

**INTERNATIONAL ASSOCIATION OF JUDGES  
4TH STUDY COMMISSION: ABIDJAN  
28-31 OCTOBER 2002  
WORKING CONDITIONS OF CHILDREN**

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Canada is a signatory to the U.N. Convention on the Rights of the Child (“the Convention”) which came into force on September 2, 1990.

The Convention specifically addresses the issue of child labour in *Article 32*:

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

As with other countries, Canada’s legislation pertaining to child labour may be classified into three categories:

- 1. Minimum age(s) for work and permissible hours of work;
- 2. Compulsory schooling; and
- 3. Health and safety, specifically as it relates to dangerous work.

**1. Has Your Country Provided for Legislation or Protective Measures Concerning Children at Work?**

Canada is a federation of 10 provinces and three territories. As a consequence, its laws on this subject are made by the Federal (National) government within its constitutional authority and by the Provinces within their constitutional authority. We have used the example of British Columbia, although each province will have passed similar legislation. Canada and British Columbia both have legislative provisions that aim to protect children at work. However, since British Columbia is presently revamping its legislation, both the current regime and the upcoming amendments are outlined below.

Furthermore, in addition to the provisions set out below, both the *Canada Labour Code* and the British Columbia *Employment Standards Act* set standards on various issues that apply equally to children as well as adults. These standards cover issues including: hours of work, wages, statutory holidays, vacation and vacation pay, sexual harassment, health and safety rules, various forms of leave, and overtime hours and pay.

**CANADA**

Canada Labour Code, R.S.C. 1985, c. L-2

**167.** (1) This Part [e.g. ss.178–179] applies

- (a) to employment in or in connection with the operation of any federal work, undertaking or business, other than a work, undertaking or business of a local or private nature, in the Yukon Territory, the Northwest Territories or Nunavut;
- (b) to and in respect of employees who are employed in or in connection with any federal work, undertaking or business described in (a);
- (c) to and in respect of any employers of the employees described in (b);
- (d) to and in respect of any corporation established to perform any function or duty on behalf of the Government of Canada other than a department as defined in the *Financial Administration Act*; and to or in respect of any Canadian carrier, as defined in section 2 of the *Telecommunications Act*, that is an agent of Her Majesty in right of a province.

**s.179.** An employer may employ a person under the age of seventeen years only

- (a) in an occupation specified by the regulations; and
- (b) subject to the conditions fixed by the regulations for employment of that occupation.

**s.178.** (1) Except as otherwise provided by or under this Division, an employer shall pay to each employee a wage at a rate

- (a) not less than the minimum hourly rate fixed, from time to time, by or under an Act of the legislature of the province where the employee is usually employed and that is generally applicable regardless of occupation, status or work experience;

(2) For the purposes of paragraph (1)(a), where minimum hourly rates for a province are fixed on the basis of age, the minimum hourly rate for that province is the highest of those rates.

Canada Labour Standards Regulations, C.R.C., c. 986

**10.** (1) An employer may employ a person under the age of 17 years in any office or plant, in any transportation, communication, maintenance or repair service, or in any construction work or other employment in a federal work, undertaking or business if

- (a) he is not required, under the law of the province in which he is ordinarily resident, to be in attendance at school; and
- (b) the work in which he is to be employed
  - (i) is not carried on underground in a mine,
  - (ii) would not cause him to be employed in or enter a place that he is prohibited from entering under the *Explosives Regulations*,
  - (iii) is not work as an atomic energy worker as defined in the *Atomic Energy Control Regulations*,
  - (iv) is not work under the *Canada Shipping Act* that he is prohibited by reason of age from doing, or
  - (v) is not likely to be injurious to his health or to endanger his health or to endanger his safety.

(2) An employer may not cause or permit an employee under the age of 17 years to work between 11 p.m. on one day and 6 a.m. on the following day.

Canada Shipping Act, R.S.C. 1985, c. S-9

**s.273.** (1) Subject to this section, no person under fifteen years of age shall be employed in any vessel.

(2) This section does not apply to a vessel in which only members of one family are employed.

(2.1) Subsection (1) does not apply to special purpose personnel on board a special purpose ship.

(3) No person under eighteen years of age shall be employed or work as a trimmer or stoker in any vessel except

- (a) in a school ship or training ship where the work is of a kind approved by the Minister, and is carried on subject to such supervision as the Minister may approve; or
- (b) in a vessel that is mainly propelled otherwise than by means of steam.

(4) Where in any port a trimmer or stoker is required for any vessel and no person of or over the age of eighteen years is available to fill the place, a person over the age of sixteen years may be employed as trimmer or stoker, but in any such case two persons over the age of sixteen years shall be employed to do the work that would otherwise have been performed by one person of or over the age of eighteen years.

(5) There shall be included in every agreement with the crew a short summary of subsections (3) and (4).

(6) No person under eighteen years of age shall be employed in any capacity in any vessel unless there has been delivered to the master of the vessel a certificate granted by a duly qualified medical practitioner certifying that the person is fit to be employed in that capacity.

