file complaints that these protections are inadequate. Section 103(3) of the *Act* states that a violation of Section 81 is an offense which may lead to a fine of a maximum of \$2,000. Section 58 of the *Act* provides that an employer shall not terminate, threaten to terminate, discipline, impose a penalty or intimidate an employee because an investigation under the *Act* has been launched or because an employee has registered a complaint under the *Act*. Section 59 establishes a list of remedies to be available when employee rights under Section 58 have been violated, including reinstatement, payment of lost wages and payment of compensation instead of reinstatement.

Despite these protections, the Commission was left with the sense that there is wide-spread cynicism about the ability of the Ministry to protect complainants against reprisals from employers. In small workplaces, it may be difficult to conceal the identity of a worker who files a complaint, especially if he or she has expressed concerns or discontent to the employer. In other circumstances, the nature of the investigation may point to the identity of the employee or employees who have complained. While no precise data are available, the Ministry reported that a large percentage of all complaints are filed by former employees, to the point that complaints originating from employees against their current employer are unusual. Prosecutions under Section 103(3) are virtually unknown, and employees are seldom reinstated under Section 59.

Some of these difficulties arise from the nature of enforcing employment standards legislation in small workplaces which lack a union or other agency to monitor the behaviour of employers and employees. Research in Ontario revealed that very few employees actually filed complaints under that province's employment standards legislation (*Adams, 1987*), for instance. At some point during the processing of a complaint, the principles of natural justice demand that the employer know the details of the allegations that are the basis of a complaint. Often this fundamental requirement requires that the name of the complainant be revealed at some point in the proceeding. In any system of regulation, the resources of the government to monitor individual behaviour will be limited, so that the law must rely upon the voluntary compliance by citizens with the law. Employees who have had a bad experience with an employer may not wish to continue an employment relationship. However, these problems should not be an excuse for inaction.

The most severe penalty an employer can impose on an employee with whom it is dissatisfied is dismissal, and employees are aware of their vulnerability, especially in times of high unemployment. No employee should have to fear that he or she is risking loss of employment in retaliation for seeking to obtain benefits guaranteed by the law. If this threat is removed, employees should be encouraged to file complaints rather than waiting until after the employment relationship has ended before seeking their legal rights. Employers will be more careful in their observance of the law if they know that their right to terminate an employee is waived if the motive for termination is the filing

of a complaint. The rights granted employees in Section 59 should be strengthened by the imposition of penalties on employers who violate employees' rights in this way.

The Commission recommends that the Ministry continue to have the right to order the reinstatement of any employee who is discharged, suffers discrimination or a threat of discharge or discrimination for filing a complaint alleging a violation of his or her rights under this *Act*. An order of reinstatement should be subject to the appeal procedures contained in the *Act*. When an employee is not reinstated at the employee's own request, generous compensation should be granted to the aggrieved employee. In addition, the Ministry should have the authority to impose monetary penalties on employers who retaliate against employees for filing a complaint of a violation of the *Act*.

V. VARIANCES AND EXEMPTIONS

The Commission received scores of representations, the majority from employers, but also from other groups, requesting changes in the system for granting variances under the *Act*. The thrust of most of these briefs was that the current system is slow, cumbersome and insufficiently responsive to changing circumstances. The largest number of examples of problems with the existing system concerned hours of work, a subject addressed elsewhere in this Report. In the course of examining the statute and the regulations made pursuant to it, many anomalies became apparent. Some matters that appeared to be best handled by regulation are in the statute and vice versa. Groups covered by exemptions (granted by Cabinet) might better be treated by the variance system. When asked by the Commission, the Ministry could not readily provide the number of variances currently in effect. Some variances granted in earlier times appear to be permanent, and there is no obvious mechanism for changing them. In more recent years, all variances have time limits on them.

The law provides no guidance for the government in granting exemptions from the *Act*. Section 105(2)(b) merely grants the Lieutenant Governor in Council that authority. Current exemptions appear to be the results of lobbying by employers, although no records were available. There is no mechanism for repealing an exemption granted under Section 105(2)(b) apart from lobbying the government. Some groups exempted under the Regulation are quite small. An obvious question is whether Cabinet should be asked to decide such a relatively minor matter. In a number of cases, the government itself is the most interested party in the existence of an exemption, and there is a clear question of whether natural justice for employees is served by having one arm of the government determine conditions of employment in other organizations dependent on government funding.

The process by which employers and employees should be placed outside of the protections of this *Act* is a significant one. If the recommendations elsewhere in this Report to reduce the number of blanket exemptions are accepted, the variance and exemption processes are likely to become more important after revisions to the *Act*.

Variations

Section 105(3) of the *Act* currently allows the Ministry to issue orders on the following subjects: the maximum amount charged to employees for room and board; arrangements for varying the minimum wage or conditions of employment as established by Cabinet and allowing an employer to pay a person with disabilities less than the minimum wage if this will benefit the employee; and authorizing an employer or a class of employers to pay annual vacation or holiday pay in a specified manner.

In addition, there are provisions for variations to 17 specific sections of the *Act*. These are contained in those sections of the *Act* dealing with the issue in question. Thus, Section 7(2)(e) provides for a variance to permit an employer to make deductions from the wages of an employee for the benefit of the employee, while Section 27(3) covers altering the requirement of a 24 hour notification of change of shift and so on. The *Act* anticipates that a variance will be issued for a single employer and its employees. In practice, most variations seem to cover a single work site. By policy of the Ministry, most variations are granted in response to a joint request from an employer and its employees. The only exceptions to this policy are allowing payroll records to be kept outside the province, altering the method for payment of vacation pay and establishing a common anniversary date for purposes of vacation entitlement. (All of these issues are dealt with in this Report). After receiving a request for a variance, the Ministry staff conducts an investigation to verify that a majority of the employees understand the application, that no employer pressure has been applied, and that it is in their interests that the application be approved. The investigating officer has the discretion to recommend restrictions or amendments to the variance. Ministry staff report variations are refused, although refusals are rare, but do occur. When a variance is granted, there is a time limit imposed. Many employers requested that variations be issued to cover job descriptions rather than individual employees. The present system seems to be consistent with that system, but there obviously is misunderstanding among employers about the meaning of a variance.

In 1992 a total of 322 variations were issued. A large majority of these, 236, concerned hours of work (Section 31) in which the application requested a compressed work week. The next largest number of variations, 34, was under Section 34(3), which concerns minimum daily pay for commencing work. Variations

for the substitution of general holidays (Section 105(3)(d)) were granted in 28 cases, and 8 variances were granted for the manner of calculation of vacation entitlement (Section 39). No other variance provision attracted more than 3 variances and there were no variances under 8 of the 17 categories. In a few cases, the Ministry staff routinely refuses to grant variances because the enforcement of the *Act* would be undermined.

A number of other parts of this Report address the provisions of the *Act* which are now the subject of variances, including hours of work, the anniversary date for purposes of vacation entitlement and alteration of general holidays. However, the need for variances will remain, and may even expand if other recommended changes to the *Act* are enacted. Thus, the variance process remains an important issue to be addressed. In addition, the distinction between variances (granted by Ministry staff) and exemptions (granted by Cabinet) should be made clear.

At the outset, it is rather obvious that the variance system should be treated separately in the *Act*, in the interest of making the statute more understandable to the user. That part of the *Act* should contain the principles for the granting of variances. The current practice of the Ministry is satisfactory, but should be clarified in the law. Other recommendations address the process for granting exemptions. Taken together the treatment of variances and exemptions in the revised *Act* should make the distinctions between the two procedures clear.

The first principle for granting a variance is that it should not undermine the purposes and protections of the *Act*. This is not to say that in specific instances individual protections may not be practical in a given employment setting. For instance, the Commission received briefs from groups representing companies who employ guides for heli-skiing and from an association of foster parents who were concerned about counsellors who assist foster parents and children in the evenings. In such cases, it may well be necessary to vary the application of the *Act*, as long as the rights of employees are protected. For the two cases just cited, a variance might provide for a waiver of one section of the *Act* on the condition that employees received compensation in some other form, additional time off with pay for instance.

The second principle for granting variances is that a majority of the employees should agree, with that agreement to be determined through procedures satisfactory to the Ministry.

“Employees” in this case should be persons covered by the *Act*, so that these individuals are not overwhelmed numerically by persons who are exempt from coverage and have no interest in the issuance of a variance. In many cases, a petition signed by employees, with verification that no employer pressure was exerted, would be sufficient. Special care will be necessary when some employees lack language skills in English, so the Ministry should ensure that employees are aware of the consequences of the request and its potential impact on them. In other cases, some form of a ballot may be appropriate. The authority to decide on the method of determining employees’ wishes should rest with the Ministry.

The law should be explicit that variances apply to a single employer for a determined period of time. At the expiration of a variance, there should be a review by the Ministry staff to ensure that current employees understand the variance and their right to request the cancellation of the variance or the issuance of a variance with different conditions. Appropriate time limits should be included in variances, again under the authority of the Ministry. Under these conditions, it should not be necessary to specify that variances accompany job descriptions. The time limit of a variance might reflect the history of turnover in a work force for instance. However, a variance should not entitle an employer to establish terms and conditions of employment that differ from the protections of the *Act* on a permanent basis.

A number of provisions for variances now in the *Act* should be eliminated, either because they undermine the administration of the *Act*, or because they serve no useful purpose. Several of the existing sections covering variances will become unnecessary if other recommended changes in the statute are implemented. Variances under Section 10(2) are not granted and should not be. A variance under that provision would permit an employer to keep payroll records outside of the province, thereby frustrating enforcement of the *Act* if the Ministry seeks to recover unpaid wages. When payrolls are issued from a central source outside of the province, employers need only keep records in British Columbia, where they are accessible to the Ministry. Variances under Section 32(4) covering eating periods or eight hours between shifts are not necessary and are not even requested. Scheduling of eating periods is addressed in this Report, and overtime provisions deal with the period between shifts.

