EMOND HARNDEN
LABOUR & EMPLOYMENT LAW
DROIT DU TRAVAIL ET DE L'EMPLOI

ESA amendments receive Royal Assent

January 1, 1997

Bill 49, the government's package of amendments to the *Employment Standards Act*, received Royal Assent on October 31, 1996. The bill has not yet been proclaimed into law. There are relatively few changes from the version we reported in the September 1996 issue of *FOCUS* (see "Changes to *Employment Standards Act* imminent" on our Publications page), but two are worthy of mention.

The first is the dropping of the controversial provision that would have permitted unions and employers to negotiate their own standards for hours of work, severance pay, overtime pay, public holidays and vacation pay. These standards would have prevailed over those set out in the Act, but only if the negotiated standards, viewed as a package, conferred greater rights than those provided in the Act. As was noted in *FOCUS*, because a negotiated package consisted of different types of standards, it was unclear how it would be determined whether that package exceeded the statutory minimum.

The other change involves the power of arbitrators hearing complaints of unionized employees concerning alleged breaches of the Act. Originally, Bill 49 provided that such arbitrators had the power to make any order that could be made by an employment standards officer, adjudicator or referee.

This has been clarified somewhat in the later version of the amendments. Now, arbitrators' powers are linked to specific provisions in the Act under which orders can be made. 64.5(6) As well, the amendments now specify that when an employer's director is liable for wages owing under Part XIV.2 of the Act, an arbitrator hearing the complaint may make an order against the director, but only if the latter is given notice of the hearing and a chance to participate. Any order that is made against a director by an arbitrator must be one that could have been made under the Act in the absence of the collective agreement. 64.5(7), (8)

A further restriction on the arbitrator's jurisdiction has been added. If a question arises as to whether the employer under the collective agreement and another entity are one employer under s. 12(1), the related or successor employer provision, the arbitrator cannot make a decision on this issue. The arbitrator must notify the Director of Employment Standards that the issue has arisen, and this notice is to be deemed the filing of a complaint by the person who initiated the arbitration. An order made under this provision may exceed the $10,000. limit applied to most orders for unpaid wages under the Act. As in the case of directors, any order made against an entity determined to be part of a single employer must be one that could have been made under the Act in the absence of the collective agreement. 64.6 (For more recent developments, see "Red Tape Commission urges key amendments to Ontario employment statutes" on our Publications page.)