(7) A shipping master or consular officer may on the ground of urgency authorize a person under eighteen years of age to be employed on board a vessel notwithstanding that a certificate granted under subsection (6) has not been delivered to the master of the vessel, but the person in whose case an authorization is given under this subsection shall not be employed beyond the first port at which the vessel calls after that person has embarked thereon, unless subsection (6) has been complied with.

...

(9) There shall be included in every agreement with the crew of a sea-going Canadian ship entered into under this Act a list of the persons under eighteen of age who are members of the crew, together with particulars of the dates of their birth, and, in the case of a ship in which there is no agreement with the crew the master of the ship shall, if persons under eighteen years of age are employed thereon, keep a register of those persons with particulars of the dates of their birth and of the dates on which they become or ceased to be members of the crew, and the register so kept shall at all time be open to inspection.

Explosives Regulations, C.R.C. c.599

Part VII: Factories for Explosives

**s.80.** A person under the age of 16 years shall not be employed in or enter any danger building except in the presence and under the supervision of some responsible person over the age of 21 years.

Part VIII: Magazines for Explosives

**s.101.** A person under the age of 16 years shall not be employed in or enter any danger building, except in the presence and under the supervision of some responsible person over the age of 21 years.

**BRITISH COLUMBIA**

Employment Standards Act, R.S.B.C. 1996, c.113

**s.3.** (1) Subject to this section, this Act applies to all employees other than those excluded by regulation.

**s.9.** (1) A person must not employ a child under age 15 without the director's permission.

(2) A parent or guardian must not consent to a person employing a child under age 15 unless the person has obtained the director's permission.

(3) On permitting the employment of a child under age 15, the director may set the conditions of employment for the child.

(4) An employer must comply with the conditions of employment set under subsection (3).

**s.16.** An employer must pay an employee at least the minimum wage as prescribed in the regulations.

Conditions for Employment of Children in the Film, Television and TV and Radio Commercial Industry

Section 9 of the *Employment Standards Act* authorizes the Director to set the conditions of employment for each child under the age of 15 who is granted permission for employment. Pursuant to the authority under s.9, the Director of Employment Standards has developed minimum conditions for child employment in the film, television, and television and radio commercial industry in British Columbia. The conditions address the following areas:

- Safety and welfare of child
- Role of parent or guardian
- Infants
- Hours of work for children
- Education
- Child's coordinator
- Protection of income

For example, no child shall be required to work in a situation that places the child in danger to life or limb, is unsafe or unhealthy, or if the child or parent/guardian has an honestly held belief that the child is in such a situation. Unsafe situations may include stunts or work with animals. Where children are to perform in scenes that depict child abuse, nudity or carnal acts, the parent or guardian must be consulted and a qualified mental health professional must be made available to help the child prepare for his or her role. No child may work seven days in one week and, depending on the child's age, there are specified hours in each day for work, breaks and schooling.

Bill 48, *Employment Standards Amendment Act*, 3<sup>rd</sup> Sess., 37<sup>th</sup> Parliament, British Columbia, 2002, section 64  
(Passed 3<sup>rd</sup> reading on May 30<sup>th</sup>, 2002 – s.64 expected to be in force via regulation in October 2002)

In short, the effect of the amendments is that individual child permits no longer will be required. For children under the age of 15, conditions of employment will be established in the regulations and by the Director of Employment Standards. Except for prescribed industries (e.g. film and television), the employment of children under the age of 12 will be prohibited.

Employment Standards Regulation, B.C. Reg. 396/95

**s.15.** (1) Subject to sections 16 to 18, the minimum wage is \$8.00 an hour.

(2) Despite subsection (1), the minimum wage is \$6.00 an hour for an employee who

- (a) has no paid employment experience before November 15, 2001, and
- (b) has 500 or fewer hours of cumulative paid employment experience with one or more employers.

School Act, R.S.B.C. 1996, c.412

**s.1.** “*school age*” means the age between the date on which a person is permitted under section 3(1) to enroll in an educational program provided by a board and the end of the school year in which the person reaches the age of 19 years;

**s.2.** A person is entitled to enroll in an educational program provided by the board of a school district if the person

- (a) is of school age, and
- (b) is resident in that school district.

**s.3.** (1) Subject to subsections (2) and (3), a person who is resident in British Columbia must

- (a) enroll in an educational program
  - (i) provided by a board,
  - (ii) in the case of an eligible child, provided by a board or a francophone education authority, and
  - (iii) in the case of an immigrant child, provided by a board or, if the child is permitted to enroll with a francophone education authority under section section 166.24, provided by that francophone education authority,

on the first school day of a school year if, on or before December 31 of that school year, the person will have reached the age of 5 years, and

- (b) participate in an educational program provided by a board or, in the case of an eligible child or an immigrant child, by a board or a francophone education authority until he or she reaches the age of 16 years.

(2) A parent of a child referred to in subsection (1)(a) may defer the enrollment of his or her child until the first school day of the next school year.

(3) This section does not apply if the person

- (a) is attending an independent school, a Provincial school or an educational institution operated by the government of Canada or by a band as defined in the *Indian Act (Canada)*, or
- (b) is registered under section 13.