The Commission recommends that all provisions of the *Act* dealing with variances be combined in one Part. This Part should contain the following principles for the granting of variances: that a variance should not undermine the intent and protections for workers in the *Act*; that variances should be granted when the Ministry is satisfied that the employees affected are aware of the application and its possible effect on them; that variances should only be granted when a majority of the employees covered by the *Act* agree; that variances should apply only to a single employer and that the Ministry should have authority to determine the extent of a variance; that all variances should contain time limits.

The Commission recommends that provisions for variances in Sections 10(2) and 32(4) of the *Act* be eliminated. Other provisions for variances on provisions of the *Act* not affected by this Report should be retained.

Exemptions

The commission concluded that Cabinet should have the right to grant exemptions from coverage of part or all of the *Act*. However, that power should be limited to a “class of persons”. There is no evidence that an exemption has been granted to a single person, although there are exemptions for individual companies, i.e., legal persons. The major problems with the status quo is the lack of standards for granting exemptions and the absence of any procedural criteria for making decision.

After reviewing both variances and exemptions, there is an implicit distinction between the two forms of exceptions. The *Act* now anticipates that variances would be specific to a work site or an employer. The obvious role for exemptions is to cover occupations or industries, to avoid a proliferation of variances and any appearance of favouritism by granting variances to some employers in an industry, but not all. The normal practice is that employers request exemptions, but there is no provision in the *Act* for consultation with the employees, whose rights are most directly affected. Although the government could rescind exemptions under the present statutory language, this has not been done.

Given the demands on the time and energy of any government, it is unreasonable to expect reviews of the appropriateness of exemptions without some stimulus. Exemptions should contain time limits for their existence, but be renewable. In the course of

its work, the Commission found very little evidence of the history of existing exemptions. Some were based on government programs that have not existed for years. At least one covered an occupation (a hostler) that no longer exists. All of these deficiencies can be corrected rather easily in the law.

The Commission recommends that the Lieutenant Governor in Council have the authority to exempt a class of persons from all or part of the *Act* or regulations. Before granting an exemption, the Ministry should ensure that the views of employers and employees are available to the Lieutenant Governor in Council. Exemptions should last no longer than 5 years, but should be renewable.

VI. APPEALS

The issue of the right of appeal under this *Act* attracted considerable attention. Prior to the appointment of the Commission, the Committee of Special Advisers to the Minister of Labour and Consumer Services considered the subject and recommended that the adjudicative functions under the *Employment Standards Act* should be transferred to the Labour Relations Board. Many briefs presented to the Commission commented on the present appeal system and proposals to change it. The Office of the Ombudsman has commented in the past that the system should be examined to ensure that it conformed to the principles of natural justice.

The existing statute provides for a system of internal reviews, followed by the right of appeal to the Supreme Court. Section 12(4) of the *Act* specifies that an employer seeking a review of an order of nonpayment of wages may send the Director of the Employment Standards Branch a written statement of particulars with a request for review with a deposit of the greater of \$100 or 10 per cent of the amount owing. Section 13 requires the Director to review an order after receiving such a request. The Director designates a person (who is an official of the Ministry with no prior involvement in the case known as a “designate”) to conduct a hearing to review the order. The hearings are quasi-judicial proceedings, and the designate has the power to vary or cancel the order under review. After the hearing, the Director must confirm, vary or cancel the order. If the Director confirms or varies the order, a certificate setting out the amount owed by the employer is issued. An appeal of the Director’s certificate is addressed to the Supreme Court, which tries the *case de novo*, i.e. a complete rehearing.

A similar process exists for decisions or orders of the Ministry with respect to other subjects covered in the *Act*. Section 84(1) of the *Act* provides that a decision, order, authorization or direction made by an official of the Ministry can be reviewed upon request of any person affected. The Director may review the decision in question and refer the matter back to an official for further investigation or issue a certificate setting out wages owing. There is no provision for further appeal of decisions of the Director under this section, but a person affected can launch a review under the *Judicial Review Procedure Act*.

Beyond the review mechanisms contained in the *Act*, there are numerous references to attempts to settle disputes without resort to a formal procedure. Officers of the Ministry report that they are frequently successful in achieving agreement between complainants and employers, often just before a scheduled hearing by a designate.

For the majority of cases, this procedure works well. Complainants receive a hearing that is less formal and less expensive than the courts. Ministry staff have become expert in dealing with the typical issues under this *Act*. Appeals to the courts are rare, on the order of 5-6 cases per year.

Despite these virtues, there are also difficulties with the present system that strongly point to reform. Reliance on an internal appeals mechanism gives rise to a perception of denial of natural justice, although the Ministry manages cases so that persons who worked on them earlier are not involved in a review. The Office of the Ombudsman has suggested that a change be made. The process can be protracted, especially when an appeal to the courts is launched. Many claimants need the monies in dispute quickly to meet their basic needs. Designates' hearings can become excessively legalistic and protracted. The designate system raises the cost of travel and lost time for staff who are diverted from other functions and must travel to hearings.

Officials of the Ministry and the Attorney General, who represent the Ministry in judicial proceedings, report that proceedings in the courts are unsatisfactory. The need to present evidence already received by the designate is a duplication of effort. Since the amounts of money involved can be small, judges frequently ask why their time should be taken up with a matter that seems relatively minor to them. Few lawyers and judges are familiar with the complexity of the *Act*, so the proceedings are delayed or the results reflect inadequate knowledge of the issues. Because the courts have held that complainants must appear personally when their case comes to trial, complainants who have moved or are otherwise unavailable are denied their rights.

The advice the Commission received from members of the community familiar with the appeals system, the staff of the Ministry and the Attorney General was almost unanimous. An appeals system should be relatively informal, with the minimum

possible reliance on lawyers. Cases should be decided quickly at the lowest possible cost to the parties and the Ministry. The process should not only be consistent with the principles of natural justice, but be seen to meet those standards. Settlements should be encouraged.

The Committee of Special Advisers to the Minister of Labour and Consumer Services dealt with the issue of appeals in its final Report of May 14, 1993. The Committee noted the concerns about the fairness of an internal appeals procedure and recommended that the appeals function be transferred to the Labour Relations Board (LRB). The reasoning for this recommendation were that putting this activity in the LRB would be less expensive than the courts, be more accessible for nonlawyers, take advantage of an existing tribunal with expertise in employment and labour matters and eliminate the need for a separate tribunal.

The mandate of the Commission was to present recommendations to the Minister on the transfer of employment standards appeals to the Labour Relations Board on an expedited basis. After considering the questions surrounding the appeals process in the spring of 1993, the Commission asked the Minister for permission to postpone the presentation of recommendations until the full review process was completed on the grounds that there were complex and controversial matters raised by the appeals process. The Minister granted the request.

In the course of public hearings and meetings with the parties, the Commission heard repeatedly from employers that the responsibility for appeals should not be transferred to the Labour Relations Board. They pointed out that the issues before the LRB are quite distinct from those raised by the *Employment Standards Act*. The LRB was perceived as being dominated by lawyers and concerned with technical and procedural matters, thus contradicting the assumption that a common body of expertise in employment law in the LRB would be beneficial for employment standard appeals. Nonunion employers found the LRB especially threatening. They seemed to fear that the standards of the unionized workplace and labour relations law would be applied to their cases.

Upon closer examination, there is little similarity between the cases heard by the LRB and those arising under this *Act*. Most employment standards cases involve the collection of relatively

small amounts of money. The decisions normally rest on reviews of evidence, not complex procedural requirements found in the *Labour Relations Code*. Employment standards cases resemble those heard in small claims courts more than those adjudicated by the LRB. Were the appeals heard by the LRB, there would be a perception, and perhaps a reality, that employment standards cases would receive a lower priority than labour relations decisions, with larger social and political implications than employment standards cases, especially when the strict time limits in the *Labour Relations Code* come into force.

The Commission recommends that employment standards appeals should not be transferred to the Labour Relations Board. Instead a separate tribunal should be established.

The Chair of the LRB has been informed of this recommendation and supports it.

As important as the tribunal are the procedures leading to a decision by the Ministry, which must themselves meet the standards of natural justice. The following procedure within the Ministry is appropriate. An investigation is launched after a complaint or on the initiative of the appropriate Ministry official. The allegations are to be investigated by the staff of the Ministry. The role of the Ministry staff is especially important.

Parties to a complaint must have an opportunity to present their case and to know the case against them. The decision of the Ministry must be made impartially, and the parties must know of their opportunities to appeal decisions of the Ministry staff.

The Commission recommends that the *Act* and Ministry policies ensure that all reviews of facts during an investigation by the Ministry should conform to the standards of natural justice.

In practice, Ministry staff report that they are able to settle many complaints without issuing an order or other official statement. As long as the rights of the parties are respected, this practice should be encouraged. The parties and the Ministry will save time and expense, and when monies are owed to employees, they should receive these funds more quickly as a result of a settlement than they would after a more formal proceeding.

The Commission recommends that the *Act* should encourage the parties to resolve disputes with the assistance of Ministry staff.

When it is necessary to settle a dispute through formal action by the Ministry, or if a complaint has been dismissed, the procedures to be followed are important to ensure that the principles of natural justice are met. The parties are entitled to know the decision resulting from a complaint and the bases for that decision if they are to decide whether to launch an appeal. It is important to include time limits in these procedures to ensure that the complaint/appeal process moves quickly. The limits included in the recommendations below appear reasonable, but are intended to be suggestive.

The Commission recommends that the following procedures prevail if Ministry officials are unable to resolve disputes by agreement, or if a complaint has been dismissed. The parties should receive a letter containing the following information:

The decision of the Ministry official responsible for the case;

The amount of compensation owing, if any, and the method of calculating that amount;

The availability of Ministry staff to assist the parties in settling the dispute;

A statement that if the matter is not resolved within 10 days, the Ministry will issue a "Confirmation of Decision" which can be appealed to a special tribunal;

An explanation of the appeals process.

