Review of
Special Project Order Legislation
in Newfoundland and Labrador

James C. Oakley
February 29, 2012

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Honourable Terry French
Minister Responsible for the
Labour Relations Agency
Government of Newfoundland and Labrador
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Dear Mr. French:

It is my pleasure to submit for your consideration my Report, "Review of Special Project Order Legislation in Newfoundland and Labrador".

I trust that my observations and recommendations will assist Government in its review of the legislation to ensure there is adequate flexibility to meet the needs of Special Project Orders, and to provide for a stable labour relations environment.

Best wishes for your deliberations on these significant issues.

Yours very truly,

James C. Oakley
JCO/sgp
Enclosure

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1. Executive Summary

The stakeholders in Newfoundland and Labrador are supportive of Special Project Orders for major projects in the construction industry. The experience with the five Special Project Orders issued since 1990 has been generally positive. The advantages of Special Project Orders include the following: (1) labour peace and stability is assured for the project, as the no strike/no lockout provision in the special project collective agreement is in effect for the duration of the project; (2) special project collective agreements can incorporate terms such as aboriginal employment and gender diversity programs, and terms required by Development Agreements; and (3) the same terms of employment, such as work schedules, may be applied to all trades persons employed on the project. The stability of special projects attracts investment to the Province and promotes economic development.

To ensure that Special Project Order legislation provides the flexibility to respond to upcoming major projects, which may include the Lower Churchill Project and future mining and offshore oil projects, the Consultant recommends amendments to the *Labour Relations Act*. It is recommended that a special project may be prescribed by either scope of work or geographic site, and the requirement to have a geographic site should be removed from the definition of "special project". Also, to provide flexibility, the length required for a special project should be reduced from "3 years" to "2 years" in the definition. Further, the reference to "ancillary work, services and catering" should be removed from the definition, but may be prescribed as part of the Special Project Order when appropriate.

The Consultant does not recommend a statutorily mandated role for the Construction Labour Relations Association of Newfoundland and Labrador ("CLRA"). The project proponent should decide how it wishes to exercise control and manage the risk of the project. The CLRA has valuable expertise, and project proponents should be encouraged to provide the CLRA with a meaningful role in the negotiation and administration of project collective agreements.

The Consultant recommends that the legislation permit Special Project Orders that overlap temporally and geographically. This may be achieved in a way that provides flexibility and labour stability, by clearly describing the scope of work of a project, and by excluding a scope of work or geographic site of another project from a Special Project Order.

The Consultant recommends that alternate tenants at the Bull Arm site be permitted by using Special Project Orders that overlap. Changes to the legislation are recommended to clarify the terms of overlapping Special Project Orders used for this purpose.

Other issues considered by the Consultant included the availability of alternate trade union models for special projects. The Consultant observes that the *Labour Relations Act* does not require a council of trade unions for a special project, however an amendment is recommended to clarify that a single union may be a party to a Special Project Order.

The Consultant completed an analysis of Special Project Order legislation in other jurisdictions. The Newfoundland and Labrador legislation currently has many desirable features, and the Consultant does not recommend the adoption of any model of legislation used in other jurisdictions.

The Report includes a review of the legislative history of Special Project Order legislation in Newfoundland and Labrador, a description of the Special Project Orders issued in the Province to date, and a summary of comments on Special Project Orders made in prior labour relations reports submitted to Government.

Finally, the Report includes twenty recommendations to provide the necessary flexibility to respond to upcoming major projects and to address other issues in the Terms of Reference.

2. Review Process

The consultant's appointment was announced by the Honourable Terry French, Minister Responsible for the Labour Relations Agency, in a news release dated December 14, 2011.

The Consultant has engaged in an extensive process of consultation with construction labour relations stakeholders. Written submissions were invited from the stakeholders and from the public. Notices were published in newspapers in the Province inviting submissions. The Terms of Reference were posted on the Labour Relations Agency's website. The Consultant met with companies, unions and associations to discuss the Review. The stakeholders were informed that a copy of the submission would be forwarded to the Minister with the Consultant's Report. Written submissions were received from the following:

Construction Labour Relations Association of Newfoundland and Labrador ("CLRA")
Newfoundland and Labrador Construction Association ("NLCA")
Hebron Project Employers' Association Inc. ("HPEA")
Nalcor Energy ("Nalcor")
Resource Development Trades Council of Newfoundland and Labrador ("RDC")
Canadian Association of Petroleum Producers ("CAPP")
Emera Newfoundland and Labrador Maritime Link Inc. ("Emera")
Vale Newfoundland and Labrador Limited ("Vale")
Newfoundland and Labrador Employer's Council ("NLEC")
St. John's Board of Trade

The Consultant viewed the Bull Arm site, currently under the management of Nalcor, and the site of the Hibernia, Terra Nova and Hebron Projects.

The Consultant would like to thank all the participants for their submissions and for their cooperation in the review process. The Consultant also thanks all those who contributed to the research and preparation of the report.

3. Introduction

There is support for Special Project Order legislation for the reasons discussed in the Report. This Report reviews the experience in Newfoundland and Labrador with Special Project Orders, and makes recommendations to ensure that the legislation provides the flexibility to respond to upcoming major projects.

The Consultant's discussion of the issues and recommendations is set out in Section 10 of the Report and the reader of the Report may wish to turn directly to that section. However, the discussion and recommendations are based upon all information considered by the Consultant as described in the Report. The Report first reviews construction industry labour relations in Section 4, and describes how the construction industry is unique compared to other labour relations environments. The history of Special Project Order legislation is reviewed in Section 5, commencing with legislation to approve the Churchill Falls Special Project Order in 1968, and followed by subsequent legislative changes, with commentary as discussed in the House of Assembly and recorded in *Hansard*. Section 6 of the Report describes the Special Project Orders issued in the Province to date. Section 7 of the Report describes comments on construction industry labour relations and Special Project Orders made in reports prepared for Government, commencing with the Maxwell Cohen Royal Commission Report in 1972 and concluding with the Morgan Cooper Consultant Report in 2001. Section 8 of the Report sets out a cross jurisdictional review of Special Project Order legislation in Canada, followed by a review of project labour agreements in the United States. Section 8 includes a summary of the key provisions of the legislation in other jurisdictions that is relevant to the issues considered by the Consultant. Section 9 of the Report provides a summary of the written submissions received by the Consultant with respect to comments on Special Project Orders generally. Section 10 of the Report discusses in detail the issues raised in the Terms of Reference. Finally, Section 11 of the Report lists the recommendations of the Consultant.

4. Construction Industry Labour Relations

4.1 Construction Industry Statistics

The construction industry is a significant contributor to the economy of the Province. Construction industry production, as a percentage of total industry gross domestic product ("GDP") in Newfoundland and Labrador, has varied from 3.5% to 8.6% between 1991 and 2008. In 2008, the most recent year for which this information is available, the construction industry as a percentage of GDP was 4.0% in Newfoundland and Labrador compared to Alberta, the Province with the greatest percentage, at 9.6% and the Canadian average at 7.2%.[1] The statistics from 2008 do not include construction activity at the Long Harbour Special Project, which started in 2009.

The unionization rate of the construction industry in Newfoundland and Labrador in 2011 was 28.6%, compared to the Canadian average of 30.9%. The unionization rate in other Provinces in 2011 varied from 17.5% in Prince Edward Island and 19.1% in Saskatchewan, the two Provinces with the lowest rates, to 29.0% in Ontario and 54.0% in Quebec, the two Provinces with the highest rates.[2]

4.2 Characteristics of Construction Industry Labour Relations

Construction industry labour relations is unique when compared to labour relations in other industries. Construction is dispersed geographically. Contractors and their employees move to the job site, in contrast to an industrial workplace, where the work and the employees remain at the industrial site. A construction project has a start date and an end date. Construction work sites are not permanent locations. The work is sporadic. When one project is completed there is no guarantee that employees will have work on another project. The work may be seasonal, depending on the nature and type of construction. A contractor may have a small core group of employees and hire additional employees, as required, for specific projects. There is

[1] Statistics Canada, CANSIM Table 379-0025.
[2] Statistics Canada, Annual average of employees by union coverage for the construction industry, Canada and Provinces, 1997-2011, CANSIM Table 282-0078.

specialization in work functions. Some contractors are specialized. Work is usually done by tradespersons qualified in their trade. In traditional construction labour relations, union membership is organized by trade. Continuity of employment is provided by the unions who refer their members to employment through union hiring halls. Unions maintain out-of-work lists and refer members to jobs when requested by contractors.[3]

Bargaining units in the construction industry are usually described by trade or craft. Labour Relations Boards may determine that a bargaining unit is appropriate for collective bargaining in the construction industry when it is comprised of employees within a trade, having regard to the traditional jurisdiction of the applicable trade union.[4] Labour Relations Boards may grant certification in the construction industry to an "all employee" unit or "wall to wall" unit, comprising all trades, subject to the legislation and the jurisprudence in each jurisdiction. An "all employee" unit has been certified in this Province for employees working in a sector of the construction industry, such as the "home building" sector, that is not typically organized by craft.[5] In some Provinces, legislation specifically authorizes an "all employee" unit in the construction industry. For example, in Saskatchewan, following a 2010 amendment to its labour legislation, an "all employee" unit was considered appropriate in the construction industry.[6] In the unionized construction workplace, employers are generally dependant on union hiring halls to supply workforce requirements. The availability of referral to work by the union hiring hall makes union membership attractive to construction workers. There is a history of voluntary recognition of unions by employers on a craft union basis. The craft bargaining unit is also consistent with the high degree of contractor specialization in the construction industry.

Another feature of construction industry labour relations, where bargaining is on the basis of craft unions, is that there may be jurisdictional disputes between unions over the assignment of work. Two or more unions may both claim that a particular job belongs to their members. These

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[3] George Adams, *Canadian Labour Law*, Canada Law Book, current to October, 2011, at 15-1 [Adams].
[4] In Newfoundland and Labrador an appropriate bargaining unit includes a unit organized by craft, Section 2 (3) *Labour Relations Act*, RSNL 1990, c. L-1.
[5] *Humber Valley Construction Ltd. and U.B.C.J.A., Local 597*, 2005 CLB 15079 (NLLRB).
[6] Adams at 15-5 and 15-26.

disputes concern which bargaining unit ought to perform the work. The trades unions have an internal plan to settle jurisdictional disputes privately. If the dispute is not settled locally by an umpire, then it may be referred to the Building and Construction Trades Department of the AFL-CIO for resolution.[7] One of the key components of a successful special project collective agreement involving the building trades unions, is that there be an adequate process for resolution of jurisdictional disputes between unions, and that jurisdictional disputes do not cause disruption of the work.

Upon voluntary recognition or certification as a bargaining agent in the construction industry, the union will negotiate directly with the contractor to settle the terms of the collective agreement. There is an exception to this practice where the employer's bargaining rights are held by an accredited employer organization. At one time, it was common for collective agreements to be negotiated by trade unions with each contractor for a particular location or region. The result was fragmentation within the construction industry, with numerous collective agreements between individual craft unions and individual employers.

4.3 Accreditation of Employer Organizations

To address the fragmentation of collective bargaining in the construction industry on the employer side, labour legislation was amended in some jurisdictions to allow for accreditation of employer organizations. Accreditation transfers the right to bargain from the individual employer to the accredited employer association. The concept of accreditation was developed in an essay by Harry Arthurs and John Crispo in 1968.[8] Arthurs and Crispo recommended accreditation as a means to create a more equitable bargaining structure and correct an imbalance in bargaining power between unions and employers. The reasoning was that, on the union side, certification was designed to strengthen union power by imposing an obligation on employers to negotiate in good faith. Accreditation was intended to increase the power of employers collectively, by forcing unions to negotiate with the association of employers, and not with

[7] Plan for Settlement of Jurisdictional Disputes in the Construction Industry, also known as the "Green Book".
[8] H.W. Arthurs and John H.G. Crispo, "Countervailing Employer Power: Accreditation by Contractor Associations", in H. Carl Goldenberg and John H.G. Crispo, eds., *Construction Labour Relations* (1968) Canadian Construction Association.

individual employers. Unions would then be unable to target individual employers for concessions in collective bargaining.[9] Accreditation also has the effect that all unionized employees operating in the sector are subject to the same labour costs and rules.

Accreditation is granted where there is support for the accreditation order by the majority of employers in the sector. There are three different models of accreditation discussed in the literature.[10] One model is the "conservative" approach, in which the collective agreement negotiated by the accredited employers' association is binding only on the members of the association. Another model is the "extreme" approach, in which the collective agreement applies to both unionized and nonunionized employers operating in the same sector of the construction industry. An alternative to the "conservative" and "extreme" models is the "realistic" model, in which a collective agreement negotiated by the accredited association applies to any unionized contractor in the sector, whether or not it is a member of the accredited association. The "realistic" model is the one found in the Newfoundland and Labrador *Labour Relations Act*, RSNL 1990, c. L-1.

The Construction Labour Relations Association of Newfoundland and Labrador Inc. ("CLRA") is the accredited association in this Province for unionized employers in the industrial and commercial sector of the construction industry. The CLRA was accredited by order of the Labour Relations Board in 1976. The effect of the accreditation order is that the CLRA holds bargaining rights for individual employers in the industrial and commercial sector of the construction industry. Any collective agreement negotiated directly by an employer in that sector is void.[11] Collective agreements negotiated by the CLRA are binding on all unionized employers for work in that sector. The collective agreements apply on a province wide basis.

Labour legislation in Newfoundland and Labrador, and in other jurisdictions, provides for accreditation of employers in a particular division or sector of the construction industry. The

[9] Adams at 15-43.
[10] Adams at 15-44 to 15-52.
[11] *Labour Relations Act*, RSNL 1990, c. L-1, Section 64.

sectors established in this Province are (1) industrial and commercial; (2) home building; (3) sewers, tunnels and water mains; and (4) road building.[12] The Labour Relations Board may designate other sectors, but it has not done so to date. There is no employers' organization accredited to date for any sector other than the industrial and commercial sector in Newfoundland and Labrador. For example, in the road building sector, sometimes called the "heavy civil" or "roads" sector, there is no employer organization accredited to negotiate a collective agreement applicable to all unionized employers. Upon certification or voluntary recognition of a union in the "roads" sector, the union and the individual employer may then negotiate the terms of the collective agreement that will apply to work done by that employer in that sector.