**s.12.** A parent of a child who is required to enroll in an educational program under section 3

- (a) may educate the child at home or elsewhere in accordance with this Division, and
- (b) must provide that child with an educational program.

**s.13.** (1) A parent of a child who is required under section 12 to provide the child with an educational program must register the child on or before September 30 of each year with

- (a) a school of the parent’s choice that is operating in the school district in which the parent resides,
  - (a.1) if the child is an eligible child, a school referred to in (a), (b) or (c), or a francophone school of the parent’s choice that is operating in the francophone school district in which the parent resides,
- (a) if the child is an immigrant child, a school referred to in (a), (b) or (c), or a francophone school district in which the parent resides but only if the francophone education authority responsible for that school permits the parent to register the child,

- (b) a distance education school providing services to the school district in which the parent resides or with the minister if no distance education school provides services to that district, or
- (c) an independent school operating in British Columbia.

## 2. What are the Applicable Sanctions in Cases of Breach of Children's Rights at Work?

### CANADA

#### Canada Labour Code, R.S.C. 1985, c. L-2

s. 256. (1) Every person who

- (a) contravenes any provision of this Part or the regulations, ...,
- (b) contravenes any order made under this Part or the regulations, or

...

is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

#### Canada Shipping Act, R.S.C. 1985, c. S-9

s.273. (10) Every person who contravenes this section is guilty of an offence and liable to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months or to both.

### BRITISH COLUMBIA

#### Employment Standards Act, R.S.B.C. 1996, c.113

s.79. (1) If satisfied that a person has contravened a requirement of this Act or the regulations, the director may require the person to do one or more of the following:

- (a) comply with the requirement;
- (b) remedy or cease doing an act;
- (c) post notice, in a form and location specified by the director, respecting
  - (i) a determination, or
  - (ii) a requirement of, or information about, this Act or the regulations;
- (d) pay all wages to an employee by deposit to the credit of the employee's account in a savings institution;
- (e) employ, at the employer's expense, a payroll service for the payment of wages to an employee;
- (f) pay any costs incurred by the director in connection with inspections under section 85 related to investigation of the contravention.

(4) The director may make a requirement under subsection (1), (2) or (3) subject to any terms and conditions that the director considers appropriate.

s.98. (1) If the director is satisfied that a person has contravened a requirement of this Act or the regulations..., the director may impose a penalty on the person in accordance with the prescribed schedule of penalties.

(2) If a corporation contravenes a requirement of this Act or the regulations, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the contravention is also liable to the penalty.

(3) A person on whom a penalty is imposed under this section must pay the penalty whether or not the person

- (a) has been convicted of an offence under this Act or the regulations, or
- (b) is also liable to pay a fine for an offence under section 125.

(4) A penalty imposed under this Part is a debt due to the government and may be collected by the director in the same manner as wages.

**s.125.** (1) A person who contravenes a requirement of Parts 2 [e.g. s.9] to 8 commits an offence.

(2) If a corporation commits an offence under this Act, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the commission of the offence commits an offence.

(3) Subsection (2) applies whether or not the corporation is prosecuted for the offence.

(4) Section 5 of the *Offence Act* does not apply to this Act or the regulations.

**s.126.** (4) The burden is on the employer to prove

- (a) that an employee is age 15 or older, ...

*Employment Standards Regulation, B.C. Reg. 396/95*

**s.29.** (1) In this section, "specified provision" means a provision or requirement listed in Appendix 2.

[A "specified provision" in Appendix 2 includes the following provisions in the *Employment Standards Act*: s.9(1), s.9(3), s.9(4) and s.16.]

(2) The penalty for contravening a specified provision of a Part of the Act or of a Part of this regulation is the following amount:

- (a) \$0, if the person contravening the provision has not previously contravened any specified provision of that Part;
- (b) \$150 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of that Part on one previous occasion;
- (c) \$250 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of that Part on 2 previous occasions;
- (d) \$500 multiplied by the number of employees affected by the contravention, if the person contravening the provision has contravened a specified provision of that Part on 3 or more previous occasions.

...

(4) Despite subsection (2), the penalty is \$5,000 for contravention of the special provision respecting section 9 (4) of the Act if the contravention relates to the employment of a child under 15 years of age in

- (a) the motion picture industry,
- (b) the television industry, or
- (c) the television or radio advertising industry.

*School Act, R.S.B.C. 1996, c.412*

**s.13.** (4) A person who contravenes subsection (1) commits an offence.

[See *Offence Act*, R.S.B.C. 1996, c.338, ss.2 and 4:

s.2. An offence created under an enactment is punishable on summary conviction.

s.4. Unless otherwise specifically provided in an enactment, a person who is convicted of an offence is liable to a fine of not more than \$2,000 or to imprisonment for not more than 6 months, or to both. ]

**Are There Any Recent Cases in Your Country on Violation of Children's Rights at Work?**

There do not appear to be any recent cases in Canada involving the violation of the rights of children at work.

**3. Specify Concrete Measures Likely to Improve Conditions of Children at Work in Your Country.**

No such measures are currently contemplated.