If the matter is not resolved within 10 days, or either party informs the Ministry that it may wish to appeal, the Ministry official charged with the case should issue a "Confirmation of Decision". The Confirmation should contain the following information:

The decision of the Ministry official and the basis for it, written in plain language;

The amount and method of calculating compensation owing, if any;

A statement encouraging the parties to settle the complaint;

A statement that the parties have 15 days to appeal the "Confirmation of Decision".

This process might be expedited if one of the parties to a case informs the Ministry that it wishes to appeal the decision based on the information in the original letter.

When the Confirmation of Decision is issued, the Ministry should be able to invoke the collection authorities currently contained in the *Act*. At any stage the Ministry official responsible for the case can file the Confirmation of Decision with the Supreme Court for purposes of collection. These cases are not common, but it may be necessary for the Ministry to move quickly if an employer's assets may not be available for collection. Thus, it is desirable that the Confirmation of Decision be filed by the Ministry official responsible.

The Commission recommends that the Ministry official responsible for an investigation be given the authority to file the Confirmation of Decision with the Supreme Court when necessary. The authority of the Ministry to collect wages currently in the *Act* should be retained.

The Commission considered a number of different models for an appeals body. There was agreement in the community that any tribunal should render decisions quickly, after a relatively informal hearing in language understandable to persons without legal training. The tribunal should be easily accessible to persons in all regions of the province. A review of appeals procedures for employment standards cases in other Canadian jurisdictions revealed that a majority of the other provinces provide for appeals to a special tribunal. Only one province provides that appeals are heard by the Labour Relations Board, and another gives the authority to the courts. A variety of practices are followed in British Columbia and elsewhere for other administrative agencies. The advantages of a separate tribunal include its expertise, and the assurance that it will be available to hear employment standards cases exclusively and quickly. A single tribunal will ensure consistency among its decisions.

The Commission concluded that it was important that the services of the tribunal should be available in the major population centres of the province, so that the parties will have access to the appeals procedure quickly and inexpensively, while

ensuring that decisions are consistent. To accomplish these objectives, there should be a chair of the tribunal, probably a full-time position, and part-time adjudicators in each population centre. The part-time adjudicators should be trained in the principles of the *Act*, and the Tribunal should be administered to ensure that decisions are consistent. The chair will hear cases and supervise the work of the adjudicators. It will be necessary to pay adjudicators fees sufficient to attract high calibre individuals, although these fees can be substantially less than those commanded by labour arbitrators. Decisions should be issued promptly and in writing. The availability of a body of published decisions will inform the employer and labour communities about the interpretation of the *Act* and should reduce the number of inadvertent violations. To ensure that decisions are issued quickly, the law should establish time limits for decisions and encourage the parties to settle their differences by agreement before an adjudicator issues a decision.

To reduce costs and the time necessary to reach decisions, most cases heard by the Tribunal will be heard by a single adjudicator. However, the Commission has learned of some cases which are unusually complex or which may have effects on other parties. In these circumstances, a tripartite panel should hear the case. Members of the panel would be drawn from a list of persons representative of the employer and employee communities who are knowledgeable about employment standards.

Recommendations that employment standards appeals be transferred to the LRB were based on the desire to achieve efficiencies by combining the support functions of the tribunal with another agency. This objective can be achieved by housing an employment standards tribunal with some agency other than the LRB. The Commission has no recommendation on this point. However, a Collective Agreement Arbitration Bureau has recently been established under the *Labour Relations Code* and separate from the LRB. Other tribunals or administrative agencies dealing with employment issues may be established in the future. It should be possible to combine one or more of these bodies with an employment standards tribunal to achieve operational efficiencies.

The Commission recommends that either party to a decision by the Ministry under the *Act* should have the right of appeal to an Employment Standards Tribunal. The Tribunal should be composed of a chair, a registrar, a number of part-time adjudicators located in major population centres in the province and a number of part-time members representative of the interests of employers and employees. Most decisions should be heard by single adjudicators, but the Tribunal chair should have the authority to strike three-person panels to hear cases when appropriate. All decisions of the Tribunal should be in writing and be readily available to interested persons. Decisions should be issued within 15 calendar days of the end of a hearing. Adjudicators should have the authority to issue interim decisions within 24 hours of the conclusion of a hearing and should issue full written decisions within 21 days of the conclusion of a hearing. Adjudicators should be knowledgeable about the principles and jurisprudence of the *Act*.

The Commission received communications from employers who were outraged by what they saw as the presumption of guilt implicit in Section 12(4) when they were required to pay the Ministry before their cases were reviewed. Some small employers found the requirement financially onerous. Some orders under this Section can be substantial, and even large employers could find the requirement burdensome. The purpose of this section is to defray the costs of appeals. However, no charge is levied against employees who appeal. Employers are sometimes uneasy when the Ministry represents the interests of employees who are seeking payment, but that is an integral part of the enforcement process. Charging employers who wish to take advantage of their legal rights gives both the appearance and reality of bias and should be eliminated. Other recommendations in this Report on enforcement should eliminate appeals filed for the purpose of delaying payment of monies owing to employees, so there is even less justification for continuing the system of deposits for appeals.

The Commission recommends that the requirements in Section 12(4)(b) of the *Act* be eliminated if the Ministry is given additional powers of enforcement.

For employment standards cases, it is desirable to keep the role of the courts to a minimum. Experience with the current *Act* has

been that the courts are not particularly interested in hearing employment standards cases and the parties find the experience intimidating. In recent years, the courts have deferred more frequently to specialized administrative tribunals, because of their expertise. It is important that the Employment Standards Tribunal outlined above be accorded the same respect as other administrative tribunals. Appointment of a skilled chair and adjudicators will do much to establish the credibility of the Tribunal. However, the law should reinforce its authority as much as possible. The role of the courts should be limited to judicial review on issues of general law. The Labour Relations Code contains provisions that limit the role of the courts to such matters and should provide a useful model for the *Employment Standards Act*.

The Commission recommends that the *Employment Standards Act* state that the decisions of the Employment Standards Tribunal are final and binding. Provisions for judicial review should be governed by principles similar to those found in Part 9 of the *Labour Relations Code*. In particular, the *Act* should state that the Tribunal has the authority to decide a list of specific issues arising under the *Act*, to interpret the *Act*, to permit the registrar to dismiss an appeal before a hearing. In addition, the law should encourage the parties to settle a complaint with the registrar before the completion of a hearing.

VII. TERMINATION OF EMPLOYMENT

Termination of employment was, unfortunately, a topic raised before the Commission frequently. No doubt the state of the provincial economy focused the attention of employers and employees alike on this subject. There were, however, relatively few suggestions for change in the present system governing the termination of individual employees. Group terminations (defined as 50 persons or more), which appear to be much less common, attracted greater attention.

Individual Termination

The protections under the *Act* for employees who are terminated on an individual basis are relatively straight forward. The intent of the *Act*, in keeping with Canadian legal tradition, is that the employer should give notice to its employees of their impending termination. The law requires an employer to give 2 weeks' notice of termination to all employees who have completed 6 months' service. The 2 week entitlement remains until an employee has completed 3 years of service, when it rises by one week for each year of service to a maximum of 8 weeks. If an employer terminates an employee without giving the statutory notice period, then it must pay severance pay equal to the notice period.

These protections do not apply in the following circumstances: when employees are discharged for cause; when an employee is engaged on a temporary basis with the option of rejecting offers of employment; when employees are employed for a definite term or for specific work to be completed in twelve months; when an employee has been offered and refused alternative employment; when the contract of employment is impossible to perform due to unforeseen circumstances. These exceptions all apply in circumstances when notice is inappropriate.

There are special problems with layoffs. The *Act* defines temporary layoffs as not exceeding 13 weeks in a period of 20 weeks. If a temporary layoff exceeds the statutory length, the employee is deemed to have been terminated and becomes eligible for severance pay. Ministry staff have the authority to issue variances for the entitlement provisions when supplemental unemployment benefits are payable or if for some reason, an extension is required.

Bill 65 established special conditions for layoffs under a collective agreement. Employees covered by a collective agreement who are laid off may choose to claim statutory severance payments or to maintain their recall rights. In effect, employees may make that election at any time within 13 weeks and claim their severance pay. Under Section 44.1(5), employers must pay the Ministry severance pay due to employees, to be held in trust while employees decide to retain their recall rights or accept the severance pay. Under some collective agreements, recall periods extend for months, and employers raised the issue of interest that would accrue on funds in trust.

Section 10 of the Regulation exempts teachers, employees of British Columbia Railway Company and persons employed in construction from the termination provisions of the *Act*.

The Commission received submission from a number of groups suggesting that the schedule of payment was illogical. The minimum period of six months for any entitlement is longer than most employers require as probation. The benefits then do not increase until the employee has completed three years of service, so the principle that rights to severance pay should increase with length of service is not observed. Other briefs proposed that the Ministry be given the right to order the reinstatement of employees who are discharged without cause. Employers expressed concern about the impact of the new provisions in Section 44.1, which cover layoffs under collective agreements. Although the intent of the law is that an employer is required to pay severance pay only if notice is not given, the current wording refers only to layoffs, not notice of layoffs. A few employers outside of the construction industry who rely upon hiring halls wondered if the severance pay provisions would cover them when their employees were laid off and returned to their hiring halls. The Commission received a brief from a group of construction unions requesting removal of the exemption for their industry, a suggestion employers rejected vigorously.

The current entitlements to severance pay compare favourably with all other jurisdictions in Canada. No province requires payments greater than 8 weeks, and three require 10 years' service by the employee to reach that level. Four provinces and the federal jurisdiction provide for eligibility after three months. After reviewing the evidence presented, the Commission concluded that modifications to the present schedule of

severance payments should be based on the principle that payments should increase with length of service.