Disputes may arise with respect to what sector applies to a particular construction project. The outcome of a sector dispute may be important. When the work is in the industrial and commercial sector, the collective agreement negotiated by the CLRA applies to the work, and individual employers are not permitted to negotiate their own agreement. The Newfoundland and Labrador Labour Relations Board has dealt with sector disputes. To determine the applicable sector, the Board has examined the end product and the end use of the project. For example, in one case,[13] the Board determined that the end product of the Granite Lake Hydro project was a hydro power facility, and the end use of the project was to supply hydro power, which had an industrial and commercial purpose. Therefore the CLRA Collective Agreement applied. In the same case, the Board also determined that construction of the access road could be considered a separate part of the project, outside the industrial and commercial sector, and within the road building sector.[14]

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[12] *Labour Relations Act*, RSNL 1990, c. L-1, Section 54.

[13] *International Association of Bricklayers and Allied Craftworkers, Local # 1 and McNamara Construction Company and Newfoundland and Labrador Building and Construction Trades Council and Construction Labour Relations Association of Newfoundland and Labrador Inc. and Construction General Labourers, Rock and Tunnel Workers, Local 1208* [2002] N.L.R.B.D. No. 19.

[14] For other sector dispute decisions see *International Union of Operating Engineers and Marine Contractors Inc.*, December 17, 2003, and *International Union of Operating Engineers, Local 904 and Construction General Labourers Rock and Tunnel Workers, Local 1208 and Olmec Construction Limited*, June 17, 1988.

Collective bargaining in the accredited sector of the construction industry in Newfoundland and Labrador occurs on a craft union basis. For work in the industrial and commercial sector, the CLRA negotiates with individual building trade unions. In the situation where individual trade unions negotiate separately with the accredited employer association, each union may be reluctant to settle the terms of its collective agreement before the trends for settlement of wages and other terms are established in the industry. Employers may seek to establish uniformity of wage rates for all trades to avoid "leap frogging" of the rates by trade unions who bargain on a single craft basis.[15] To further consolidate construction industry collective bargaining, some jurisdictions require multi-trade bargaining. In those jurisdictions, the building trades unions establish a council of unions and bargain collectively with the employer association. For example, in British Columbia, multi-trade bargaining is encouraged, and it was legislatively mandated between 1998 and 2001. In Alberta there is consolidated bargaining at regular intervals. In other jurisdictions, multi-trade bargaining occurs on a voluntary basis.

4.4 Special Projects and Labour Relations

When there is a special project, collective bargaining may occur on a multi-trade basis between a council of trade unions and an employer representative, usually an owner, principal contractor, employer association, or combination of same. In some jurisdictions, special projects may be designated where there is a collective agreement with a single union for an "all employee" or "wall to wall" bargaining unit. As noted by Paul C. Weiler,[16] it is not surprising that Governments are ready to intervene to facilitate mega-projects. Weiler states that the natural impulse of Government is to try to isolate the mega-project from strike action. The relationship between labour relations for major projects and construction industry labour relations generally will be discussed further in this Report.

[15] Adams at 15-42.
[16] Paul C. Weiler, "*Mega Projects – The Mega Bargaining Dimensions*" 1981, Canadian Construction Association

5. Special Project Order Legislation in Newfoundland and Labrador

The relevant sections of the current Special Project Order provisions in the *Labour Relations Act*, RSNL 1990, c. L-1, as amended, are as follows:

> 2. (1) In this Act
>
> . . .
>
> (u) "special project" means an undertaking for the construction of works designed to develop a natural resource or establish a primary industry that is planned to require a construction period exceeding 3 years, and includes all ancillary work, services and catering within a prescribed geographic site relating to the undertaking or project.
>
> 61. (2) Notwithstanding subsection (1), the board shall not accredit an employers' organization to bargain on behalf of an unionized employer engaged in a special project.
>
> . . .
>
> 69. Where a collective agreement purporting to be for a period exceeding 3 years has been or is proposed to be entered into, a certified bargaining agent, an employer or employers' organization or 1 of the parties or proposed parties to the agreement may apply to the board for a determination of the question whether the undertaking with which it is concerned is a special project as defined in this *Act*, and the question whether an undertaking is a special project shall be decided by the board.
>
> **70.** (1) The Lieutenant-Governor in Council may by order
>
> (a) declare an undertaking that is a special project within the meaning of paragraph 2(1)(u) to be a special project under this Act, and the project so declared is a special project for all the purposes of this Act; or
>
> (b) notwithstanding paragraph 2(1)(u), declare an undertaking for the construction or fabrication of works at the Bull Arm site, including all ancillary work and services, to be a special project and the project so declared is a special project for all the purposes of this Act.

(2) The Lieutenant-Governor in Council may, with respect to an order made under subsection (1), prescribe

(a) the geographic site to which the declaration relates;

(b) the employers, employers' organizations, trade unions and councils of trade unions that may be involved in collective bargaining relating to employment on the special project;

(c) the bargaining unit for the purpose of the special project;

(d) that a collective agreement is the collective agreement for the purpose of the special project; and

(e) those conditions and qualifications with respect to any aspect of the special project that the Lieutenant-Governor in Council considers necessary or desirable.

(3) [Rep. by 2001 c12 s4]

(4) Where a declaration is ordered under subsection (1), an application made to the board under section 69 for a determination of the question whether an undertaking with which it is concerned is a special project is void whether or not that application is made before or after the declaration is ordered under subsection (1).

(5) Where an undertaking is declared a special project, employees who work under the provisions of a collective agreement in relation to the work at the special project site may not be included as members in good standing of the trade union or employees in a unit for the purposes of a vote under section 38 and the board may not consider those employees in determining whether or not a trade union may be certified.

(6) Subsection (5) applies in relation to all declarations made under subsection (1) and applies in relation to all applications before the board, whether made before or after the commencement of subsection (5).

(7) Where the Lieutenant-Governor in Council has made an order with respect to a special project under paragraph (1)(b),

(a) a collective agreement proposed or entered into with respect to that special project shall not contain a provision that authorizes an employee to; and

(b) an employee employed with respect to that special project shall not, refuse to perform work for his or her employer because other work was or will be performed or was not performed by a person or class of persons who were not or are not members of a trade union or a particular trade union.

(8) A provision of a collective agreement with respect to an undertaking to which paragraph (1)(b) applies that authorizes an employee to refuse to perform work for his or her employer because other work was or will be performed or was not performed by a person or class of persons who were not or are not members of a trade union or a particular trade union, is void.

(9) An employers' organization that may be prescribed under paragraph (2)(b) shall have a constitution that includes all of the following:

(a) the exclusive authority to negotiate, enter into, and administer collective agreements;

(b) provisions that provide for the election or appointment of its officers;

(c) a formula for reaching decisions that assures that a deadlock cannot occur; and

(d) a formula for the ratification by the employers represented by the employers' organization, of collective agreements reached between the organization and a trade union or council of trade unions prescribed as a party to collective bargaining on a special project and a time limit within which ratification shall take place.

(10) A council of trade unions that may be prescribed under paragraph (2)(b) shall have a constitution adopted with the agreement of each of the trade unions that are members of that council and that constitution shall include all of the following:

(a) provisions that vest the council with the exclusive authority to negotiate, enter into and administer collective agreements;

(b) provisions for the election of officers to the council;

(c) a formula for reaching council decisions that assures that a deadlock cannot occur;

(d) provisions for final, binding and expeditious resolution of jurisdictional disputes without a stoppage of work;

(e) provisions requiring bargaining unit employees to be members in good standing of the council; and

(f) a formula for the ratification by a majority of the members of the trade unions that comprise the council, of collective agreements reached between the council and an employer or employers' organization prescribed as a party to collective bargaining on a special project and a time limit within which the ratification must occur.

(11) Where an undertaking has been declared by order to be a special project under subsection (1), the minister, an employer, employers' organization, trade union or council of trade unions may apply to the board for a determination as to whether

(a) a person is an employer or an employee;

(b) an organization or association is an employers' organization and if so, whether that employers' organization is in compliance with subsection (9);

(c) an organization or association is a trade union or a council of trade unions and if it is a council of trade unions, whether that council is in compliance with subsection (10); and

(d) a collective agreement has been entered into.

(12) The board may, with respect to an undertaking declared by order to be a special project under subsection (1), hear and decide upon complaints made to it with respect to or under sections 18.1, 30 and 130.

The Consultant has reviewed the history of amendments to the *Labour Relations Act* dealing with special projects, and the statements made by members of the House of Assembly with respect to amendments of the *Act*, as reported in *Hansard*.

Legislation to authorize Special Project Orders was introduced in the *Labour Relations Act* in 1968 to sanction the Churchill River Special Project. The relevant changes to the *Act* included adding a definition of "special project", amending the definition of "union" to include a council of trade unions, authorizing negotiation of a special project collective agreement when there are no employees in the bargaining unit, authorizing the Labour Relations Board to declare a special project, and authorizing the Collective Agreement for the Churchill River Project to be a special project.

The rationale for the Special Project Order legislation for the Churchill River Project was discussed in the House of Assembly on May 22, 1968. Premier Smallwood stated that Churchill Falls Labrador Corporation was selling bonds to finance the project, and investors needed assurance there would be no strikes or lockouts or anything that would disrupt swift completion of the job. He said that no investor would take a chance on an endless series of labour disputes.[17] Premier Smallwood also stated that the alternative to the Special Project Order legislation was "desperate uncertainty", and a project in "a position of precariousness". He said the Government should not be willing to take that chance. He also stated that the designation of Churchill River as a special project would legalize an unlawful act retroactively. The collective agreement that was signed between an association of contractors and the council of building trades unions was illegal because there were no employees of any employer on the union bargaining committee, as required by the *Labour Relations Act.* It is of interest that the legislation was opposed by Government members Burgess and Neary on the grounds that it was undemocratic to have the union selected by the contractors or the Government, and not by the workers.[18] The legislation included a provision allowing the workers to change unions. However, in the event the workers changed unions, the collective agreement would continue to apply.

There was a discussion in the House of Assembly of the events leading up to the signing of the collective agreement for Churchill Falls. Member Burgess, the member for Labrador West, and

[17] Hansard, Government of Newfoundland and Labrador, May 22, 1968, at 2974-2979 [Hansard].
[18] Hansard, May 22, 1968, at 3003 to 3012.

a former International Representative for the United Steelworkers, had, along with two organizers, attempted to establish a local in Churchill Falls. According to statements in the House of Assembly, the United Steelworkers signed up a majority of employees of one of the companies and applied for certification. The application was rejected by the Labour Relations Board on a technicality. Premier Smallwood stated that he was concerned when he heard that the Confederation of National Trades Unions ("CNTU") had organizers at the project. He did not want to see the Churchill Falls project organized by the CNTU, a Quebec Union, which he described as a Quebec nationalist organization. Premier Smallwood stated that he asked the president of the Newfoundland Federation of Labour to inform the Canadian Labour Congress about the activities of the CNTU. Premier Smallwood stated that he was later visited by representatives of international building trades unions and was informed that a master collective agreement was negotiated with contractors covering all employees for the duration of the project.[19]

The relevant amendments in the *Labour Relations (Amendment) Act*, 1968, S.N. 1968, No. 71, were as follows:

> 2. Subsection (1) of Section 2 of *The Labour Relations Act*, chapter 258 of The Revised Statutes of Newfoundland, 1952, is further amended by
>
> (a) deleting paragraph (a) and substituting therefor the following:
>
> "(a) "bargaining agent" means a trade union or a council of trade unions that acts on behalf of employees
>
> (i) in collective bargaining, or
>
> (ii) as a party to a collective agreement with their employer;";
>
> (b) inserting immediately after paragraph (g) as paragraph (gA) the following:

[19] Hansard, May 22, 1968, at 2971.

"(gA) "council of trade unions" means two or more local or provincial organizations or associations of employees, or local or provincial branches of national or international organizations or associations of employees within the province that have been certified as a bargaining agent for employees of an employer or an employers' organization or that have signed an agreement in writing or sign a collective agreement with an employer or employers' organization;";

(c) inserting immediately after paragraph (o) as paragraph (oA) the following:

"(oA) "special project" means an undertaking for the construction of works for the development of a natural resource or for the establishment of a primary industry which is planned to require a construction period exceeding three years and includes all related and ancillary work and services and catering;";

and

(d) deleting paragraph (r) and substituting therefor the following:

"(r) "trade union" or "union" means a local or provincial organization or association of employees, or a local or provincial branch of a national or international organization or association of employees within the province or a council of trade unions that has as one of its purposes the regulation in the province of relations between employers and employees through collective bargaining but does not include an organization or association of employees or a council of trade unions that is dominated or influenced by an employer,".

. . .

7. There is inserted immediately after Section 18, as Section 18A of the said *Act*, the following:

"18A. In the case of an undertaking determined under this *Act* to be a special project, an existing or future agreement in writing between an employer or employers' organization, on the one hand, and a trade union or trade unions or a council of trade unions, on the other hand, shall be deemed to be a collective agreement in force for all of the purposes of this *Act*, notwithstanding that the composition of the bargaining committee was not in accordance

with the provisions of Section 15A or that there were no employees in the bargaining unit or units represented by the bargaining agent or agents at the time of the negotiation or execution of the agreement."

8. There is inserted immediately after Section 53, as Section 53A of the said *Act*, the following:

"53A. (1) Subject to subsection (2), where a collective agreement purporting to be for a period exceeding three years has been or is proposed to be entered into, a certified bargaining agent, an employer or employers' organization or one of the parties or proposed parties to such agreement may apply to the Board for a determination of whether or not the undertaking with which it is concerned is a special project within the meaning of this *Act* and the question of whether or not an undertaking is a special project shall be decided only by the Board.

(2) Any Agreement for a term exceeding three years executed and delivered at the date of the passing of this *Act* and relating to an undertaking arising out of or incidental to the development of the Upper Churchill River is declared to be an agreement relating to a special project, and no application under subsection (1) shall be required in respect of it."

The Special Project Order provisions enacted in 1968 were continued in the 1970 consolidated statutes with the sections renumbered. The Special Project Order provisions appeared in the following sections of the *Labour Relations Act*, R.S.N. 1970, c. 191:

2. (1) In this *Act* unless the context otherwise requires:

. . .

(q) "special project" means an undertaking for the construction of works for the development of a natural resource or for the establishment of a primary industry which is planned to require a construction period exceeding three years and includes all related and ancillary work and services and catering;

. . .

64. (1) Subject to subsection (2), where a collective agreement purporting to be for a period exceeding three years has been or is proposed to be entered into, a certified bargaining agent, an employer or employers' organization or one of the parties or proposed parties to such agreement may apply to the Board for a determination of whether or not the undertaking with which it is concerned is a special project within the meaning of this *Act* and the question of whether or not an undertaking is a special project shall be decided only by the Board.

(2) Any agreement for a term exceeding three years executed and delivered at the date of the passing of this *Act* and relating to an undertaking arising out of or incidental to the development of the Upper Churchill River is declared to be an agreement relating to a special project, and no application under subsection (1) shall be required in respect of it.

In 1977, new labour legislation was enacted as the *Labour Relations Act 1977*, SN 1977, c. 64. The Special Project Order sections were amended by deleting the specific reference to the Upper Churchill River Special Project and authorizing the Lieutenant Governor-in-Council to declare a special project. The new section also required that an organization of employees and a council of trade unions be formed for the purpose of bargaining. The relevant sections were as follows:

2. (1) In this *Act*

. . .

(v) "special project" means an undertaking for the construction of works designed to develop a natural resource or establish a primary industry that is planned to require a construction period exceeding three years, and includes all ancillary work, services and catering relating to any such undertaking or project;

61. (2) Notwithstanding subsection (1), the board shall not accredit an employers' organization to bargain on behalf of an unionized employer engaged in a special project.

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69. Where a collective agreement purporting to be for a period exceeding three years has been or is proposed to be entered into, a certified bargaining agent, an employer or employers' organization or one of the parties or proposed parties to such agreement may apply to the Board for a determination of the question whether the undertaking with which it is concerned is a special project as defined in this *Act*, and the question whether an undertaking is a special project shall be decided by the Board.

70. (1) The Lieutenant-Governor in Council, where he considers it necessary or desirable so to do, may, by proclamation and without any qualification respecting the length of the construction period, declare any undertaking that conforms to a special project within the meaning of paragraph (1) of subsection (1) of section 2 to be a special project under this *Act*, and when any such proclamation is made, the project so declared is, from the date of the proclamation, a special project for all the purposes of this *Act*.

(2) Where an undertaking is declared to be a special project pursuant to subsection (1), the individuals, corporation or other legal entities having direction of the project shall organize all employers involved in the project for the purposes of joint bargaining, and the trade unions seeking to represent employees involved in the project shall form a council of trade unions so that the effective bargaining unit encompasses all the jobs on the project.

In 1990, there were additions made to Section 70 by S.N. 1990, c. 22 s. 2. One of the amendments was to change the definition of "special project" to make reference to a geographic site. Other amendments included providing that, in a Special Project Order, the Lieutenant Governor-in-Council may prescribe the geographic site to which the project relates, may prescribe the employers and trade unions who may be involved in collective bargaining and may include such conditions and qualifications as the Lieutenant Governor-in-Council considers necessary or desirable. The 1990 amendments stated as follows:

1. Paragraph (v) of subsection (1) of section 2 of *The Labour Relations Act*, 1977 is amended by adding immediately after the words "ancillary work, services and catering" the words "within a prescribed geographic site, if any,".

2. Section 70 of the *Act* is repealed and the following substituted:

"70. (1) The Lieutenant-Governor in Council may by order

(a) declare an undertaking that conforms to a special project within the meaning of paragraph (v) of subsection (1) of section 2 to be a special project under this *Act*, and the project so declared is a special project for all the purposes of this *Act*; or

(b) declare that an agreement reached between an employer and a representative of workers for a term exceeding three years that is executed and delivered on or before the date of the order and relating to a special project as defined in subsection (1) of section 2 is an agreement relating to a special project and that project is deemed to be a special project for all purposes of this *Act*.

(2) The Lieutenant-Governor in Council may, with respect to an order made under subsection (1) prescribe

(a) the geographic site to which the declaration relates; and

(b) the employers and the trade unions who may be involved in collective bargaining relating to employment on the special project.

(3) Where the Lieutenant-Governor in Council declares an order under subsection (1), the Lieutenant-Governor in Council may include those conditions and qualifications with respect to any aspect of a special project that the Lieutenant-Governor in Council considers necessary or desirable.

(4) Where a declaration is ordered under subsection (1), an application made to the Board under section 69 for a determination of the question whether an undertaking with

> which it is concerned is a special project is void whether or not that application is made before or after the declaration is ordered under subsection (1).".

In the House of Assembly, on June 13, 1990,[20] Minister of Labour Cowan stated that Government, when facing development of the Hibernia Project, observed that the special project order legislation did not provide sufficient flexibility to enable conditions Government believed were necessary, such as providing first consideration to residents of the Province for construction jobs. The 1990 amendment also allowed the Lieutenant Governor-in-Council to prescribe the geographic site, and to prescribe the employers and unions who may be involved in collective bargaining. Minister Cowan noted that special projects provide for stable labour relations. In response to complaints that the Marine Workers' Union at the Marystown Shipyard was not able to participate in work at the special project site, the Minister responded that Mobil found out that it was not desirable to have the Building Trades Unions and the Marine Workers' Union working together on the same site, and that typically, across Canada, it is the building trades unions that are involved in mega-projects.[21]

The Special Project Order sections were continued in the 1990 consolidated statutes as the *Labour Relations Act*, R.S.N.L. 1990, c. L-1. The relevant sections of the 1990 consolidated version stated as follows:

> 2. (1) In this Act
>
> . . .
>
> (u) "special project" means an undertaking for the construction of works designed to develop a natural resource or establish a primary industry that is planned to require a construction period exceeding 3 years, and includes all ancillary work, services and catering within a prescribed geographic site relating to the undertaking or project.
>
> 69. Where a collective agreement purporting to be for a period exceeding 3 years has been or is proposed to be entered into, a certified bargaining agent, an employer or employers' organization or 1 of the parties or

[20] Hansard, June 13, 1990, Vol. XLI No. 54, R 27.
[21] *Ibid* at R 43.

proposed parties to the agreement may apply to the board for a determination of the question whether the undertaking with which it is concerned is a special project as defined in this *Act*, and the question whether an undertaking is a special project shall be decided by the board.

70. (1) The Lieutenant-Governor in Council may order

(a) declare an undertaking that conforms to a special project within the meaning of paragraph 2(1)(u) to be a special project under this *Act*, and the project so declared is a special project for all the purposes of this Act; or

(b) declare that an agreement reached between an employer and a representative of workers for a term exceeding 3 years that is executed and delivered on or before the date of the order and relating to a special project as defined in subsection 2(1) is an agreement relating to a special project and that project is considered to be a special project for all purposes of this *Act*.

(2) The Lieutenant-Governor in Council may, with respect to an order made under subsection (1), prescribe

(a) the geographic site to which the declaration relates; and

(b) the employers and the trade unions who may be involved in collective bargaining relating to employment on the special project.

(3) Where the Lieutenant-Governor in Council declares an order under subsection (1), the Lieutenant-Governor in Council may include those conditions and qualifications with respect to any aspect of a special project that the Lieutenant-Governor in Council considers necessary or desirable.

(4) Where a declaration is ordered under subsection (1), an application made to the board under section 69 for a determination of the question whether an undertaking with which it is concerned is a special project is void whether or not that application is made before or after the declaration is ordered under subsection (1).

It is interesting to note that the definition of "special project" in the 1990 amendment included the words "within a prescribed geographic site, if any". The definition in the 1990 consolidated version included the words "within a prescribed geographic site", but the words "if any" were removed. It may be argued that, if the legislation included the words "if any", the Lieutenant Governor-in-Council would have authority to declare a special project without prescribing a geographic site. In any event, the inclusion of "geographic site" in the definition, and the removal of the words "if any", had the effect that a special project must have a prescribed geographic site.

Section 70 was amended by S.N. 1991, c. 47, s. 4 by adding a provision that persons employed as union members on a special project may not be included as members for the purpose of determining support for certification of a union. This amendment had the effect that a non-union contractor could work under the special project collective agreement, and employ union members, but still remain a non-union contractor for the purpose of work outside the special project. The amendment to Section 70 was as follows:

> 4. Section 70 of the Act is amended by adding immediately after subsection (4) the following:
>
> "(5) Where an undertaking is declared a special project or where an agreement is declared to be an agreement relating to a special project, employees who work under the provisions of that agreement or under a collective agreement in relation to the work at the site of the special project, may not be included as members in good standing of the trade union or employees in a unit for purposes of a vote under section 37 and the board may not consider those employees in determining whether or not a trade union may be certified.
>
> (6) Subsection (5) applies in relation to all declarations made under subsection (1) and applies in relation to all applications before the board, whether made before or after the commencement of subsection (5).".

Section 70 was amended by S.N. 1997, c. 14, s. 1 to provide specifically for a special project for construction or fabrication at the Bull Arm site. The amendment facilitated the Terra Nova Project. In the House of Assembly, Minister Furey stated that the Terra Nova Project was expected to be an 18 to 24 month project, and would be less than the 3 years required in the legislation. Minister Kevin Aylward stated that the amendment was needed to attract opportunities for the industrial site at Bull Arm and to allow it to compete.[22] The amendment stated as follows:

> 1. (1) Subsection 70(1) of the *Labour Relations Act* is amended by striking out the word "or" at the end of paragraph (a), by striking out the period at the end of paragraph (b) and substituting a semi-colon and the word "or" and by adding immediately after paragraph (b) the following:
>
> (c) notwithstanding paragraph 2(1)(u), declare an undertaking for the construction or fabrication of works at the Bull Arm site that is planned to require a construction or fabrication period of 3 years or less, including all ancillary work and services, to be a special project and the project so declared is a special for all the purposes of this *Act*.

Following the Terra Nova Project, and the report of consultant Morgan Cooper (the "Cooper 2001 Report"),[23] section 70 of the *Act* was amended by S.N.L. 2001, c. 12. The explanatory note accompanying the amendment, as presented to the House of Assembly, stated as follows:

> Clause 4 of the Bill would amend section 70 of the *Act* respecting the designation of special projects. These amendments would more clearly state the rules for collective agreements, employers' organizations and councils of trade unions working on an undertaking that has been declared to be a special project.

In the House of Assembly on May 20, 2001, Minister Thistle stated that Government endorsed the framework outlined in the Cooper 2001 Report, and the amendments were intended to give

[22] Hansard, May 20, 1997, Vol. XLIII No. 28.
[23] Morgan Cooper, "Labour Relations Processes on Offshore Oil and Gas Fabrication and Construction Projects", January, 2001 [Cooper 2001].

effect to the Report. There would be specific criteria for Employer organizations and Councils of Trade Unions in order to qualify for a special project. The practice of union labeling would be prohibited on special projects at the Bull Arm site. The legislation was intended to address labour relations challenges at the Bull Arm site and to bring labour peace and harmony.[24]

The 2001 amendments were as follows:

> 4. (1) Subsection 70(1), (2) and (3) of the *Act* are repealed and the following substituted:
>
> 70. (1) The Lieutenant-Governor in Council may by order
>
> (a) declare an undertaking that is a special project within the meaning of paragraph 2(1) (u) to be a special project under this *Act*, and the project so declared is a special project for all the purposes of this Act; or
>
> (b) notwithstanding paragraph 2(1)(u), declare an undertaking for the construction or fabrication of works at the Bull Arm site, including all ancillary work and services, to be a special project and the project so declared is a special project for all the purposes of this *Act*.
>
> (2) The Lieutenant-Governor in Council may, with respect to an order made under subsection (1) prescribe
>
> (a) the geographic site to which the declaration relates;
>
> (b) the employers, employers' organizations, trade unions and councils of trade unions that may be involved in collective bargaining relating to employment on the special project;
>
> (c) the bargaining unit for the purpose of the special project;
>
> (d) that a collective agreement is the collective agreement for the purpose of the special project; and
>
> (e) those conditions and qualifications with respect to any aspect of the special project that the Lieutenant-Governor in Council considers necessary or desirable.

[24] Hansard, May 20, 2001, Vol. XLIV, No. 24.

(2) Subsection 70(5) of the *Act* is repealed and the following substituted:

(5) Where an undertaking is declared a special project, employees who work under the provisions of a collective agreement in relation to the work at the special project site may not be included as members in good standing of the trade union or employees in a unit for the purposes of a vote under section 38 and the board may not consider those employees in determining whether or not a trade union may be certified.

(3) Section 70 of the *Act* is amended by adding immediately after subsection (6) the following:

(7) Where the Lieutenant-Governor in Council has made an order with respect to a special project under paragraph (1)(b),

(a) a collective agreement proposed or entered into with respect to that special project shall not contain a provision that authorizes an employee to; and

(b) an employee employed with respect to that special project shall not,

refuse to perform work for his or her employer because other work was or will be performed or was not performed by a person or class of persons who were not or are not members of a trade union or a particular trade union.

(8) A provision of a collective agreement with respect to an undertaking to which paragraph (1)(b) applies that authorizes an employee to refuse to perform work for his or her employer because other work was or will be performed or was not performed by a person or class of persons who were not or are not members of a trade union or a particular trade union, is void.