The Commission recommends that employees become eligible for severance pay after the completion of three months of service in the following amounts: one week's pay after three months; two weeks' pay after one year; an additional one week's pay for each additional year of service to a maximum of eight weeks' pay after eight years of service.

Following considerable reflection, the Commission decided against recommending that the Ministry be given the authority to reinstate workers who are discharged without cause. Other recommendations in this Report will enhance the security of employees who complain about violations of the *Act*, or claim other rights under it. Information collected by Statistics Canada revealed that 73 per cent of all employers in the province have fewer than 5 employees. Another 18 per cent have between 5 and 19 employees. (*The Small Business Sector in British Columbia, 1990*). Reinstatement of discharged employees in businesses of that size would impose a burden on both parties. In those jurisdictions (Canada, Quebec and Nova Scotia) where reinstatement is available, it is used only half of the cases in which the neutral determines that an employee was discharged unjustly. To make this remedy effective, much closer supervision of workplace practices by Ministry officials would be required (Christie, *et al.* 1993; Trudeau, 1991). Since many of these cases would arise in very small nonunion employers, enforcement would be especially difficult.

The current language covering layoffs under collective agreements is unclear. The general intent of the law that employers can substitute notice for severance pay is not stated explicitly in Section 44(1). In addition, there is room for confusion on the combination of notice periods required by the *Act* and periods, if any, required by collective agreements. The *Act* is intended to contain basic rights available to all workers (with a few specific exceptions). When unions and employers agree to go beyond the entitlements in the law, as they often do, then the rights under the collective agreement should prevail if the collective agreement meets the standards of Section 2(2) of the *Act*.

The Commission recommends that employers who are parties to collective agreements have the right to give notice of layoffs in lieu of severance payments.

The *Act* does not specify who receives interest accrued by trust funds controlled by the Ministry to cover potential claims from employees. These funds really belong to employers, so they should receive this interest.

The Commission recommends that interest earned on funds held by the Ministry in trust for severance payments either be paid to the employer responsible for paying the funds or be applied to severance pay paid from the trust.

Section 43(b) of the *Act* may well cover employers who are not in the construction industry and rely upon hiring halls to recruit employees. Never the less, the language of that section of the *Act* is open to several interpretations and should be clarified.

The Commission recommends that the *Act* state that employers and employees who rely on hiring halls for the short-term dispatch and recall of workers should not be covered by the termination provisions currently in Section 42.

Current exclusions from the termination provisions of the *Act* reflect the realities of the industries affected. Majority sentiment in these industries is to leave the exclusions in the Regulation. In all cases, the exclusions reflect special conditions of these groups. The Commission respects the parties' views and does not recommend any change in the status quo.

Group
Termination

The provisions of the *Act* covering group terminations attracted considerable attention, especially from employers in resource industries. Some of this attention occurred as a result of the passage of Bill 65, which focused attention on the subject, even among employers who had no experience with the previous requirements in the law. It also appears that there has been some confusion in the administration of these provisions prior to Bill 65.

The group termination provisions of the *Act* in Part 5.1 were originally directed at plant closures, especially in small resource communities where the shutdown of a major employer has especially serious effects on employment. These objectives are quite different from those covering individual terminations. Thus, the group termination requirements come into effect when an employer intends to terminate the employment of 50 or more employees within a 2 month period. In that case, the employer is required to give notice to the Minister of Labour, each employee whose employment is to be terminated and any union representing the employees affected. There are provisions for a joint employer/employee adjustment committee to eliminate the need for layoffs or to mitigate the impact of the terminations on the employees affected. The Job Protection Commissioner, created under another statute, may intervene to assist the committee in accomplishing its objectives.

The original intent of the notice period was to permit these adjustment processes to operate. Thus, length of the notice depends on the size of the closure, not the seniority of the employees affected, since the impact on communities increases with the size of the closure. Notice periods start with 8 weeks for groups between 50 and 100 and rise to 16 weeks for groups exceeding 300 workers. This notice is in addition to the greater of any notice to which employees are entitled under the terms of their collective agreements or the notice for individual terminations required by the law, which are based on the employee's length of service. The provisions of the *Act* governing individual terminations under collective agreements also apply to group terminations, so that employees have the option for 13 weeks of choosing severance pay or recall rights.

Severance pay comes due only when an employer fails to give notice. In practice, notice under this Part has been "working notice", i.e, notice given to employees while they remain at work. If an employer is unable or unwilling to give notice, it becomes liable for severance pay in lieu of notice, whether or not the employee has obtained other employment. If an employee who receives notice continues to be employed after the expiry of the notice, the notice is "without effect".

Exceptions to the application of Part 5.1 are parallel to those for individual termination. They include discharge for cause, arrangements whereby an employer can request that an employee work for a temporary period and the employee has

the option of rejecting the request, persons employed for a definite term or for a specific work to be completed in less than 12 months, when the contract of employment is impossible to perform because of unforeseen events, persons employed in the construction industry, persons who have been offered and refused alternative employment under a seniority system, persons terminated because of seasonal closures and persons on layoff who have refused alternative employment.

Several employer representatives pointed out that Part 5.1 contains no definition of “layoff”. It is a characteristic of unionized resource industries in particular that employees may be subject to layoff for extended periods of time, and the length of these periods is often uncertain when the operation shuts down or reduces the scale of its operations due to market conditions. This is a very different situation from the total shutdown for which 5.1 was designed. Moreover, the law is unclear about the connection between notice and severance pay.

The forest products industry explained that normal seasonal layoffs may be extended by market conditions or government restrictions on the cutting of timber. The industry sought an exemption in the statute for such events, which are caused by government action, not the market or other external forces.

The current wording of Part 5.1 does not allow extensions of layoff notices. The Commission received evidence that, after having given notice to their employees under Part 5.1, employers were able to continue operating longer than the period of the notice. In addition, it may be difficult for the employer to identify all of the employees who will be laid off in cases of partial shutdowns. Employees’ exercise of bumping rights will affect some of the individuals who actually lose their jobs. As it now stands, the law does not permit exceptions to the notice requirements. A strict reading led some employers to speculate that they would have to issue second termination notices immediately after the expiration of the first one.

The law does not anticipate short-term hiring situations. For instance, the Commission learned of an employer who wished to add a third shift to take advantage of what it believed was a temporary market condition. It was not appropriate to hire a labour force for a fixed period of time, since changes in the market were unpredictable. Employers in this situation are discouraged from hiring additional workers because of the possible liability under Part 5.1.

Section 49.9 of the law states that employees who accept severance pay after termination have in effect abandoned any right of recall to their place of employment. While that principle is logical, there are multi-employer agreements in the province that give employees terminated by one employer the right to claim a position at another operation owned by the same employer or a different firm.

There were perhaps more comments on the “stacking” of notice periods under the individual and group termination provisions than any other matter relating to termination. Employers objected to having to give notice or severance pay under the individual termination provisions of Part 5 of the *Act*, in addition to the notice requirements for group terminations in Part 5.1 of the *Act*. Some briefs on this point were reactions to Bill 65, which called these matters to the attention of many employers which had no experience with group terminations. In fact, Section 49.1(1) of the *Act*, which was not affected by Bill 65, states that severance requirements for group terminations are “in addition to the requirements of Section 42” (which governs individual terminations), so Bill 65 did not create “stacking”. In fairness to the employer representatives who raised this point, it appears that there was some confusion in the administration of this provision prior to 1993, and some employers may have been told that the two entitlements did not combine with each other.

Many of the problems arising from the interpretation and administration of Part 5.1 of the *Act* could be addressed by better defining the conditions when that part should operate. When shutdowns of the type originally contemplated by Part 5.1 occur, there should be no doubt of the ultimate result — jobs will disappear completely. The prolonged layoff is more difficult. Acting in the best faith, the parties may not be sure when or if a long layoff will become in effect a shutdown. Market conditions or other circumstances can force the employer to close an operation during a layoff. Conversely, collective agreements in the province provide for recall rights that may last as long as 24 months. The parties obviously anticipated that temporary layoffs might last that long. In practice, however, when there are long layoffs without firm plans for resumption of operations by smaller firms, the employer is normally facing bankruptcy. As the *Act* has operated in the past, a declaration of group termination, invokes the severance pay requirement as a declaration of a group termination. Since a working notice is not

possible, severance pay is due, although it may be difficult to collect.

Section 41 of the *Act* contains definitions of “severance pay”, “temporary layoff”, “terminate” and “week of layoff”. In the interests of consistency, these basic elements of these definitions should be imported into the part of the *Act* that deals with group terminations. The effect of this change would be to define a termination as either the employer’s decision to sever the employment relationship or a layoff of more than 13 weeks. However, there will be circumstances under which the parties are aware that a 13 week layoff does not imply the closure of an operation. The law should provide flexibility to deal with these situations, normally with the support of the joint employer/employee adjustment committee and the Job Protection Commissioner. Thus, after 13 weeks of a layoff, the employer should be required to give notice that there is no immediate prospect of resuming operations or seek approval from the Ministry for a notice that gives an estimate when the layoff will end. At the same time it is important to prevent employers from using a layoff to disguise their intentions of shutting an operation down completely.

The Commission recommends that the *Act* define “termination” and “temporary layoff” for purposes of group termination in the same terms as currently found in Section 41 of the *Act*. Further the Commission recommends that the Ministry have the authority to extend the 13-week limit of temporary layoffs when there is a clear indication that the employer has a reasonable prospect of resuming operations at the location affected by the termination notice. Notice periods for termination should run from the expiry of the temporary layoff. Employees on layoff when the notice of termination is issued should not suffer any loss of rights compared to employees who receive immediate notification of termination.

When the shutdown does not affect all of an operation, which appears to be more common than the complete closure, there may be doubts about the identities of some of the workers affected, due to bumping procedures, early retirements, normal attrition and the like. Thus it is logical that the law give some flexibility to employers in their determination of the individual workers who will be affected by the reduction in the employer’s operations.