(9) An employers' organization that may be prescribed under paragraph (2) (b) shall have a constitution that includes all of the following:

(a) the exclusive authority to negotiate, enter into, and administer collective agreements;

(b) provisions that provide for the election or appointment of its officers;

(c) a formula for reaching decisions that assures that a deadlock cannot occur; and

(d) a formula for the ratification by the employers represented by the employers' organization, of collective agreements reached between the organization and a trade union or council of trade unions prescribed as a party to collective bargaining on a special project and a time limit within which ratification shall take place.

(10) A council of trade unions that may be prescribed under paragraph (2)(b) shall have a constitution adopted with the agreement of each of the trade unions that are members of that council and that constitution shall include all of the following:

(a) provisions that vest the council with the exclusive authority to negotiate, enter into and administer collective agreements;

(b) provisions for the election of officers to the council;

(c) a formula for reaching council decisions that assures that a deadlock cannot occur;

(d) provisions for final, binding and expeditious resolution of jurisdictional disputes without a stoppage of work;

(e) provisions requiring bargaining unit employees to be members in good standing of the council; and

(f) a formula for the ratification by a majority of the members of the trade unions that comprise the council, of collective agreements reached between the council and an employer or employers' organization prescribed as a party to collective bargaining on a special project and a time limit within which the ratification must occur.

(11) Where an undertaking has been declared by order to be a special project under subsection (1), the minister, an employer, employers' organization, trade union or council of trade unions may apply to the board for a determination as to whether

(a) a person is an employer or an employee;

(b) an organization or association is an employers' organization and if so, whether that employers' organization is in compliance with subsection (9);

(c) an organization or association is a trade union or a council of trade unions and if it is a council of trade unions, whether that council is in compliance with subsection (10); and

(d) a collective agreement has been entered into.

(12) The board may, with respect to an undertaking declared by order to be a special project under subsection (1), hear and decide upon complaints made to it with respect to or under sections 18.1, 30 and 130.

6. Special Project Orders issued in Newfoundland and Labrador

6.1 Churchill Falls

The first special project in the construction industry in Newfoundland and Labrador was the Churchill Falls Power Project. The project included the construction of the dam and hydro power plant on the Upper Churchill River in Labrador. The contractors formed the Churchill Falls Power Project Contractors' Association, and met with international representatives of the construction trades unions in the Summer of 1967. The building trades unions formed a Council called the Churchill Falls Project Allied Construction Council. A Collective Agreement was signed between the Association and the Council to cover the period August 10, 1967 to August 31, 1975. The terms of the Collective Agreement included higher wages than had been negotiated for other construction projects in the Province. The Collective Agreement provided a system for resolving jurisdictional disputes between trades unions. When it was signed, the Collective Agreement was illegal because the *Labour Relations Act* did not authorize a council of trade unions to enter into a collective agreement, the *Act* required that employees in the bargaining unit be represented on the bargaining committee and the *Act* did not authorize a special project collective agreement. The Government made legislative changes in 1968 to retroactively approve the Churchill Falls Project as a special project. The special project legislation also allowed the Labour Relations Board to approve other special projects.

The Collective Agreement for the Churchill Falls Project provided a formula for adjustment of wage rates based on the average wage increase in 10 cities in Canada, namely, St. John's, Halifax, Saint John, Montreal, Ottawa, Toronto, Winnipeg, Regina, Edmonton and Vancouver. The unions that were the members of the Council and were party to the Collective Agreement were the Brotherhood of Painters, Decorators and Paperhangers of America, Local 1679; the International Association of Bridge Structural and Ornamental Iron Workers, Local 764; the International Brotherhood of Electrical Workers, Local 1615; the International Union of Operating Engineers, Local 904; the Construction and General Labourers Rock and Tunnel Workers, Local 1208; the Operative Plasterers and Cement Masons International Association,

Local 144; the Sheet Metal Workers International Association, Local 512; the Transport and Allied Workers, Local 855; the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 740; the United Brotherhood of Carpenters and Joiners of America, Local 579; and the Hotel and Restaurant Workers, Local 779.

6.2 Hibernia

The first Special Project Order issued under Section 70 of the *Labour Relations Act* by the Lieutenant Governor-in-Council was for the Hibernia Project. The Order was called the *Gravity Base Structure Construction, Topsides Assembly and Platform Hookup, Great Mosquito Cove, Bull Arm Area of Trinity Bay Special Project Order*, Newfoundland Regulation 223/90 issued September 14, 1990. The Special Project Order identified the parties to the special project Collective Agreement as the Hibernia Employers' Association Inc. ("HEA") and the Newfoundland and Labrador Oil Development and Allied Trades Council ("ODC"), acting for all affiliated unions. The Special Project Order included the conditions that, in accordance with the *Canada Newfoundland Atlantic Accord Implementation Newfoundland Act*, individuals in the Province shall be given first consideration for training and employment; that preference in hiring be given to qualified union members resident in the Province, subject to certain qualifications; that there be a hiring procedure for persons to be hired and become a union member in good standing; and representatives of the Government would have access to employment records and union membership information for the purpose of the Special Project Order. In 1995, there was an amendment to the Special Project Order, by Newfoundland Regulation 137/95, to clarify that the Special Project Order applied to work at the Hibernia offshore site.

A study by Gregory S. Kealey and Gene Long[25] described the process leading to negotiation of the Hibernia Collective Agreement and the Special Project Order, based on interviews they conducted with the key persons involved. The study noted that the parties involved in the project

[25] Gregory S. Kealey and Gene Long, *"Labour and Hibernia:Conflict Resolution at Bull Arm, 1990-1992"*, April, 1993, Institute of Social and Economic Research, Memorial University of Newfoundland, St. John's, Newfoundland and Labrador [Kealey and Long].

anticipated that it would be the first phase of oil related construction development in the Province. As a result of a concern about labour relations on the construction site, it was decided that the project would proceed as a special project, with special project designation, a union site and workers drawn from the building trades unions. At a meeting in December, 1988 in Ottawa, Mobil and contractor representatives met with representatives of the Building and Construction Trades Department, AFL-CIO. The owner and contractors sought three commitments from the building trades unions, (1) the local trades unions would act collectively, (2) the international union representatives would be present at the bargaining table, and (3) the agreement would be in effect for the duration of the project only and it would be a separate agreement from the CLRA Collective Agreement.[26] These demands were tied to perceived problems in the local construction labour relations environment.

According to the study by Kealey and Long, one of the reasons the Hibernia Project owners wanted a special project order was to overcome the legal hurdle of exclusive bargaining rights held by the CLRA in the industrial and commercial sector of the construction industry.[27] Special project status would allow the HEA to take over bargaining from the CLRA. The HEA was incorporated in January, 1989. Following a year of negotiations, a Collective Agreement was signed on July 5, 1990 by the HEA and the ODC. The Project Collective Agreement stated there would be no strikes or lockouts for the duration of the project, had special provisions designed to ensure speedy dispute resolution without work stoppages, and provided for ODC site representatives on the site. The site representatives were crucial in the area of resolving disputes without filing grievances, and in the handling of grievances once filed.[28] There was provision for assignment of work in accordance with a pre-job mark-up procedure and resolution of jurisdictional disputes between trades unions without work stoppages. An Umpire was picked by mutual agreement and disputes were decided under a Jurisdiction Disputes Resolution Plan. There was also provision for a wage increase on January 1st each year in an amount determined

[26] *Ibid* at 3.
[27] *Ibid* at 3-4.
[28] *Ibid* at 6-7.

by the average increase in the previous year in nine cities across Canada. There was provision for a liaison committee that would meet to find solutions to problems without using the grievance and arbitration procedure.

The members of the ODC who signed the Hibernia Collective Agreement were 15 Local Unions and their International affiliates. The Unions were International Association of Heat and Frost Insulators and Asbestos Workers and Local Union 137; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers and Local Union 203; International Union of Bricklayers and Allied Craftsmen and Local Union 1; United Brotherhood of Carpenters and Joiners of America and Local Union 579; Millwrights, Machinery Erectors and Maintenance Union and Local 1009; International Brotherhood of Electrical Workers and Local Union 2330 and Local Union 1620; International Association of Bridge, Structural and Ornamental Ironworkers and Local Union 764; The Construction and General Labourers' Union, Rock and Tunnel Workers Local 1208 and Labourers International Union of North America; International Union of Operating Engineers and Local 904; International Brotherhood of Painters and Allied Trades and Local Union 1984; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Local Union 855; United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. and Canada, and Local Union 740; Sheet Metal Workers' International Association and Local Union 512; and Hotel Employees and Restaurant Employees International Union and Local 779.

The scope of the Collective Agreement for the Hibernia Special Project became an issue when an application for certification was made to the Labour Relations Board to represent employees not included in the scope of the bargaining unit. The Board rejected the application.[29] The Board's decision was upheld by the Supreme Court of Newfoundland and Labrador, Trial Division.[30] The Court dealt extensively with the jurisdiction of the Labour Relations Board at the Hibernia

[29] *International Union of Operating Engineers, Local 904 and NODECO et al* [1993] Nfld. L.R.B.D. No. 8.
[30] *Operating Engineers, Local 904 and NODECO*, (1994) 117 Nfld. & P.E.I.R. 311 (NSCTD).

Special Project site and whether or not the Board had any residual jurisdiction to issue a certification order following the declaration of the special project. The Court determined that the Board did not have jurisdiction and stated, in part, as follows:

> [48] Therefore on an examination of this *Act* as a whole, it becomes clear that the essential purposes, roles and functions of the Board, are to determine matters pertaining to bargaining units, certification of trade unions and accreditation of employers, together with a supervisory and enabling role in the facilitation of the collective bargaining process.
>
> [49] In determining jurisdiction the question becomes, does the cumulative effect of the *Act*, the Orders-in-Council and the Project Agreement, remove from the purview of the Board the essential elements which it normally has in collective bargaining, thereby ousting its jurisdiction. Thus, is employee determination for the Hibernia project, outside its jurisdiction?
>
> . . .
>
> [51] A reading of the powers granted by section 70 together with the Orders-in-Council which exercised them, shows clearly that the Lieutenant Governor in Council removed from the Board the essential powers which it would normally have exercised in a labour relations matter. These are:
>
> (a) the definition of bargaining units;
> (b) the certification of bargaining agents;
> (c) the accreditation of employers;
> (d) the general supervision of the collective bargaining process.
>
> [52] My interpretation is reinforced by the events described in the affidavits, which show that the Board played no part in the process leading to the special project declaration or the completion and signing of the project agreement of July 1990. The Board's lack of involvement is in complete contrast to what would have occurred had the Lieutenant-Governor in Council not made the declarations which it did. Had these declarations not been made, the way would have been clear for a completely different mode of procedure which would have been governed by section 69 of the *Act*.
>
> . . .
>
> [55] The foregoing is not to say that recourse may never be had to the Board on matters which may fall outside of the scope of the declaration of the Lieutenant Governor in Council. Such instances require individual consideration. However, I am satisfied that where, either expressly or by implication, matters pertaining to the Hibernia project fall within the

purview of the section 70 declarations, the ordinary provisions of the *Act* which allow the Board to deal with certification, bargaining units and the processes leading to collective agreements, are not applicable.

. . .

[59] A further question arises which is, has the Lieutenant Governor-in-Council exhausted its powers under s. 70 with respect to Hibernia? In my opinion it has not. The *Act* must be considered always as speaking, and thus subsection (3) provides and continues to provide the mechanism by which the Lieutenant Governor-in-Council may, should it find it necessary to do so, make further orders containing conditions and qualifications with respect to any aspects of the Hibernia project.

[60] Thus if the present Orders-in-Council are unclear, or if ambiguities or uncertainties must be resolved, the way is clear to resolve them by Order-in-Council. The fact that the power to do so exists, and that it vests in the Lieutenant Governor-in-Council, is a strong indication that the legislature intended that there be two kinds of special project; one under the supervision of the Lieutenant Governor-in-Council, the other under the supervision of the Board.

. . .

[67] A specific and precise regime of collective bargaining was established in this case under s. 70. A collective agreement was negotiated and signed. It is not in my view open to the Board to assert jurisdiction in the Hibernia bargaining process. It is the role of the parties to bargain collectively, and to reach and if necessary to amend the collective agreement. If amendments are desired by either side, they must be negotiated. If that process fails, the parties or either of them are entitled to seek the assistance of the Lieutenant Governor-in-Council which established the labour relations regime under which they are operating.

[68] In fact the Board in its concluding paragraph recognized its limitations vis-à-vis the Hibernia project when it said:

> "In the Board's opinion, the *Act's* dual function of facilitating union representation and industrial stability on special projects would be fully realized <u>if the HEA and the ODC establish a mechanism for settling without stoppage of work, terms and conditions of employment for persons working at the site of the special project sites</u> and subsequently determined by the Board to be employees." (emphasis mine)

[69] By the foregoing the Board acknowledged that the perceived problem cannot be solved except by agreement between the parties. Even if the Board were to determine the "employee" question, it would still rest with

> the parties to agree or not to agree on any amendment to the project agreement. Without the subsequent agreement of the parties, the contemplated "employee" determination by the Board would lead to nowhere. Such a result, namely that a statutory body may make a determination that is without force and effect, is contrary to the Board's *raison d'etre* under the *Act*.

Site preparation work for the Hibernia Project commenced in October, 1991 and work on the GBS and topsides continued to November, 1996. During the Hibernia Project there was one work stoppage of 13,800 person hours, representing 0.05% of the total person hours worked on the project. This amount of lost time compared favourably to other construction projects.[31]

6.3 Terra Nova

The Terra Nova oil field began production in 2002 using a Floating Production Storage and Offloading ("FPSO") vessel. Several modules for the FPSO vessel were fabricated at the Bull Arm site. Final assembly and integration of the vessel occurred at the site. On April 3, 1997, a Collective Agreement was signed by PCL Industrial Constructors Inc. ("PCL") as the employer and Newfoundland and Labrador International Building Trades Petroleum Development Association ("PDA"), as a Council of Trade Unions, representing employees. A Special Project Order was issued by the Lieutenant Governor-in-Council on February 25, 1998. The project was described as "the undertaking known as the Terra Nova Project that will occur at Great Mosquito Cove, Bull Arm area of Trinity Bay". The Special Project Order declared that the parties to the Collective Agreement entered into on April 3, 1997, were PCL and the PDA. Those parties were authorized to be involved in collective bargaining on the special project. The Special Project Order also made provision for application by a group of employees who wished to be represented by a trade union and were not represented by the PDA. In the event that the Labour Relations Board determined that the majority of the group of employees wished to be represented by the PDA, then they would become part of the bargaining unit for the special project. The Special Project Order was issued under a new section of the *Act* that permitted a

[31] Cooper 2001 at 7.

Special Project Order at the Bull Arm site even though the duration of the project was not expected to exceed 3 years.

Two Local Unions, the Operating Engineers, Local 904, and the Construction General Labourers Rock and Tunnel Workers, Local 1208 did not sign the Terra Nova Collective Agreement, although their International affiliates had signed. The two Local Unions applied for certification to the Labour Relations Board, arguing that the PDA was not a trade union, and that the agreement between PCL and the PDA was not a Collective Agreement, within the meaning of the *Labour Relations Act*. The two Unions objected to the involvement of the International Unions, and submitted to the Board that the Special Project Order was unconstitutional and violated section 2 (d) of the *Charter of Rights*. The Labour Relations Board, in a 1999 decision,[32] rejected the application and ruled that the Special Project Order had no effect on the *Charter* rights of unions and that the Special Project Order was issued under the proper authority of the Lieutenant Governor-in-Council. The Board ruled that it was reasonable that the parties would negotiate a Collective Agreement before work started on the project. The Board found that the Constitution of the PDA did not establish a local office in the Province and it vested control in the Canadian Executive Board of the Building and Construction Trades Department. Therefore the PDA lacked the requisite local control or presence and did not meet the definition of "trade union" in section 2 (1)(w) of the *Act*. The Board found that the provisions of the Special Project Order declaring the PDA to be a trade union were *ultra vires* the Lieutenant Governor-in-Council. As a result, the project Collective Agreement was not a collective agreement within the meaning of the *Act*. However, the Board ruled that it had no authority to process applications for certification that would destroy the foundation of Special Project Order legislation. The Lieutenant Governor-in-Council had the remedial authority to address defects in the Special Project Order, not the Board. The Board stated that special projects had the benefit of insulating mega projects from disputes and work stoppages in the broader industrial relations community. The Board noted that the PDA had amended its Constitution a short time after the

[32] *International Union of Operating Engineers, Local 904, Construction General Labourers, Rock and Tunnel Workers, Local 1208, PCL Industrial Constructors Inc. and Newfoundland and Labrador International Petroleum Development Association,* January 28, 1999.

Special Project Order was issued. The Board was satisfied, based on the amended constitution, that the PDA was properly constituted as a trade union as of March 18, 1998. Also, the Collective Agreement was revised on March 25, 1998, after the PDA was properly constituted as a trade union.

There were several difficulties in labour relations at the Terra Nova Project. These were identified by Morgan Cooper, Consultant, in his 2001 Report.[33] Work stoppages at the Terra Nova Project represented 2.1% of the total person hours worked. PCL and the Terra Nova Alliance contractors attempted to operate the Project using an industrial model and composite work crews. However, this was a source of difficulty at the site. The Cooper 2001 Report recommended that the construction labour relations model was a reasonable model to follow. One cause of labour disruption at the site was related to the "union label" provision, found in some Building Trades Union's collective agreements, which permitted a work stoppage if it was caused by employees refusing to handle goods made by non-union workers or members of other unions. The Cooper 2001 Report recommended that "union label" provisions be prohibited from collective agreements for special projects at the Bull Arm site.

6.4 Voisey's Bay

On April 23, 2003, the Lieutenant Governor-in-Council issued a Special Project Order, called the "*Voisey's Bay Special Project Order*", Newfoundland and Labrador Regulation 47/03, for the construction of a mine and mill/concentrator plant at Voisey's Bay, Labrador. The Order specified that the parties who may be involved in collective bargaining for the project were the Voisey's Bay Employers' Association Inc. ("VBEA") as the employer representative, and the Resource Development Trades Council of Newfoundland and Labrador ("RDC") as the Council of Trade Unions representing employees employed at the Project. The Order stated that the Collective Agreement entered into between VBEA and RDC, effective September 9, 2002, was the Collective Agreement for the purpose of the Project. The Order also referred to the "Adjacency Principle", and the commitments respecting employment on the project made by

[33] Cooper 2001.

Voisey's Bay Nickel Company Limited in the Innu Impacts and Benefits Agreements and LIA Impacts and Benefits Agreement. The Order also acknowledged the commitment with respect to the development of a Womens' Employment Plan for the Project. The Special Project Order was stated to remain in effect until appropriate Certificates of Completion were issued by Voisey's Bay Nickel Company Limited. Construction at Voisey's Bay commenced in 2002 and ended in 2005.

The trade unions that were members of the RDC were as follows: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 203; International Union of Bricklayers and Allied Craftsmen, Local Union 1; Newfoundland and Labrador Regional Council of Carpenters, Millwrights and Allied Workers, Local 579; Hotel and Restaurant Employees International, Local 779; International Brotherhood of Electrical Workers, Local 1620; International Brotherhood of Electrical Workers, Local 2330; The International Association of Heat & Frost Insulators and Asbestos Workers, Local 137; International Association of Bridge, Structural, Ornamental Ironworkers, Local 764; Labourers International Union of North America, Local 1208; Newfoundland and Labrador Regional Council of Carpenters, Millwrights and Allied Workers, Local 1009; International Union of Painters and Allied Trades, Local 1984; The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 740; International Union of Operating Engineers, Local 904; Sheet Metal Workers International Association, Local 512; and Transport and Allied Workers Teamsters, Local 855.

The Voisey's Bay Special Project Order was amended on July 27, 2005, by Newfoundland and Labrador Regulation 62/05, to include the hydrometallurgical demonstration plant at Argentia. Voisey's Bay Nickel Company Limited established the demonstration plant to study the proposed hydrometallurgical processing method. VBEA and RDC had previously concluded a Collective Agreement dated September 22, 2004 with respect to construction of the demonstration plant. The demonstration plant operated from October, 2005 to June, 2008.

6.5 Long Harbour

The Lieutenant Governor-in-Council issued a Special Project Order on April 9, 2009, Newfoundland and Labrador Regulation 26/09, called the "*Vale Inco Long Harbour Processing Plant Special Project Order*" for the construction of a commercial processing plant to produce nickel and associated cobalt and copper products. The Order declared that the parties involved in collective bargaining with respect to the Project were the Long Harbour Employers' Association Inc. ("LHEA") and the Resource Development Trades Council of Newfoundland and Labrador ("RDC") as the Council of Trade Unions. The Collective Agreement between LHEA and RDC, dated March 24, 2009, was declared to be the Collective Agreement for the purpose of the special project. The Special Project Order acknowledged the condition attached to the Provincial release from further environmental assessment, dated August 26, 2008, that related to the development of a womens' employment plan for the project. The Order also acknowledged a commitment contained in the Voisey's Bay Industrial and Employment Benefits Agreement, 2002, with respect to implementation of a human resources plan for the Project.

The Construction Labour Relations Association for Newfoundland and Labrador filed an Application with the Labour Relations Board objecting to the Long Harbour Special Project Collective Agreement (Board File 5265). The CLRA applied under Sections 70(11)(b) and (d) of the *Act* requesting that the Board determine the following: (a) whether the Long Harbour Employers' Association Inc. ("LHEA") is an employers' organization, (b) if the LHEA is an employers' organization, whether it is in compliance with Section 70(9) of the *Act*; (c) whether a collective agreement has been entered into, and (d) an Order directing that the CLRA should have been involved in the establishment of the Collective Agreement for the Long Harbour Special Project and/or must be involved in the replacement of same. Replies to the Application were filed by the Long Harbour Employers' Association Inc. and the Resource Development Trades Council. Her Majesty the Queen in Right of Newfoundland and Labrador as represented by the Minister of Natural Resources, was granted intervenor status by the Board and filed a Reply. The matter was scheduled for a hearing by the Board in October, 2010. Prior to the hearing, the CLRA asked to withdraw the Application. The Board issued an Order to approve

the withdrawal of the Application. As a result, the Board did not decide the issues raised in the Application.

The Consultant reviewed Labour Relations Board file 5265, including the Application and the Replies filed by the parties, the written submissions to the Board, and the report of the Board's Investigating Officer. The file indicated that in September, 2002, a Development Agreement applicable to the Voisey's Bay Project was reached between the Government of Newfoundland and Labrador, Vale Inco Newfoundland and Labrador Limited and Vale Inco Limited. In 2006, Vale announced that the commercial processing plant would be located in Long Harbour, Placentia Bay, Newfoundland and Labrador. The Vale collective bargaining team commenced bargaining with the RDC on June 6, 2007. After approximately 22 bargaining sessions, a Collective Agreement for the construction project at Long Harbour was concluded on March 24, 2009. CLRA was not involved in the negotiation of the Long Harbour Collective Agreement. On March 25, 2009, the Labour Relations Agency received a joint request from LHEA and RDC that the Lieutenant Governor-in-Council issue a Special Project Order in relation to construction of the nickel processing plant in Long Harbour. A Special Project Order was issued on April 9, 2009. Workers were first employed on the Long Harbour site on April 11, 2009. The Collective Agreement is administered by LHEA and RDC.

CLRA submitted to the Labour Relations Board that the creation of the Special Project Collective Agreement by LHEA and RDC in effect destabilizes the provincial collective agreement regime in the construction industry which CLRA administers. The CLRA submitted that the Special Project Order interfered with its exclusive authority to bargain on behalf of employers in the industrial and commercial sector of the construction industry. The CLRA submitted that there was an apparent conflict between two public policy objectives in the *Labour Relations Act*. The exclusive authority of an accredited employers' organization provides stability within the industrial and commercial sector on a Province wide basis, which is apparently in conflict with the public policy objective of stability achieved by special project designation and a project collective agreement. The CLRA submitted that since the Project

Collective Agreement was signed on March 24, 2009, it had made efforts to become involved in labour relations at the project, but its efforts were unsuccessful.

The CLRA submitted to the Board that the Collective Agreement was not valid, for several reasons, including the fact that it was not negotiated by the CLRA, the exclusive bargaining agent of unionized contractors in the industrial and commercial sector. All three respondents submitted to the Board that the Collective Agreement that was ratified by the RDC and signed by the parties on March 24, 2009 was a valid Collective Agreement. The LHEA submitted that the CLRA's accreditation does not give it any right or entitlement to be involved with labour relations on special projects, even when the project is in the industrial and commercial sector. The RDC submitted that the CLRA had no bargaining rights with respect to special projects by reason of its accreditation, and that there was no obligation to involve the CLRA in the negotiation of the Collective Agreement.

The Respondents submitted that the Board had no authority to direct that the CLRA be involved in negotiating a collective agreement for the special project. The CLRA argued that by granting the Board authority to determine issues in respect of special projects, the Board should resolve whether a collective agreement, an employers' organization or council of unions existed for the purpose of the Special Project Order. If it did not, then the Special Project Order is flawed and the Board should fashion an appropriate remedy.

The submissions filed with the Labour Relations Board indicate that the parties negotiated a collective agreement in anticipation of the Special Project Order. Any collective agreement negotiated individually between an employer and a trade union in the industrial and commercial sector of the construction industry is void because the CLRA has bargaining rights on behalf of employers in the sector.[34] The intent of the Special Project Order is to validate the Collective Agreement signed prior to the Order.

[34] s. 64, *Labour Relations Act*, R.S.N.L. 1990, c. L-1.

6.6 Hebron

The most recent Special Project Order issued in the Province was the *Hebron Development Special Project Order*, dated September 8, 2011, Newfoundland and Labrador Regulation 78/11. The Order declared a special project for the undertaking with respect to the construction or fabrication activities of the gravity base structure, topsides and platform hookup for the Hebron Development Project that will occur in the Great Mosquito Cove, Bull Arm area of Trinity Bay, Newfoundland and Labrador, including the onshore, atshore and inshore locations, and construction or fabrication activities that will commence in that area and will require completion offshore, and solid ballasting that will occur in that area or offshore. The Hebron oil field is estimated to have 400 to 700 million barrels of oil and will be developed using a Gravity Base Structure ("GBS"). The Hebron Project proponents are Exxon Mobil Canada Properties (36%), Chevron Canada Limited (26.7%), Petro Canada Hebron partnership through its managing partner Suncor Energy Inc. (22.7%), Statoil Canada Limited (9.7%) and Nalcor Energy – Oil and Gas Inc. (4.9%). Exxon Mobil Canada Properties is the operator of the Project.

The Special Project Order excluded from the project any activities required for the repair, maintenance, construction, installation or inspection of electric power lines, towers and associated infrastructure and rights-of-way in the area. The geographic site excluded the electric power lines and rights-of-way.

The Hebron Special Project Order stated that the parties that may be involved in collective bargaining are the Hebron Project Employers' Association Inc. ("HPEA") and Resource Development Trades Council of Newfoundland and Labrador ("RDC") as the Council of Trades Unions acting for affiliated unions representing employees on the project. The Order stated that the Collective Agreement entered into between HPEA and RDC dated August 31, 2011 is a Collective Agreement for the purpose of the special project. The Order also acknowledged the commitment contained in Article 5.11 of the Hebron Benefits Agreement dated August 20, 2008 with respect to the development of a Gender Equity and Diversity Program.

6.7 Applications to the Labour Relations Board

A review of Labour Relations Board files indicates that there were two Applications for Special Project Orders submitted to the Board since 1968, when the legislation authorized the Board to issue Special Project Orders. One application was allowed, and one application was rejected. By Order dated October 15, 1975, the Labour Relations Board declared that the Gull Island Hydro-Electric Project and Transmission Facilities was a special project within the meaning of the *Labour Relations Act*. The applicant was the Gull Island Power Company Limited, and the respondent was Newfoundland and Labrador Building and Construction Trades Council.