The Commission recommends that the *Act* give the Ministry the authority to extend the notice period for employees affected by group terminations upon application from the employer, to facilitate an orderly reduction or closure in the employer's operations.

The situation of short-term hiring should be addressed through the variance procedure. The intent of the *Act* is not undermined by giving employers the right to hire employees for a relatively short time without incurring liabilities based on the termination of longer-run employment relationships. However, these variances should be limited in their duration, to prevent efforts to escape the intent of the law by extending "short term" hiring.

The Commission recommends that the Ministry have the authority to grant variances to employers who hire 50 or more employees on a short-term basis, provided that these variances should expire no later than one year after their issuance.

The intent of the *Act* is that employees who accept severance pay have abandoned their right to reemployment by the same employer. In a number of industries, there are industry-wide agreements which entitle employees who are laid off from one employer to bid for positions in another employer covered by the same collective agreement. This practice can displace employees of another employer or limit the possibilities for advancement there.

The Commission recommends that employees who accept severance pay are deemed to have abandoned reemployment rights with their employer and with other employers covered by the same collective agreement as their employer.

There is confusion in the minds of the parties about the relationship between notice and severance pay. The *Act* should state in the case of group termination that the intent of the part is to provide employees with notice of termination and that severance pay becomes payable only when notice is not given.

The Commission recommends that the *Act* state that employers are required to pay severance pay when they do not fulfil part or all of the requirements to give notice.

The special circumstances of the forest products industry should not be addressed in the statute, but may warrant attention through the Regulation or a variance. The industry's concern is that the government may cause group terminations when it reduces the Annual Allowable Cut for a region of the province. A matter specific to a single industry should not be addressed in the statute. Because it does have implications for an entire industry, the issue should be addressed by Cabinet through an exemption, using the process for granting exemptions outlined elsewhere in this Report. If the issue arises in a particular workplace, then a variance may be in order, using the procedures recommended in this Report.

The Commission recommends that the Ministry have the authority to issue a variance for the provisions for group termination to deal with circumstances in which the terminations are caused by action of the government.

The Commission notes that the exemption for the construction industry is in the Regulation for individual termination and in Section 49.2(e) of the *Act* for group terminations. That inconsistency should be corrected. The Commission notes that this exclusion is very broad. Many workers in the construction industry work on a short-term basis and the industry is organized around intermittent employment. Workers are often compensated in their wages for the employment insecurity they face. On the other hand, workers in some branches of the industry are not paid for insecurity and construction employers may retain a core of permanent employees between projects. As the law and Regulation now stand, these employees are not covered by the termination provisions. In the course of eliminating the inconsistency of treatment of construction workers in the *Act* where it covers terminations, the government may wish to examine the specific circumstances of that industry and grant more specific exemptions in accord with the recommended procedures.

VIII. DIRECTORS' AND OFFICERS' LIABILITY

Section 19 of the *Act* makes directors and officers of corporations personally liable for up to two months' unpaid wages, to include vacation pay and severance pay. In cases of bankruptcy, the obligation does not extend to severance pay and Section 19(2) contains other exceptions. Directors' and officers' liability is most important if corporations are in or near bankruptcy. When companies are in that circumstance, assets seldom are large enough to meet all creditors, so the law sets out priorities among different claimants. The *Bankruptcy Act*, a federal statute, assigns a high priority to secured creditors, especially financial institutions. If that statute runs its course, normally very few assets remain to pay employees when a company goes into bankruptcy. Section 19 is an effort by the provincial government to protect employees' wages, even when their employer is in financial difficulty, by putting pressure on directors and officers to ensure that employees are paid as they work or that monies are set aside for this purpose. Similar provisions exist in most other provinces. (The Regulation exempts directors and officers of charities who receives no remuneration except for "reasonable out of pocket expenses" for their services).

The Commission received numerous representations from business groups concerning directors' liability. The issue gained added prominence when an official of the Ministry issued an order against three directors for several million dollars while the Commission's hearings were under way. In the months before the Commission was appointed, the directors of other prominent companies in the province resigned rather than face the personal consequences of liability under this *Act*.

While putting payment of employees high in the priorities for the division of assets of a failed corporation is a laudable policy objective, Section 19 also raises obvious problems. Directors and officers of corporations may have exerted their very best efforts to save the business and to ensure that employees received their wages, but failed for reasons beyond their control. Persons who cannot be faulted for their efforts might then face personal financial loss or even ruin as a result of the application of Section 19. Faced with this prospect, able directors, especially

those with experience in reviving companies in danger of failure, may decline to serve on boards of directors. Thus firms most in need of expert management may be deprived of the best qualified persons who might help them, although consultancy agreements between companies and potential directors can alleviate this problem. Officers of corporations are themselves employees, and they may not be in a position to influence financial decisions to protect other employees' interests.

The law also creates a conflict between the normal common law obligation of a director or an officer to act in the best interest of the shareholders and the obligation to protect the interests of employees. For example, it may be in the interests of the shareholders not to pay employees' wages and treat the funds as an interest-free loan from the employees. Such an action would, however, violate the obligation in Section 19.

While the resignation of directors from a number of high-profile companies focused attention on Section 19, the Commission also heard that the provision works very well in the overwhelming majority of the cases in which it functions. Most of these cases involve small firms, in which the directors and the officers have an active role in the business and are often principals. Millions of dollars are collected through formal action by the Ministry, and substantial amounts are paid to workers in anticipation of collection efforts by the Ministry under the authority of Section 19. The value of Section 19 should be viewed in the light of other liabilities of directors.

Apart from Section 19 of the *Employment Standards Act*, there are numerous statutes imposing liabilities on directors. Typically, however, these liabilities depend on some failure by a director to act in the manner expected of a director. For example, directors must act in the best interests of the company, act honestly and in good faith, exercise the care diligence and skill expected of a reasonably prudent person. Under the *Company Act*, directors who fail to meet these tests may be liable for their actions or the consequences of their behaviour. To offset these liabilities, the law establishes defenses for directors, i.e. actions they may take to establish that they have carried out their duties properly. Other statutes regulating taxes, environmental protection and bankruptcy impose liabilities on directors when they act inappropriately. By contrast, Section 19 does not require that

a director or officer have failed in any obligation to establish the liability, and there is no defense available to directors under the *Act* to relieve them of their liabilities.

A suggestion frequently presented for dealing with these problems was amendment to the *Bankruptcy Act*. Unfortunately, the federal government has responsibility for that legislation under the Constitution, so there is really nothing this Commission can do. The provincial government can urge the federal government to raise the priority of wages in the distribution of assets in the *Bankruptcy Act*, but the Commission was also informed that such lobbying in the past has been ineffective, even when several provincial governments joined to attempt to persuade the federal government to act.

A second suggestion presented was to amend Section 19 to incorporate the defense of “due diligence” to insulate officers and directors from the authority of the Ministry to collect back wages. In other words, directors and officers who exercised due diligence should not be held liable for unpaid wages.

In theory, this concept is appealing. Directors and officers who do everything within their power (according to some standard) to ensure that employees are paid or that the company avoids bankruptcy are protected against claims against their personal assets if their efforts fail. However, the concept of due diligence raises some difficult problems of its own.

There is no general definition of “due diligence” in law. Each statute must establish its own standard of what constitutes due diligence as a defense to relieve directors of the liability established elsewhere in a law. It follows that if the *Employment Standards Act* exempted directors and officers from the liability for unpaid wages when they exercised due diligence, the *Act* would also have to set out what constituted due diligence and how directors and officers could establish that their actions met that test. For the sake of consistency in public policy, standards in this *Act* should be the same or comparable to those in other statutes. However, most other statutes, such as the *Company Act*, exist to protect shareholders, in whose interests directors must act. But the *Employment Standards Act* exists to protect the interests of workers, so there would be two conflicting obligations in separate statutes. How should the law differentiate

between the obligations to the shareholders in most commercial legislation and the duty to employees in employment standards legislation? Many corporations affected by Section 19 are small, with directors who are also substantial shareholders in the firm. How could a director who is also a part owner of a corporation reconcile his or her interests as an owner with the obligation of a director also to ensure that employees received their wages? Would directors who are not shareholders or not substantial shareholders be treated differently?

Administrative problems also arise from the due diligence defense. Decisions to defer payment of wages are likely to be controversial. The due diligence test typically provides a director with the defense of opposition to a policy that led to the liability. Should directors who voted against a decision to defer payment of wages or not to hold back funds to pay employees be exempt from liability? Some representatives from the employer community suggested that officers and directors be relieved from any liability if the company's failure occurs as a result of circumstances beyond the ability of the directors to control. This defense might cover a range of possibilities — decline in world markets, loss of significant customers due to poor business conditions elsewhere, changes in exchange rates and the like. While these events may be beyond the power of a director to influence, it is within the power of directors to arrange a corporation's affairs to ensure that employees are paid should certain unexpected events occur. How, in the context of employment standards, could the behaviour of directors be judged. Adoption of the due diligence test would mean that officials of the Ministry who have a background in employment relations would be put in the position of deciding the wisdom of business decisions. To guide them, it would be necessary to establish detailed standards for directors' conduct in the law or in Ministry policy, a substantial intrusion into what are essentially the private affairs of business organizations. A tribunal with expertise in both corporate law and practices and employment law would be required to oversee these decisions.

For these reasons, the Commission does not recommend any changes to Section 19.

The Commission sought legal advice on possible alternatives to the present system of collecting employees' wages in bankruptcy,

including Section 19. Shortly before the completion of the review, the Commission received advice that it may be possible under the Constitution for the province to enact legislation that would give employees' wages secured status in a bankruptcy, based on precedents in the *Builder's Lien Act*. It was not possible to explore this suggestion fully, and there is some doubt about the constitutional status of such legislation. The issue is an important one, however, and should be pursued by the Ministry and other ministries with interests in this subject.

The Commission recommends that the government seek to enact legislation that would give employees' unpaid wages the status of secured creditors in case of the bankruptcy of the employer.