The second application to the Labour Relations Board for a Special Project Order was filed by Gold River Construction Limited on June 9, 1983 in respect of the Cat Arm Hydro Electric project. Gold River had entered into a Collective Agreement with the Construction General Labourers Rock and Tunnel Workers, Local 1208. Newfoundland and Labrador Hydro, other contactors and other building trades unions objected to the application for a special project on the site. The Newfoundland Construction Labour Relations Association filed a Reply stating that at least seven Building Trades were working on the Cat Arm Project under the terms of CLRA negotiated agreements, that special project status would disrupt labour relations in the construction industry, that recent hydroelectric projects at Bay D'Espoir, Holyrood, Hynds Lake and Upper Salmon were carried out using CLRA Agreements, and that the application was untimely given that the project had been ongoing for one year. The Board did not grant the application for a Special Project Order.

7. Reports submitted to Government of Newfoundland and Labrador

7.1 Royal Commission on Labour Legislation (Chair – Maxwell Cohen) 1972

Maxwell Cohen, Q.C., chaired a Royal Commission on Labour Legislation that submitted its report in 1972 ("Cohen Report").[35] The Report contained a comprehensive examination of labour legislation. Many of the Cohen Report's recommendations were incorporated into a revised *Labour Relations Act*, passed in 1977. The Cohen Report included a section on the construction industry. The Report described the construction industry as unique, with projects of a short lived duration, workers affiliated along craft lines, multiple bargaining units, and absence of continuity of employment with a single employer. On the subject of accreditation of employers in the construction industry, the Report noted that, without formal accreditation, employers could form an organization, but participation was voluntary and an employer could undermine the organization by making its own collective agreement with building trades unions. The Cohen Report recommended accreditation of employers to allow a majority of employers to bargain on behalf of all employers. Accreditation was described as countervailing employer power in the face of union power. A powerful employer organization could protect the public interest by avoiding the exorbitant settlements which could flow from an imbalance of power on the union side. It was noted that there still might be exorbitant settlements when negotiated by an accredited employer organization, if the settlement costs could be passed on to the public without fear of another employer undercutting the price. The Report therefore recommended that a public representative, such as a government agency, participate in collective bargaining to protect the public from any unreasonable burdens that might be placed upon it.

The Cohen Report stated that multi trade bargaining provided enhanced stability. In an environment where each trade union operates and bargains independently, there is a possibility of a continuous succession of negotiations and work stoppages. There is also a greater possibility that a work stoppage will interrupt construction work. Where there is a common collective agreement negotiated by a council of trade unions, some unions may not feel their

[35] Maxwell Cohen, Chairperson, "Royal Commission on Labour Legislation in Newfoundland and Labrador", 1972.

independent strength has been effectively mobilized. Public policy should facilitate councils of trade unions in the construction industry. The Report stated that it was in the public interest that projects be identified for this kind of coordinated effort. When there is a special project, the contractor selects the union with which it will bargain, in advance of the hiring of any employees to do the work. The Report stated that, for construction projects, contractors prefer to bargain with the traditional construction trades unions who can provide the workers. Although the contractor, and not the employees, select the union, this situation cannot be avoided when the parties and the Government want the stability provided by a special project. The Cohen Report noted concerns related to hiring employees who are members of other unions, and stated that any council of trades unions or its members should not deprive a person who is a member of another union, or their employers, of the opportunity to work on a special project.

With respect to the Churchill Falls Power Project, the Report noted that the contractors formed an Association and the construction trades unions formed a Council. A collective agreement was signed by the Association and the Council to cover the period August 10, 1967 to August 31, 1975. The Report recommended that the Lieutenant Governor-in-Council have authority to declare special projects within the meaning of the *Act*; that there be an obligation on the owner and contractors having direction of the project to form an organization of employers; and that there be an obligation on the trades unions to form a council of unions, so that the bargaining unit would encompass all jobs on the project.

The Cohen Report said that the purpose of a special project was to have greater stability in the employment relationship. The initiative to have a special project rested with the parties. The Report recommended that, where there was a special project, there should be restrictions on the "open period" when applications for certification could be made. If a union that had not signed the project agreement was certified as a bargaining agent, the project agreement would continue to remain in effect for the duration of the special project.

7.2 Construction Industry Advisory Committee Report (Chair – Gordon Easton) 1985

The Construction Industry Advisory Committee, chaired by Gordon G. Easton, Q.C., submitted its report to the Minister of Labour in 1985 ("Easton Report").[36] The committee held public and private meetings throughout the Province, and visited Norway and Sweden to study offshore oil construction labour relations. The committee studied methods of settling jurisdictional disputes between unions on large construction projects, collective bargaining in construction for the petroleum industry, construction industry accreditation and arbitration, and the practice of employers operating both unionized and nonunionized companies at the same time. The Easton Report noted that the labour relations climate in the construction industry was unique. When a job was finished, the contractors and tradespersons went their separate ways to perform work on different projects. The Easton Report noted that it was the intent of the owners of the Hibernia offshore oil field to construct a gravity based structure (GBS) in Newfoundland. It was noted that the response of the Province to this opportunity would dictate the extent to which the people of the Province would benefit from the Hibernia Project and from future oil development.

The Easton Report discussed methods for settling jurisdictional disputes between trade unions. The construction industry was organized along craft lines. Contractors were specialists and employed the trades to match the specialty. Each union considered it important to protect its particular jurisdiction. It was noted that nonunion contractors had the advantage of the unrestrained ability to assign workers with the appropriate skills to a particular job. The jurisdictional dispute settlement procedure in use at that time was considered to be unacceptable. A local dispute resolution procedure was recommended. The Report suggested implementing job mark-ups and having pre-job conferences.

It was considered essential that there be a stable work environment in order to encourage investment. The Report stated it was unfortunate that the construction industry in Newfoundland and Labrador was replete with examples of labour management difficulties. For example, during the construction of the Come By Chance Oil Refinery in 1971 and 1972, there were 12 strikes

[36] Gordon G. Easton, William A. Alcock and Gonzo Gillingham, "Report of the Construction Industry Advisory Committee", 1985.

and 96,727 lost person hours. The Report referred to the briefs submitted to it and noted that everyone recognized the need to ensure stability in the workplace and completion of projects on target. The Easton Report said it was best to adapt and expand on the labour relations processes in existence, rather than to adopt a completely new process. Designation of the Hibernia Construction Project as a special project would give it the best chance of success. The Report recommended against an "open shop" structure, because that would leave too much to chance. The Report stated that the Newfoundland Construction Labour Relations Association, the accredited employer's organization, should be responsible for negotiation and administration of the special project collective agreement. It was important to have a high degree of cooperation between the local construction industry and the project contractors. Construction management should speak with the same voice in all parts of the industry. The designation of a special project would avoid the uncertainties of unionization part way through the project. The owner and contractors would know in advance with greater certainty the labour costs of the project. Tradespersons would know what wages and benefits to expect for the duration of the project. There was a need for trades jurisdictional flexibility. The craft unions should work together in composite crews and allow tradespersons to perform work outside their jurisdiction, while continuing to remit dues to their own union.

The Easton Report made several recommendations, including establishing a jurisdictional umpire at the Labour Relations Board, implementing a process of job mark-ups, designating the Hibernia GBS Project as a special project, amending the *Act* to allow the CLRA and project contractors to negotiate and administer the special project collective agreement, providing for a council of building trades unions to be the bargaining agent on the special project, providing for composite crews and amending the definition of "special project" to include ancillary work and catering.

7.3 Labour Relations Working Group Report (Chair – David Alcock) 1996

The Labour Relations Working Group, chaired by David Alcock, published a report in November, 1996.[37] The Working Group was comprised of senior management and labour leaders, and was established by Government based on a recommendation by the Advisory Council on the Economy. The mandate of the Working Group was to work toward the creation of a new climate in labour management relations and to develop recommendations concerning existing labour relations legislation. One section of the Report examined labour relations in the construction industry. The Report noted that the construction industry was unique, as employees were organized by craft or trade. The Report expressed concern about employers participating in special projects who do not become members of the accredited employer organization and do not pay associated membership fees. Such employers have a cost advantage over local counterparts. The Report recommended that, where a special project was declared, the membership fees, or an equivalent amount, be paid to the accredited employer organization for every hour worked on the project in the accredited sector. The Report stated that employers should either be required to maintain membership in the accredited employer organization or pay an amount equivalent to membership fees. The Report also recommended that jurisdictional disputes between trades unions in the construction industry not be resolved by the Labour Relations Board, but be resolved by the Canadian Plan for Settlement of Inter-Trade Jurisdictional Disputes, as developed by the Canadian Office of the Construction and Building Trades Department, AFL-CIO.

7.4 Consultant Report (Morgan Cooper) 1997

Morgan C. Cooper, in a 1997 Report, addressed the appropriate labour relations regime for offshore oil production platforms ("Cooper 1997 Report").[38] Although the Report did not examine labour relations in the construction industry, it did consider a submission from the building trades unions to declare a special project for oil production platform operations. The Report noted that special projects were a "carve-out" from general labour relations processes and

[37] David Alcock, Chairperson, Labour Relations Working Group, "New Century, New Realities: Creating a Framework Together", 1996.
[38] Morgan Cooper, "Labour Relations Processes on Offshore Oil Production Platforms", April 25, 1997.

were characteristic of mega construction projects in Canada. It was noted that the restriction of special project status to the construction phase of a project was likely intended to insulate the construction project from disputes and work stoppages in the construction industry. The Report stated that there were no examples of a Canadian production operation carved out from general labour legislation by declaring special project status, and the majority of the workforce on offshore oil production platforms would not be trades employees. The Report concluded that the employees on the oil production platform should be the judge of their own interests on the issue of unionization as well as choice of bargaining agent.

7.5 Consultant Report (Morgan Cooper) 2001

In his January, 2001 Report,[39] Morgan C. Cooper, Consultant, made recommendations with respect to Special Project Order legislation ("Cooper 2001 Report"). The Consultant's appointment was precipitated by an unlawful work stoppage at the Terra Nova Special Project, legal challenges related to the scope of work on the project, and the status of trade unions prescribed as parties to collective bargaining on the special project. The Report stated that expectations that a fabrication model for the Terra Nova Project would enhance productivity and stability at the Bull Arm site were not realized. The Report noted that, in future, the principal contractors in collective bargaining for special projects need to look at wages benchmarked to local, regional and national rates, binding and expeditious mechanisms for resolving jurisdictional disputes, and terms and conditions of employment that reflect the reality of a remote job site. The building trades unions must embrace flexible work practices and form an organization to ensure accountability of unions and their members. A special project declaration for fabrication or construction at the Bull Arm site was recommended as the preferred mechanism for stability and productivity. Where the principal contractor chooses to partner with the building trades unions, a special project declaration is an effective mechanism for insulating the work at the site from the vagaries of the construction industry. The Report recommended mandatory criteria for employer organizations and councils of trades unions in order that the project be eligible for a Special Project Order. It also recommended that the Lieutenant

[39] Cooper 2001

Governor-in-Council be authorized to remit questions related to Special Project Orders to the Labour Relations Board.

The Cooper 2001 Report referred to the history of Special Project Orders and collective bargaining at the Bull Arm site. A collective agreement was signed by the Hibernia Employers Association and the Oil Development Council on July 5, 1990. On September 14, 1990 the Lieutenant Governor-in-Council issued a Special Project Order declaring the special project. The CLRA was not a party to collective bargaining. The Report referred to the decision of the Supreme Court of Newfoundland and Labrador Trial Division that the Labour Relations Board's authority under certification and other provisions of the *Labour Relations Act* did not apply when there was a Special Project Order. The Report noted that, following the completion of the Hibernia Project, ownership of the Bull Arm site was transferred to the Newfoundland and Labrador Government and then leased to PCL Industrial Contractors Inc. ("PCL"), the principal contractor for the Terra Nova Project.

The Cooper 2001 Report stated that four modules for the Terra Nova Project were fabricated at the Bull Arm site. On April 3, 1997 a collective agreement was signed by PCL, on behalf of the Terra Nova Alliance, and the Petroleum Development Association ("PDA"), the council of trades unions. The collective agreement included a no strike/no lockout provision for the duration of the project. On February 25, 1998 the Lieutenant Governor-in- Council issued a Special Project Order declaring a special project and stating that the parties to the Collective Agreement were PCL and the PDA. Two local unions, the Operating Engineers and the Labourers applied for certification to the Labour Relations Board. The application was rejected by the Board in a January 28, 1999 decision. There were a number of circumstances that led to uncertainty and instability during the formative months of the Terra Nova Project. These included the lead role of national union representatives in the negotiation of the collective agreement, the fact that certain terms and conditions were less beneficial than those of the Hibernia Project, the lack of commitment by local building trades union representatives, and legal challenges by local building trades who had not ratified the collective agreement. There

were work slowdowns and refusals to work mandatory overtime. PCL responded by providing a travel allowance, establishing a mechanism to resolve jurisdictional disputes, providing a wage adjustment, providing an attendance bonus and adjusting the overtime provisions.

The Cooper 2001 Report attributed difficulties in labour relations at the Terra Nova Project to a number of factors, including the fact there was no collective agreement provision regarding settlement of jurisdictional disputes, there was no process for local unions to ratify the collective agreement, the PDA was unable to act as a single bargaining agent, the PDA lacked internal mechanisms to control its members, the PDA needed a constitution that provided for ratification of the collective agreement by the majority of its members, and the absence of a site owner dedicated to servicing multiple projects with a long term outlook. The Report stated that the contractors needed to recognize the role of local union representatives. The Report stated that for a single project, the construction labour relations model was reasonable. Alternatively, the site owner could choose to use the site under an industrial model with one union as opposed to a council of building trades unions. The best outcome was accomplished through the continued use of Special Project Order legislation.

Work stoppages at the Terra Nova Project represented 2.1% of the total of 2.98 million person hours worked as of October 1, 2009. The work stoppages eroded confidence in the no strike provision in the Collective Agreement. The Cooper 2001 Report stated that the number and nature of work stoppages at the Bull Arm site did not place the Terra Nova Project among the more positive experiences in oil and gas fabrication or construction. Improvements were required if Newfoundland and Labrador was to develop a reputation as an attractive location for fabrication and construction in support of oil and gas development.

The Cooper 2001 Report dealt with union label provisions in collective agreements. The legal meaning of “strike” in the *Labour Relations Act* could be interpreted to include a refusal to handle goods made by non-union workers or members of other unions, but the legislation was not clear in that regard. Union label provisions were contrary to the intent of the PCL and PDA

Project Collective Agreement. The Report recommended that union label provisions be prohibited from collective agreements for special projects.

The CLRA was excluded by the Terra Nova Project proponents from participating in collective bargaining. The Cooper 2001 Report noted that in other jurisdictions the accredited Construction Labour Relations Association performed a significant role in negotiating collective agreements for special projects. In situations where a project was more like construction than fabrication, then the institutional experience of the CLRA might impact positively on labour stability and productivity. The Report recommended that the Province not mandate a role for the CLRA for offshore oil and gas fabrication and construction at the Bull Arm site. The CLRA must convince a project proponent and its principal contractors that its knowledge and expertise favoured inclusion as a partner. Legislative amendments were needed to enhance the effectiveness of Special Project Orders to ensure they met their intended purpose. The Report also recommended that the employer and union identified as the bargaining agent in the Special Project Order should meet the definitions of "employer" and "trade union" in the legislation. The Report recommended that the Lieutenant Governor-in-Council review the constituent documents of the council of unions and employer organization to ensure that they met the definition prior to being prescribed as parties to collective bargaining. It was also important that the Lieutenant Governor-in-Council have authority to refer questions, such as questions of status, to the Labour Relations Board.

Following the submission of the Cooper 2001 Report, there were amendments to the Special Project Order provisions in section 70 of the *Act*. The amendments provided for detailed review of the constitutions of the employers' organization and council of trade union, and prescribed that certain provisions be contained in special project collective agreements, such as prohibition of union label provisions from agreements at the Bull Arm site, and provision for settlement of jurisdictional disputes.

8. Cross Jurisdictional Review of Special Project Order Legislation in the Construction Industry

8.1 Canada

8.1.1 Summary

There is considerable variation in the Special Project Order legislation across Canada. The legislation in New Brunswick and Alberta has the greatest similarity to Newfoundland and Labrador legislation. Four Provinces do not currently have Special Project Order legislation, namely, British Columbia, Manitoba, Nova Scotia and Prince Edward Island. This section of the Report contains a summary of the legislation in other jurisdictions with respect to specific issues, followed by a more detailed description of the legislation in each jurisdiction.[40] First, the legislation in other jurisdictions is summarized with respect to the following topics: (1) type of project described in the legislation; (2) geographic area; (3) duration of project; (4) party issuing the Special Project Order; and (5) overlap geographically and temporally.

(1) Type of project described in the legislation:

Alberta	Construction of a plant, or the alteration of or addition to a plant, including camp or catering facilities. "Plant" means a plant or other work or undertaking for the production or manufacture of petroleum products, natural gas products, pulp and paper products or any other products specified by regulation. Project must be significant to the economy of Alberta, and in the public interest.
Saskatchewan	No statutory requirements
Ontario	Proponent believes project is economically significant. Not restricted to construction project in industrial segment of the industrial/commercial/ institutional (ICI) sector; however, project falling outside industrial segment of the ICI sector must be

[40] There is only limited reference to "major projects" in the federal jurisdiction under section 7 of the *Canada Labour Code*. Consequently, a summary for that jurisdiction is not provided.

	declared by Board to be ineligible for project agreement where timely objection filed, unless a regulation designates that construction project as one that may be the subject of a project agreement.[41]
Quebec	Construction project which, according to estimates approved by the parties, will require simultaneous work of at least 500 employees at any time during the project.
New Brunswick	Construction project within a described geographic area, taking into account social and economic effects of the project.
(2) Geographic area	
Alberta	No statutory requirement. Area may be described in the regulation designating the project.
Saskatchewan	No statutory requirement
Ontario	Project agreement to contain general description of project; no requirement to specify geographic area. New projects can be added to existing project agreement. A project agreement has been found to not apply to offsite fabrication work.[42]
Quebec	No statutory requirement
New Brunswick	Described geographic area as designated by regulation. Regulations may add or exclude any area from the described area. Regulations have been used to exclude unrelated work within described area.
(3) Duration of project	
Alberta	No limit
Saskatchewan	No limit

[41] Harry Freedman, "Project Agreements under the *Labour Relations Act*", paper prepared for Insight Information, 5th Biannual Construction Labour Relations Conference, Toronto, April 7-8, 2011 at pp. 5-6 [Freedman].
[42] *Weyerhaeuser Engineering Services (No. 2)*, [2005] O.L.R.B. Rep. May/June 510.

Ontario	No limit, project agreement remains in effect until every project to which it applies is completed or abandoned.
Quebec	No limit
New Brunswick	No limit

(4) Party issuing the Special Project Order

Alberta	Lieutenant-Governor in Council, on recommendation of the Minister of Labour
Saskatchewan	No order required
Ontario	No order required to bring into force if there is no challenge. If a challenge is made to the Labour Relations Board and the Board dismisses the challenge or amends the proposed agreement, the Board must declare agreement to be in force.[43]
Quebec	No order required
New Brunswick	Lieutenant-Governor in Council on request by owner and recommendation of major project advisory committee

(5) Overlap geographically and temporally

There is no specific provision for overlap of Special Project Orders in the legislation in other jurisdictions. In New Brunswick, regulations may set out specific exclusions from the special project, with the effect that more than one collective agreement could be in operation in the same geographical area at the same time.

[43] Freedman at 10.

8.1.2 British Columbia

The legislation in British Columbia does not currently provide for project agreements in labour relations statutes.[44] However, special project collective agreements are made between owners/contractors and unions or councils of unions. In British Columbia, the accredited employer organization has bargaining rights only for its members, and membership is voluntary. The report of a Review Panel in 1998 recommended that the British Columbia Minister of Labour allow a project collective agreement where it is of significant economic importance to the Province. The Report also recommended that the accredited employer organization have authority to represent all unionized employers, and that the employer organization and a council of trades unions be able to sign a project agreement with an owner for the duration of the project.[45]

8.1.3 Alberta

Part 3, Division 8 of the Alberta *Labour Relations Code*[46] governs collective agreements relating to major construction projects. A person who wishes to engage in a major project may apply to the Minister for an authorization allowing a principal contractor to bargain collectively with respect to the project [s. 195(1)]. "Principal contractor" is defined as the person, corporation, partnership or group of persons primarily responsible for the construction of a plant or the alteration of or addition to an existing plant, and may include an owner of the plant or a person contracting with the owner for the construction, alteration or addition. A "project" is defined as the construction of a plant or the alteration of or addition to an existing plant, and includes providing camp or catering facilities in connection with that construction, alteration or addition. "Plant" is defined as a plant or other work or undertaking for the production or manufacture of petroleum products, natural gas products, pulp and paper products or any other products specified by regulation [s. 194(1)].

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[44] *Halsbury's Laws of Canada: Labour* (Markham: LexisNexis, 2011) at 833 [*Halsbury's Labour*].
[45] Stephen Kelleher and Stan Lanyon "Looking to the Future:Taking Construction Labour Relations into the 21st Century", Construction Industry Review Panel, February 25, 1998.
[46] R.S.A. 2000, c. L-1, as amended.

Where an application is made to the Minister and he or she considers that the project is significant to the economy of Alberta, the Minister must forward the application to the Lieutenant-Governor in Council (LGIC) [s. 195(3)]. If the LGIC is satisfied that it is in the public interest that a person or a designated principal contractor be authorized to bargain collectively for the project, the LGIC may by regulation designate the project as a project to which this Division of the legislation applies, and authorize the principal contractor to bargain collectively in respect of that project. The LGIC may in that regulation or any subsequent regulation also: designate the principal contractor; prescribe the scope of construction to which a collective agreement under the Division shall apply; and provide the method for determining when project completion occurs [s. 196].

A principal contractor may engage in voluntary collective bargaining on its own behalf and on behalf of any other employer engaged in the project, and this bargaining may be conducted with any trade union that is a bargaining agent of the employees of the principal contractor or of the employees of those other employers working on the project [s. 197(1)]. Collective agreements relating to major construction projects do not supersede existing collective agreements between the principal contractor in its capacity as employer (or another employer engaged on the project) and a trade union [s. 197(3)].[47] Further, the collective bargaining and construction industry provisions of the legislation do not apply to principal contractor and trade union collective bargaining [s. 197(5)].[48] There must also be no strikes or lockouts with respect to the negotiation of a collective agreement under the Division [s. 197(6)].

A collective agreement between a principal contractor and a trade union under Division 8 is binding on those persons outlined in section 198. Further, a collective agreement is deemed to continue in force until: its expiry; the completion of the designated project; or the repeal of the designating regulation, whichever first occurs [s. 199(3)]. However, if the project occurs in phases, a collective agreement under Division 8 is deemed to continue in force with respect to

[47] *Halsbury's Labour* at 834.
[48] *Canadian Master Labour Guide*, 26th ed. (Don Mills, Ont.: CCH Canadian Ltd., 2011) at 862 [*Canadian Master Labour Guide*].

any phase of construction until the completion of that phase of construction or the repeal of the designating regulation, whichever first occurs [s. 199(5)].

The Government of Alberta has published a fact sheet on major project designations outlining a "protocol" for the application process.[49] The Alberta Labour Relations Board also provides information on major projects.[50]

By Order dated December 6, 2004, the Alberta Lieutenant Governor-in-Council designated the Horizons Oil Sands Project as a special project under the *Labour Relations Code*.[51] Horizon Construction Management Ltd. ("Horizon") was designated as the principal contractor and authorized to bargain collectively in respect of the project. After the project was designated, there were disputes with respect to which unions would be parties to project collective agreements.[52] The disputes were resolved, and the Horizon project was built under an "inclusive agreement" which allowed companies affiliated with the building trades unions, companies affiliated with other unions and non-union companies on site at the same time.

8.1.4 Saskatchewan

The *Construction Industry Labour Relations Act*[53] (*CILRA*) protects the formation of "project collective agreements" without legislative requirements for their content or application [s. 21].[54] A "project collective agreement" is defined as a collective bargaining agreement that is to be

[49] "Major Project Designations", Government of Alberta, March 16, 2011. Online: http://employment.alberta.ca/documents/Major-Projects-Designations.pdf
[50] Alberta Labour Relations Board, *A Guide to Alberta's Labour Relations Laws* at pp. 62-3. Online: http://www.alrb.gov.ab.ca/guide/guide.pdf
[51] Alberta Regulation 264/2004.
[52] See *Alberta Building Trades Council and its affiliates and Construction Workers Union (CLAC), Local No. 63, Canadian Natural Resources Limited, Horizon Construction Management Ltd. and International Association of Bridge, Structural and Ornamental Ironworkers, Local Union No. 720*, [2007] Alta. L.R.B.R. LD-085 (CanLII); and *Operative Plasterers' and Cement Masons' International Association of the United States and Canada, Local 222 v. Alberta*, 2007 ABQB 34 (CanLII).
[53] S.S. 1992, c. C-29.11, as amended.
[54] *Halsbury's Labour* at 833.

effective during the term of a project and that is negotiated among: a trade union or unions; where applicable, a representative employers' organization or organizations; and a project owner or project owners [s. 2(l)].

The stated purpose of the *CILRA* is to permit a system of collective bargaining in the construction industry to be conducted by trade on a province-wide basis between an employers' organization and a trade union with respect to a "trade division" outlined in the legislation, subject to some exceptions. One of those exceptions is that nothing in the *CILRA* precludes a trade union from seeking a certification order under the *Trade Union Act* for a multi-trade/multi-craft unit or an "all-employee" unit. In exercising its powers under the *Trade Union Act* the Labour Relations Board must not make a presumption that a craft unit is a more appropriate unit in the construction industry than any other form of appropriate unit. The *CILRA* does not apply to an employer and trade union with respect to such an order under the *Trade Union Act* [s. 4].[55]

The *CILRA* was last amended in 2010, prior to which the Government of Saskatchewan issued a release outlining why amendments were deemed necessary.[56]

8.1.5 Manitoba

The legislature of Manitoba has not provided for project agreements in applicable labour relations statutes.[57]

8.1.6 Ontario

A "project agreement" is not defined in the Ontario *Labour Relations Act*[58] but a "collective agreement" is defined to not include a project agreement [s. 1]. The legislation does provide that a project agreement may modify a provincial collective agreement [s. 163.1(14)].[59] A project

[55] *Canadian Master Labour Guide* at 1223.
[56] "Backgrounder, *Construction Industry Labour Relations Amendment Act, 2009* (CILRA)", Government of Saskatchewan, March 10, 2009. Online: http://www.gov.sk.ca/adx/aspx/adxGetMedia.aspx?mediaId=735&PN=Shared
[57] *Halsbury's Labour* at 833.
[58] S.O. 1995, c. 1, Sch. A, as amended.
[59] Jeffrey Sack, Q.C., C. Michael Mitchell & Sandy Price. *Ontario Labour Relations Board Law and Practice*, 3rd ed., looseleaf (Toronto: Butterworths, 1997), updated to 2010, at §10.202 [Sack and Mitchell].

agreement must contain a general description of each project covered by the agreement, and a term providing that the agreement is in effect until every project covered is completed or abandoned [s. 163.1(4)]. A project agreement may also contain a term providing that additional projects may be added to the agreement [s. 163.1(4.1)].