IX. STRUCTURE OF THE ACT

In the course of this review, the Commission found that the structure of the *Act* was illogical and difficult to follow. A relatively simple matter such as the order in which subjects are presented can contribute to the understanding of a statute or impede such understanding, which is the case with this law now.

Having examined the present text and considered numerous amendments, the Commission concluded that the following structure would assist the parties in using the *Act*. This structure assumes that the recommendations in this Report will be accepted and thus must be somewhat tentative.

Part 1 Introductory Provisions

Definitions
Purpose of the *Act*

Part 2 Hiring Employees

all requirements that deal with no false representations, farm labour contractors, employment agencies, domestics (drafters may decide some of this should be in Regulation), special apparel, etc.

Part 3 Hiring Children

all requirements for obtaining permits for child employment.

Part 4 Payment of Wages

all requirements for payment of wages, wage statements, employer records, deductions, assignments, etc.

Part 5 Minimum Wage

all requirements for the payment of minimum wage and the review of minimum wage, etc. The rates would be outlined in the Regulation.

Part 6 Hours of Work

all requirements for hours of work including compressed work weeks, minimum daily pay, split shifts, eating periods, overtime pay, etc.

Part 7 Annual Vacations

all requirements for annual vacation.

Part 8 Statutory Holidays

all requirements for statutory holidays.

Part 9 Leaves

all requirements for maternity, parental, bereavement, family and jury duty leaves.

Part 10 Termination of Employment

all requirements for individual termination of employment.

Part 11 Group Termination of Employment

all requirements for termination of employment for more than 50 workers.

Part 12 Filing Complaints

all requirements for filing complaints.

Part 13 Investigating Complaints

all requirements for investigations, including issuing Confirmations of Decisions and collection processes etc.

Part 14 Penalties

all requirements for penalties to be paid.

Part 15 Appealing Decisions

all requirements for appealing a decision of the Ministry, to the Employment Standards Tribunal.

Part 16 Exemptions and Variances

principles and processes outlined for exemptions and variances of the *Act*.

Part 17 General Provisions

include provisions such as the current provisions covering the right to take legal action, sale of businesses, extraprovincial certificates, service of notices, etc.

X. MISCELLANEOUS

Maternity Leave
(Section 52)

This Report has not discussed Part 7 of the *Act*, Maternity and Parental Leave, largely because the protections it contains appear to be adequate and comparable to those available in other jurisdictions. However, Section 52 should be addressed. Section 52 gives the employer the right to force an employee to start her maternity leave when the employee cannot perform her duties because of pregnancy and to continue her leave of absence until the employee provides a medical certificate that she is able to perform her duties. The intent of this Section is obvious, but the authority it grants is totally out of step with the prevailing climate in the province. It is open to an employer to reassign an employee who is unable to perform normal duties for any reason, including illness or temporary disability. Similarly, an employer has the right to refuse employment to an employee who is unable to carry out assigned duties for any reason. The law should operate on the assumption that employees and employers will adapt to temporary changes in conditions of work and employees. It is unnecessary and patronizing to single out pregnant women in this fashion, and existing text may well contravene the Charter of Rights and Freedoms. This Section should be repealed.

The Commission recommends that Section 52 of the *Act* be repealed.

Industrial
Camps

The Commission received information about conditions in camps provided for workers in the silviculture, logging and oil exploration industries. According to labour representatives, living conditions in some camps can be inadequate and occasionally unhealthy. In the case of the oil exploration industry, the Commission heard of cases when no camps were provided. Workers slept in their vehicles to avoid long drives to and from the nearest town.

While the Commission was working, the Workers' Compensation Board (WCB) was considering the issue of industrial camps. A committee of employer and worker

representatives drafted regulations covering health and safety in such camps. It recognized that enforcement was a problem. The Ministry of Health now has jurisdiction to inspect camps for their compliance with the *Health Act*, but seldom exercises its authority. No statute now requires employers to provide camps. The WCB Board of Governors has asked the government to transfer authority to inspect camps for compliance with its regulations. The Governors also suggested to the Commission that the *Employment Standards Act* be amended to require employers to provide camps for workers in remote locations.

When this issue was placed before the Commission, there were vigorous protests from the forest products industry. In essence, the employers pointed out that they had once provided camps, especially in their coastal logging operations, but found these arrangements unsatisfactory for a variety of reasons. They have negotiated many different agreements with the unions representing the workers in these camps to relieve them of the need to maintain camps. Were the *Act* to require camps in all circumstances, employers would face the prospect of re-establishing these facilities after having paid to relieve themselves of that obligation.

The Commission is persuaded that most unions in this province have negotiated adequate camp facilities for their members. Also, there are real problems with requiring workers to live in camps or giving them the choice an allowance to compensate them for the lack of normal accommodations. Obviously, it would be unacceptable for an employer or the law to require workers to live in a particular facility.

Under these circumstances, a blanket requirement that camps be provided at this time is inappropriate. Most of the problems with industrial camps seem to arise in the silviculture industry, an ironic circumstance. This industry operates either under contract with the Ministry of Forests or with private companies which hold permits to cut timber on Crown lands. The competitive bidding system the government has established for silviculture contractors leads to unhealthy and unsanitary conditions for employees of these contractors. If the problem of industrial camps is to be resolved, the logical place to start is with the government's own forest management policies. When the government lets a contract for tree planting, it can require that the contractor provide a camp meeting the WCB standards when the location of the contract work makes that measure

appropriate. The government can also use its influence with private forest products companies to ensure that adequate living facilities are available for silviculture workers.

Evidence from other industries is troubling but mixed. The Commission has concluded that camp facilities are inadequate in some circumstances, but the extent of this problem outside of silviculture is unclear. An appropriate solution would be to authorize the Ministry to require camps when the circumstances dictate, *i.e.*, when a pattern exists of inadequate or nonexistent living areas for workers in remote areas. Government has used its power as the owner of resources or the purchaser of services to effect social policies in other areas. The Ministry could receive evidence on these conditions and issue an order subject to appeal under the system recommended in this Report. This system should enable the Ministry to respond to abuses when they exist without disturbing existing arrangements negotiated by the parties.

The Commission recommends that the Minister of Skills, Training and Labour notify the Minister of Forests of the existence of inadequate industrial camps in the silviculture industry and request that contracts for silviculture require that camps meeting WCB standards be provided when the work location requires such a facility. The Commission also recommends that the Ministry have the authority under this *Act* to require employers to provide camps on a site specific basis after receiving evidence of conditions and requirements for camps.

Apparel

Section 35.1 of the *Act* governs special apparel. For some reason, it was placed in the Part of the *Act* that covers hours of work. Obviously, the provision should be placed in a more appropriate location in the revised *Act*. Two administrative problems have come to the Commission's attention. Many items of work apparel are suitable for washing in an employee's home with items of personal laundry. When the employer and the employees agree, the most simple means for dealing with special apparel is for the employees to take responsibility for laundering the garments in return for a fee paid by the employer. As the Section now reads, this can only be done through a variance. No such variances were requested in 1991-1992, but the Commission

believes that the practice is common without use of a variance. These reasonable practices should be recognized by the law.

The Commission recommends that the provisions of the *Act* regulating special apparel be amended to permit an employer to reimburse employees for the cost of laundering or performing other maintenance on special apparel. These arrangements should be made with the agreement of a majority of the employees affected. Employers should be required to maintain records of the agreement of employees and the amounts paid for inspection by officials of the Ministry.

The Commission learned that some retail clothing stores require sales persons to wear clothing sold in the store as a condition of employment. At present, there is some doubt whether this clothing would be “special apparel” as the phrase is used in the *Act*. The intent of Section 35.1 is clear — to ensure that employees who are required to wear clothing as dictated by the employer, but not including a general dress code, should be reimbursed for the purchase of the clothing. Requirements that employees wear a particular brand of clothing as a condition of employment falls squarely within this intent, and the *Act* should cover such requirements.

The Commission recommends that the provisions of the *Act* covering “special apparel” should apply when an employer requires employees to wear a specified brand of clothing while at work.

Child
Employment

Part 6 of the *Act* prohibits employment of a child under the age of 15 without permission of the Ministry. When requests reach the Ministry, the staff investigate the conditions of the job for possible impacts on the health or safety of the child and consult with school officials if the work is to be performed during the school year. When appropriate, the Ministry consults with the Public Trustee for advice before granting variances. Slightly more than 500 requests for variances were received in 1991-1992, but there was no way to determine in which industries or locations they occurred.

Problems around the employment of children were raised mainly in connection with the entertainment industry. Unions representing artists and performers urged greater regulation of the incomes of child performers, not all of whom are covered by collective agreements. These organizations were concerned that parents or guardians might capture the incomes of child performers, leaving these persons without the financial benefits of their work and talent when they were able to look after their own affairs. The State of California has a comprehensive statute, known as the Coogan Act. This law was named after Jackie Coogan, a very successful child actor in silent films who was left without any savings when he could no longer accept children's roles because his parents and other adults had spent his earnings. Performers' unions in this province urged the enactment of a law modelled on the Coogan Act.

The Commission is unwilling to recommend major changes to the *Employment Standards Act* without convincing evidence that abuse is occurring or is very likely to occur. Moreover, the present policies of the Ministry seem adequate to guard against most abuses, although some modifications may be appropriate. Changes in the role and functions of the Public Trustee are now in progress. The Ministry should ensure that its policies protect the interests of child performers, whose earnings can be substantial at a very young age. It should consult with the Office of the Public Trustee concerning the protections necessary for child performers.

The Commission recommends that the Ministry consult with the Office of the Public Trustee to ensure that its policies are adequate to protect the interests of child performers.

Payment of
Wages

Section 6 of the *Act* requires employers to pay wages in one of three forms: cash, a cheque or by direct deposit to an employee's account. Section 7 sets out the conditions under which an employer may withhold a portion of an employee's wages for payment to a third party, i.e. a trade union, a charity, a pension plan, a person to whom the employee is required to pay maintenance under the *Family Maintenance Enforcement Act*, and an insurance company. Proposals to amend these provisions were made by a number of employers, and the provincial

government in its capacity as an employer. An issue has arisen in several collective bargaining relationships in which the parties agreed to direct deposit of wages. As Section 6 now stands, the employer must obtain an authorization from each employee, and an employee is presumably free to refuse the authorization, thereby frustrating the bargain between the employer and the employee's union. In other situations, the parties in bargaining have negotiated changes to fringe benefit plans that require additional contributions by employees. Again the law now requires the employer to obtain written authorization from each employee.

The prevailing system of collective bargaining anticipates that a union should be the sole representative of employees in a bargaining unit for which it holds a certificate or voluntary recognition. This system provides adequate protection to employees against improper payment of employees' wages or improper deductions from their wages.

The Commission recommends that Sections 6 and 7 of the present *Act* be amended to permit employers to deposit wages to an employee's bank account and assign a portion of an employee's wages to a third party pursuant to a collective agreement negotiated with a trade union as defined in the *Labour Relations Code*.

Similarly, Section 11(1) of the *Act* requires the employer to provide each employee with a written statement of wages for each pay period. By and large there is no difficulty with this provision, but some employers have requested the right to provide that information electronically, with the proviso that an employee can request that the information be furnished in written form. This request recognizes the increasing importance of the transmission of information electronically and should be incorporated in the *Act*.

The Commission recommends that Section 11(1) of the *Act*, be amended to permit an employer to furnish employees with statements of wages for a pay period in an electronic format, but that an employee or an employee's trade union acting on behalf of a member has the right to request and receive a written statement of wages.

The intent of Section 7 is to prevent employers from unilaterally deducting monies from employees' wages without their permission. It has come to the Commission's attention that some employers are evading the purpose of Section 7 by giving employees invoices for breakage and the like. Were these charges to be deductions, they would violate Section 7, but they are now legal under the *Act*. This loophole should be closed.

The Commission recommends that the *Act* prohibit employers from charging employees for the employer's business costs.

Employer
Payroll Records

There are six sections in the *Act* and Regulation which require employers to keep records. These are Sections 10 Employer Records, 40 Vacation Records, 65 Records, Farm Labour Contractors, 78 Records, Employment Agencies, and Sections 2 and 6 of the Regulation, Records for Resident Caretakers and Records for General Holidays. A constant criticism heard by the Commission during the review process was the complexity of the statute and the difficulty in understanding all one's rights and responsibilities because of the way the *Act* is structured. One of the objectives of this Report is to make recommendations that make the *Act* more simple and understandable. Employers' obligations for keeping records do not need to be scattered throughout the *Act*. The requirements should be no greater than necessary to administer the *Act* effectively. The only new requirement on employers is to maintain adequate records for the accumulated time off provisions.

The Commission recommends that there be one section in the *Act*, possibly with the Payment of Wages, which outlines all the requirements for maintaining employee records. This should include but not be limited to the following information:

- employee's name, occupation, social insurance number, residential address,
- wage rate, (hourly, salary, commission or piece rate)
- hours worked each day (hourly, salary, commission or piece rate),
- benefits paid by employer,
- each deduction made and the reason for it,
- statutory holidays, dates taken and the amounts paid,
- annual vacation, dates taken and the amounts paid,
- accumulated time off, hours earned, the amounts owing, dates taken and the amounts paid,
- gross and net wages for the pay period.

Payroll records should be in English, maintained in the Province at a principal place of business, for a period of at least three years.

Ministry officials charged with the authority to enforce the *Act* informed the Commission of the difficulty at times in securing payroll records or corporate records. Although Section 97 allows the Ministry to acquire records, there is no incentive for an employer or an employer's representative to cooperate. This frustrates the investigation process.

The Commission recommends that Ministry officials be given powers in the *Act* to assist them in acquiring payroll or corporate records deemed necessary to conduct a thorough investigation. In addition, employers or employers' representatives who refuse to cooperate with the Ministry officials' requests for records should be subject to the penalty provisions of the *Act*.

Review of the
Act

This review uncovered literally scores of problems with the existing *Act*, although as the Introduction to this Report observed, there was a high level of satisfaction with the system of regulating employment standards. Many of the problems raised, the readability and structure of the statute, the ability of

employers and employees to decide to move the date when a public holiday would be observed, for instance, were not particularly controversial. Yet these flaws remained for over a decade. Presumably, these situations persisted because no previous government wanted to do a thorough review of the *Act*, and it was difficult to address relatively minor features of it without opening up the whole subject to review.

The *Act* is inherently complex and affects many citizens, so it is understandable that governments should be hesitant to amend it frequently. However, the history of this law is that needless difficulties arise for employers and employees because of the infrequent amendments to it. No law can force a government to act against its will. Nonetheless the situation of the past 10 years could have been alleviated by amendments to the statute. A review could raise issues needing attention for consideration by the government of the day, without implying that the entire statute needed examination. For instance, if even a minority of the recommendations in this Report are accepted, there will be wholesale changes in the statute. Despite the best efforts and intentions of the drafters and political decision makers, it is likely that some fine tuning in the wording of the legislation will be necessary 1 or 2 years after the new law is passed. A review process would be a useful way to accomplish that task.

The review process should include consultation with the employer and employee communities and the commissioning of studies if necessary. The result of the review should be submitted to the Minister with the understanding that it would be made public after the government studied it. The government and the Legislature could decide if recommendations for change should be made.

The Commission recommends that the *Act* contain a provision for review of the statute at least every three years. The review should include consultations with the employer and employee communities. The chair of the review process should not be from either community. The results of the review should be presented to the Minister responsible for the *Act* and made public after the Minister and Cabinet have considered it.

XI. TRANSITION

It was not possible in this Report to deal with all of the issues raised in connection with the review of employment standards. Some issues not discussed in this Report were valuable, but time to pursue them was not available. Other suggestions were not accepted for a variety of reasons.

This Report touches on most major subject areas now in the *Act*, but not on all sections of the *Act*. As a rule, those sections in the *Act* which are not addressed in this Report were found to be satisfactory. When legislation is drafted, they can be incorporated into a revised statute with only the changes in tone and style mentioned in the Introduction to the Report. Several topics raised in the discussion document, *Standards for a Changing Workplace* were not addressed in this Report.

The discussion document suggested that the *Act* might include protection of employees against harassment. It asked if employers should be required to have policies forbidding harassment under this statute or another one. A large number of briefs supported the suggestion. However, there were virtually no concrete examples of the benefits of such a provision in the *Act*. Other briefs opposed adding a subject to this law already covered in other legislation. The most common forms of harassment, that based on gender or ethnic group, is covered in the *Human Rights Act*. No suggestions were offered on the way that this statute could or should cover other forms of harassment. Following the principles that recommended changes should address problems identified in British Columbia workplaces and that the *Employment Standards Act* should not include subjects already included in other statutes, no recommendation on harassment in connection with this review is included.

Another subject in the discussion document was protection of “whistleblowers”, i.e., persons who report an employer’s violation of a law. Once again, many briefs supported this idea, but there was not one example offered of an employee in this province who suffered loss of a job or other discrimination for being a whistleblower. The most common example of whistleblowing seems to be violation of regulations to protect

the environment. Most citizens probably would agree that no one, especially an employee, should suffer reprisals for reporting violations of environmental legislation. However, environmental protection legislation normally includes such protections. Based on the principle that this legislation should not duplicate protections found in other statutes, no recommendations on whistleblowing were made.

Many employers suggested that employees be required to give notice of resignation, to parallel an employer's obligation to give notice of termination. There is a balance to this suggestion, but no one suggested a means of enforcing the obligation. To withhold an employee's pay for the period when notice was not given seemed too severe, even to some employers when asked by the Commission. Proponents of this policy could not point to another employment standards law with such a requirement. The Commission was reluctant to impose an obligation which is fundamentally unenforceable. Therefore, no recommendation was made on this subject.

The Commission received a number of reports of violations of the *Act* by silviculture contractors. These violations seem to originate in the contracts let by the Forest Service and licensees responsible for reforestation. Workers are paid on a piece rate basis, but the Forest Service or licensee holds back part of its payment until the quality of work can be inspected. Inspection may not take place for two or three months, so payment of full wages may be delayed at least that long. Contractors circumvent the law by establishing "bonuses" to be added to payments based on the minimum wage after they receive full payment from the Forest Service or licensee. Other contractors apparently adjust "camp fees" to avoid paying by the requirements of Section 4 of the *Act*. It was alleged that contractors deduct "quality fines" or other sums from employees' wages because of alleged deficiencies in their work, a practice forbidden by Section 7.

The Commission concluded that these violations do not require statutory amendment, but notes that their ultimate cause is policies of the provincial government. It appears that the zeal of the Forest Service to plant as many trees as possible for the lowest price causes these violations. The Commission calls the attention of the government to this situation. The Commission urges the Minister to bring this matter to the attention of the

Minister of Forests. The government has used its economic power in other areas to improve the condition of employees. In this case, that power seems to be undermining working conditions, and such practices should not be tolerated.

The Commission received briefs from both the British Columbia Railway Company and two unions representing a proportion of its employees. Taken together, several sections of the Regulation exempt some or all employees of the Railway from parts of the *Act* which regulate hours of work and individual terminations. The unions sought removal of the exemption covering hours of work, while the employer argued that it should be retained. The parties agreed that a number of the occupations described in Section 9(1)(o) of the Regulation are obsolete and should be removed in any case.

These briefs were filed in the midst of a labour dispute between the parties. Ultimately, the dispute was resolved while the Commission was engaged in its review. In general terms, the Commission was unwilling to become involved in a labour dispute, especially between two parties with a long-standing collective bargaining relationship. The changes sought by the unions would have altered the balance of bargaining power between the parties. For the near future, the parties' collective agreement will deal with hours of work.

The Commission's recommendations concerning variances and exemptions pointed out that an exemption should not cover employees of a single employer. Exclusions from part of the *Act* for them should be by way of a variance. Therefore, British Columbia Railway employees should be subject to a variance, if they are to be excluded from coverage by the hours of work provisions of the law. Since the parties have concluded their collective agreement, they will have the opportunity to deal with this issue through procedures established under other recommendations in the Report prior to the expiration of that collective agreement.

In total, the Commission's recommendations on exemptions from the *Act* will remove most of these. However, no information was received on several groups, including persons employed in the oil industry, policemen(sic), fire fighters, commercial travellers, counsellors/therapists for the disabled, truck drivers, motor cycle operators, cookhouse employees, miners working

underground and first aid attendants. Therefore no recommendations were made on these groups. Submissions were received from employers of fishing and hunting guides, instructors in charity camps and British Columbia Ferry Corporation, all requesting that existing exemptions be retained. Except for the Ferry Corporation, there was no evidence that the employees were consulted about their views on the exemption.

None of these exemptions is illogical on its face, and the lack of recommendations about them should not be interpreted as meaning that the exemptions should be removed. The recommendations for variances and exemptions in this Report set out procedures for the re-examination of exemptions. These procedures could be applied to the remaining exemptions after proper consultation with interested parties.

APPENDIX 1

DATES AND LOCATIONS EMPLOYMENT STANDARDS REVIEW TOUR

Date	Location
August 30, 1993	Vancouver, B.C.
August 31, 1993	Terrace, B.C.
September 8, 1993	Nanaimo, B.C.
September 9, 1993	Campbell River, B.C.
September 10, 1993	Victoria, B.C.
September 11, 1993	Victoria, B.C.
September 13, 1993	Abbotsford, B.C.
September 15, 1993	Kamloops, B.C.
September 16, 1993	Kelowna, B.C.
September 22, 1993	Cranbrook, B.C.
September 23, 1993	Nelson, B.C.
September 25, 1993	Dawson Creek, B.C.
September 27, 1993	Prince George, B.C.
September 29, 1993	New Westminster, B.C.
October 7, 1993	Vancouver, B.C.

APPENDIX 2

APPENDIX 3

MINIMUM WAGES AS A PERCENTAGE OF AVERAGE WEEKLY EARNINGS 1983-1992

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992*
Federal	37%	35%	34%	37%	37%	36%	34%	32%	30%	30%
Nfld.	41%	39%	41%	40%	39%	39%	38%	36%	38%	39%
P.E.I.	48%	47%	45%	46%	45%	43%	45%	43%	44%	43%
Nova Scotia	44%	42%	43%	42%	41%	39%	42%	40%	39%	41%
New Brunswick	44%	41%	40%	40%	40%	39%	40%	41%	40%	42%
Quebec	43%	41%	40%	40%	42%	42%	42%	42%	42%	42%
Ontario	42%	41%	39%	38%	40%	39%	39%	39%	40%	43%
Manitoba	45%	43%	45%	44%	45%	46%	43%	42%	42%	42%
Saskatchewan	46%	45%	45%	46%	45%	45%	43%	45%	43%	44%
Alberta	36%	36%	35%	35%	35%	36%	39%	37%	34%	37%
B.C.	35%	35%	34%	34%	36%	38%	38%	40%	38%	41%

* 1992 figure is calculated based on AWE figures for July 1992.

APPENDIX 4

COMPARISON OF MINIMUM WAGE WITH B.C. INDUSTRIAL WAGE AND AVERAGE WEEKLY EARNINGS

Year	Minimum Wage	Under 18 Years	B.C. Industrial Average Hourly Wage*	Average Weekly Earnings†	CPI B.C. 1986=100‡	CPI VCR 1986=100‡
1970	1.50			121.99		31.3
1971	1.50			134.91		32.4
1972	2.00	1.60		146.04		34.1
1973	2.25	1.85		157.73		36.4
1974	2.50	2.10		177.36		40.8
1975	2.75	2.35		203.45		45.4
1976	3.00	2.60		229.59		49.7
1977	3.00	2.60		251.36		53.3
1978	3.00	2.60		266.52	59.2	57.4
1979	3.00	2.60		289.41	62.2	61.9
1980	3.40	2.85		321.58	68.0	67.7
1981	3.65	3.00		360.09	77.7	77.3
1982	3.65	3.00		394.06	85.9	85.5
1983	3.65	3.00	12.18	419.91	90.5	90.2
1984	3.65	3.00	12.28	428.47	94.2	93.8
1985	3.65	3.00	12.56	441.29	97.1	96.8
1986	3.65	3.00	12.41	443.57	100.0	100.0
1987	4.00	3.65	12.63	456.68	103.0	103.1
1988	4.50	4.00	12.89	467.32	106.7	106.8
1989	4.75	4.25	13.66	497.77	111.5	111.5
1990	5.00	4.50	14.01	514.65	117.6	117.6
1991	5.00	4.50	14.77	534.88	123.8	123.7
1992	5.50	5.00	15.15	549.09	127.2	127.4
1993	6.00	5.50				

* Average Hourly Earnings: Gross pay earned by employees whose wages are calculated on an hourly basis. Includes overtime pay, but excludes supplementary income (i.e., Employer's contributions to UIC, medical, etc.)

† Average Weekly Earnings: Gross pay as defined above but includes all salaried, piece work, and commission-earning employees in addition to weekly and hourly-rated wage earners.

‡ Consumer Price Index (CPI): An indicator of changes in consumer prices. It measures the percentage change in the cost of purchasing a constant "basket" of goods and services, which is representative of the purchases made by a particular population group in a specified time period.

Source: "British Columbia Earnings and Employment Trends," Data Dissemination, Ministry of Finance and Corporate Relations. Their source is Statistics Canada.

BIBLIOGRAPHY

- Akyeampong, Earnest B. and Jason Siroonian (1993). "Work Arrangements of Canadians: an overview", *Perspectives on Labour and Income*, Vol. 5, No. 3.
- Akroyd, Colin (1993). "Minimum Wage: Trends and Effects", Province of British Columbia, Ministry of Labour and Consumer Services, Policy and Legislation Branch.
- Adams, Roy J. (1987). "Employment Standards in Ontario: An Industrial Relations Systems Analysis", *Relations Industrielles*, Vol. 42, No. 1.
- British Columbia Ministry of Finance and Corporate Relations. *B.C. Stats*. Various numbers.
- British Columbia Ministry of Labour and Consumer Services (1992). *Negotiated Working Conditions, 1991*.
- Canadian Federation of Independent Business (1992). *The Small Business Sector in British Columbia — 1990*. Toronto: CFIB.
- Carson, Rob (1991). *Statistical Review of the British Columbia Labour Market*. Victoria: B.C. Task Force on Employment and Training, 1991.
- Christie, Innis, Geoffrey England and Brent W. Cotter (1993). *Employment Law in Canada*. 2d. ed. Toronto: Butterworths.
- Coates, Mary Lou (1988). *Part-Time Employment: Labour Market Flexibility and Equity Issues*. Kingston: Industrial Relations Centre, Queen's University.
- Cousineau, J.-M., David Tessier and François Vaillancourt (1992). "Unemployment of Women and the Young in Ontario: A Note, the Impact of the Ontarian Minimum Wage", *Relations Industrielles*, Vol. 47, No. 3.
- Economic Council of Canada (1991). *Employment in the Service Economy*. Ottawa: Ministry of Supply and Services.
- Ehrenberg, Ronald G. (1992). "Symposium Introduction", *Industrial and Labor Relations Review*, Vol. 46, No. 1, pp. 3-5.
- Ernst & Young (1992). "The Impact of Proposed Minimum Wage Increases on the Restaurant and Foodservice Industry". Toronto: Ernst & Young.
- Gunderson, Morley, Leon Muszynski and Jennifer Keck (1990). *Women and Labour Market Poverty*. Ottawa: Canadian Advisory Council on the Status of Women.
- Higgins, Christopher, Linda Duxbury and Catherine Lee (1992a). "An examination of work-time and work-location flexibility", *Optimum*, Vol. 23, No. 2.
- Higgins, Christopher, Linda Duxbury and Catherine Lee (1992b). "Balancing Work and Family: A Study of Canadian Private Sector Employees". London, Ont.: The University of Western Ontario, Western Business School, National Centre for Management Research and Development.

- Krahn, Harvey (1991). "Non-standard work arrangements", *Perspectives on Labour and Income*, Vol. 3, No. 4.
- Scott, Donna E. (1993). "Youth Employment: The Legal Issues and the Realities of the Workplace", unpublished manuscript, Faculty of Education, Simon Fraser University.
- Siroonian, Jason (1993). *Work arrangements*. Ottawa: Ministry of Supply and Services.
- Statistics Canada (1992). *Earnings of Men and Women, 1991*. Ottawa: Ministry of Supply and Services.
- Statistics Canada (1993). *Employment Income by Occupation, September 1993*. Ottawa: Ministry of Supply and Services.
- Statistics Canada (1993). *The Labour Force, Annual Averages, 1992*. Ottawa: Ministry of Supply and Services.
- Taras, Daphne (1992). "The Duty of Accommodate Disabled Employees", *Relations Industrielles*, Vol. 47, No. 4.
- Trudeau, Gilles (1991). "Is Reinstatement a Remedy Suitable to At-Will Employees?", *Industrial Relations*, Vol. 30, No. 2, pp. 302-315.
- Vaupel, Suzanne (n.d.). *Growers' Decisions to Hire Farm Labor Contractors and Custom Harvesters*. Davis, CA: University of California, Division of Agriculture and Natural Resources.
- Wallace, Joan (1983). *Part-time Work in Canada: Report of the Commission of Inquiry into Part-time Work*. Ottawa: Minister of Supply and Services Canada.
- Workers' Compensation Board of British Columbia (1992). "Perspectives on Coverage of Agricultural Workers", Richmond: WCB.