The first step in creating a project agreement begins where a proponent (a person who owns or has an interest in the land for which the project is planned, including an agent of such a person) believes that the project or projects are economically significant. The proponent then creates a list of potential parties to the agreement, and gives each bargaining agent on the list: a copy of that list; a "notice that the proponent wishes to have a project agreement"; a general description of each of the proposed projects; and the estimated cost of each project. The proponent also gives a copy of the notice to any applicable employee or employer bargaining agencies. The proponent must also give the Labour Relations Board a copy of the notice, as well as evidence that the notice has been given to each bargaining agent on the list [s. 163.1(1)]. A bargaining agent may be included on the list only if it is bound by a Provincial collective agreement, and only if the proponent anticipates that any project may include work within the bargaining agent's geographic jurisdiction for which the bargaining agent would select, refer, assign, designate or schedule persons for employment [s. 163.1(2)].

In response, a bargaining agent on the list may file an application with the Board, within 14 days of receiving the above notice, for an order that a project may not be the subject of a project agreement. The Board must dismiss the application if the project is an industrial project in the industrial, commercial and institutional sector of the construction industry. It must also dismiss the application if the project is designated in the regulations as one that may be governed by a project agreement. Otherwise, the Board must grant the application and make an order that the project may not be the subject of a project agreement [s. 163.1(3)].

The next step involves the proponent giving "notice of a proposed project agreement" which it may do if at least 40% of the bargaining agents on the list agree, in writing, to the giving of this notice [s. 163.1(5)]. Such notice must be provided to each bargaining agent on the list and to the

Board [s. 163.1(6)]. The notice must include a copy of the proposed project agreement and the names of the bargaining agents on the list that have agreed to the giving of the notice [s. 163.1(7)].

A bargaining agent on the list that wishes to approve or disapprove of the proposed agreement does so by giving notice of that approval or disapproval to the proponent within 30 days after receiving notice of the proposed agreement. Such notice of approval or disapproval must also be given to the Board. The proposed agreement is approved if the agreement is approved by at least 60% of the bargaining agents that gave notice, either of approval or disapproval, within the timeframe for doing so. If the proponent determines that it has been approved, the proponent must give "notice that the proposed agreement has been approved" to every bargaining agent on the list. It must also give the Board a copy of the notice as well as evidence that the notice has been given to each bargaining agent on the list. If the proponent determines that the proposed agreement has *not* been approved, the proponent must give "notice that the proposed agreement has not been approved" to every bargaining agent on the list and to the Board [s. 163.1(8)].

Next, a bargaining agent on the list that did not give notice of approval may challenge the proposed agreement by giving notice to the Board. This must be done within 10 days of the proponent providing the Board with evidence that "notice of approval" was given to the bargaining agents on the list. If a challenge arises, the Board must make an order either declaring the proposed project agreement is in force or declaring that it shall not come into force. If the proposed project agreement would result in a reduction in the "total wages and benefits, expressed as a rate" in the objecting bargaining agent's provincial collective agreement that is "larger proportionally" than the largest reduction set to apply to a bargaining agent that approved the project, the Board may either amend the project agreement to make the reduction proportionate, or may declare that the proposed agreement shall not come into effect.[60] The Board may also make an order declaring that the proposed project agreement shall not come into force if subsections 163.1(1) to (8) have not been satisfied and the failure to satisfy those

[60] Sack and Mitchell at §10.212.

requirements affected the bargaining agent challenging the project agreement. Further, the Board may make an order declaring that the proposed project agreement shall not come into force in circumstances prescribed by regulation [s. 163.1(9)].

A project agreement comes into force upon the Board making an order declaring that the proposed project agreement is in force or, if the project agreement is not challenged under s. 163.1(9), upon the expiry of the time for making such a challenge. If the project agreement comes into force, the proponent must give notice that the project agreement is in force to the bargaining agents, employee bargaining agencies and employer bargaining agencies to which notice was given under s. 163.1(1). Notice must be given by the proponent to the same parties if the Board makes an order declaring that the proposed project agreement shall not come into force [s. 163.1(10)-(13)].

The "effect" of a project agreement is such that it applies to all construction work on the project that is within the jurisdiction of a bargaining agent on the list. Each applicable Provincial collective agreement, as modified by the project agreement, applies to construction work on the project, even with respect to employers who would not otherwise be bound by the Provincial collective agreement. Subject to the project agreement, if a Provincial collective agreement ceases to apply while the project agreement is in effect, the Provincial collective agreement that applied when the project agreement was approved applies to the construction work on the project until a new Provincial collective agreement is made. This is not the case for Provincial collective agreements that apply to work that the project agreement does not cover. Further, it is prohibited for employees performing work to which the project agreement applies to strike and for an employer to lock-out these employees while the project agreement is in effect [s. 163.1(14)].

The legislation also provides certain protections from certification or voluntary recognition for non-unionized employers and other persons participating on projects. Those protections apply to both construction and non-construction work [s. 163.1(15)-(17)].

In 1998, the project agreement provisions prevailing at that time were the subject of a complaint by the Canadian Labour Congress to the International Labour Organization Committee on Freedom of Association.[61]

8.1.7 Quebec

In Québec, a major construction project is not determined through an economic or natural resource-based test.[62] Rather, a "major construction project" is defined under *An Act respecting labour relations, vocational training and workforce management in the construction industry*[63] as a construction project which, according to the estimates approved by the parties to the agreement, will require the simultaneous work of at least 500 employees at any time during the project [s. 60.2].

A sector-based employers' association and at least three associations whose representativeness is 50% or more may make a special agreement on the conditions of employment that will apply to a major construction project in the sector of that sector-based employers' association. Except with respect to common clauses provided in section 61.1, conditions of employment may be different from the conditions applicable in the sector concerned [s. 60.2].

Subject to certain exceptions[64], and unless the context indicates otherwise, the provisions of the Act which concern a collective agreement or its application apply, with the necessary modifications, to a special agreement. Such an agreement may not be made, however, after a first call for tenders has been made for the carrying out of construction work relating to the major construction project [s. 60.3].

Further, if, on the date a special agreement is filed under section 48 of the Act, there is a collective agreement applicable in the sector associated with the special agreement, the special

[61] See, for example, International Labour Office, Official Bulletin, Vol. LXXXIII, 2000, Series B, No. 2, 321st Report of the Committee on Freedom of Association at pp. 22-9. Complaint against the Government of Canada (Ontario) presented by the Canadian Labour Congress, Case No. 1975.
[62] *Halsbury's Labour* at 833.
[63] R.S.Q., c. R-20, as amended.
[64] Ss. 42, 43 to 45.3, 46 and 47 and the third paragraph of s. 48.

agreement becomes a schedule to that collective agreement. Otherwise, the special agreement becomes a collective agreement of limited application until a collective agreement takes effect in the sector concerned, in which case the special agreement becomes a schedule to that collective agreement. The application of the clauses of a special agreement is limited, for the period in question, to the employees and employers who carry out construction work or cause construction work to be carried out as part of the major construction project to which the agreement pertains [s. 60.3].

8.1.8 Nova Scotia

The legislature of Nova Scotia has not provided for project agreements in its applicable labour relations statutes.[65]

8.1.9 Prince Edward Island

The legislature of Prince Edward Island has not provided for project agreements in its applicable labour relations statutes.[66]

8.1.10 New Brunswick

The New Brunswick *Industrial Relations Act*[67] defines "major project" as a construction project within a described geographic area designated by regulation of the Lieutenant-Governor in Council (LGIC). The LGIC may also make regulations "adding any area to or excluding any area from" the geographic area, and may revoke a designation in whole or in part [s. 51.1; 51.11].

The legislation requires a major project advisory committee to be struck consisting of a chairperson and such other members as the LGIC may decide consisting of an equal number

[65] *Halsbury's Labour* at 833.
[66] *Halsbury's Labour* at 833.
[67] R.S.N.B. 1973, c. I-4, as amended.

representative of employees and employers in the construction industry. The purpose of the committee is to advise the LGIC through the Minister with respect to requests for the designation of major construction projects [s. 51.2]. The owner of a construction project (or its agent) may send a request, in writing, to the chairperson of the committee seeking the designation. The committee must hold meetings for the purpose of providing its advice, and must take into account the social and economic effects within the Province of the construction project under consideration. The LGIC must not make a regulation designating a major project unless a majority of the committee has recommended the regulation and rendered its advice through the Minister [s. 51.21].

If, before the commencement of a regulation designating a major project, a trade union or council of trade unions has been certified or granted voluntary recognition in a recognition agreement, all members of the trade union or council of trade unions engaged in on-site work on or after the commencement of the regulation are deemed to constitute a bargaining unit separate and apart from the bargaining unit consisting of members engaged in off-site work [s. 51.3(1)]. Any collective agreement in operation at the time a bargaining unit is constituted under s. 51.3(1) that would otherwise be applicable to both employees engaged in on-site and off-site work ceases to apply in relation to that bargaining unit [s. 51.3(4)].

Similarly, if, before the commencement of a regulation designating the major project, the Board has accredited an employers' organization as the bargaining agent for a unit of employers, all employers in the unit engaged in on-site work on or after the commencement of the regulation are deemed to constitute a unit of employers separate and apart from the unit of employers engaged in off-site work [51.3(2)]. An employer in a unit of employers constituted under s. 51.3(2) who is engaged in both on-site and off-site work retains, in addition to and distinct from the rights, duties and obligations under the *Act* in respect of the unit of employers constituted

under s. 51.3(2), all the rights, duties and obligations under the Act in respect of the unit of employers engaged in off-site work [s. 51.3(3)].

The legislation provides that a trade union or council of trade unions representing employees in a bargaining unit constituted under s. 51.3(1), or the associated employer/employers' organization/accredited employer's organization, may serve notice on the other party, in writing, to commence collective bargaining [s. 51.4].

Where a collective agreement or a recognition agreement is entered into between an employer and a trade union or council of trade unions in respect of employees of the employer who are engaged in on-site work, the trade union or council of trade unions may, subject to the rules of the Board, make application to the Board to be certified as bargaining agent of any of the employees of the employer by reference to a geographic area that is larger than the geographic area described in the designating regulation. On such an application for certification, the Board must, without a hearing and without notice or without a hearing on such notice as may be required under the rules, certify the trade union or council of trade unions as the bargaining agent for the employees of the employer who are engaged in on-site work by reference to the geographic area described in the regulation [s. 51.5(2)]. However, if the Board considers it advisable it may certify by reference to the geographic area described in the application for certification. Where the Board certifies without notice or without a hearing, and the employer or another trade union requests a hearing, the Board must hold a hearing and may revoke or vary the certification order. There are time limits on such a request for hearing [s. 51.5].

There are also "open periods" with respect to a collective agreement entered into after the designation of a major project that is applicable to a bargaining unit constituted under s. 51.3(1). Another union may seek certification of employees in that unit or an employee may seek decertification in different timeframes than would otherwise apply under the legislation [s. 51.6].

The legislation further provides that an employee who, at the time a strike vote is taken, has been engaged in on-site work continuously for the three calendar month period immediately before the taking of the vote, must not participate in or be counted in respect of a strike vote taken by a trade union or council of trade unions of employees engaged in off-site work [s. 51.7].

When a major project designation is revoked in whole or in part by regulation, the employer, the employers' organization or the accredited employers' organization and the trade union or the council of trade unions must, to the extent of the revocation, revert to the rights, duties and obligations that existed under the Act before the designation of the major project so far as those rights, duties and obligations have continued, and subject to such rights, duties and obligations, if any, that may have arisen under the Act after the designation of the major project [s. 51.8]. The Board has exclusive jurisdiction to determine questions with respect to these rights, duties and obligations [s. 51.9].

8.1.11 Federal Jurisdiction

Section 7 of the *Canada Labour Code*[68] provides that nothing in Part I of the legislation shall be construed so as to prevent the establishment of agreements on a project basis and where all the parties in a collective bargaining relationship identify themselves to the Minister as being engaged in a project that the Minister determines to be a major project, the Minister and the Board shall act as expeditiously as possible to facilitate the collective bargaining process involving those parties.

[68] R.S.C. 1985, c. L-2, as amended.

8.2 United States

The Consultant has reviewed literature describing the use of Project Labour Agreements in the United States.[69] Project Labour Agreements are used in the United States for the same reasons that special project collective agreements are used in Canada.

Pursuant to the 1935 *National Labor Relations Act* (also known as the "*Wagner Act*"), employees have the right to join a labour union and bargain collectively. Workers also have the right in the construction industry to enter into a collective bargaining agreement before a project begins. A Project Labour Agreement ("PLA") is a collective agreement that applies to a specific construction project and lasts only for the duration of that project. The characteristics of a PLA are that one or more unions negotiate the contract with one or more contractors; all contractors who work on the project are required to comply with the terms of the PLA; where employees are hired for the project through a union hiring hall, then contractors that are non-union or whose employees are represented by a different bargaining agent are allowed to hire a certain percentage of core employees outside the union hiring hall; and there will be no strike or lockout for the duration of the project. There are standardized terms and conditions of employment for all trades, such as standard working schedules and drug and alcohol policies.

In the United States, the majority of PLAs are in the private sector, however, they are also used in the public sector. PLAs have been used since at least the 1930's. The projects have included the Grand Coulee Dam in Washington in 1938, the Shasta Dam in California in 1940, the Denison Dam in Texas in 1940, the Trans Alaska Pipe Line, Walt Disney World and the Kennedy Space Centre in Florida, nuclear power plants in Washington and Tennessee, a Toyota plant in Kentucky, and the Boston Harbour project.[70]

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[69] Gerald Mayer, "Project Labor Agreements" (July 1, 2010), *Federal Publications*, Paper 854, online:digitalcommons.ilr.cornell.edu/key_workplace/854 [Mayer]; Matthew M. Bodah, "Labor Arbitration in the Construction Industry:A Guide to Current Practices and Issues" (March 1, 2004), University of Rhode Island [Bodah]; John T. Dunlop, "Project Labor Agreements" (September, 2002), Joint Center for Housing Studies Harvard University) [Dunlop].

[70] Mayer at 2, Dunlop at 3-7.

In February, 2009, President Obama signed an Executive Order (EO) that encourages Federal Agencies to use PLAs on large scale construction projects of $25 million or more. In the regulations passed under the EO, the factors for agencies to consider when deciding whether to use a PLA include a shortage of skilled workers, the need for multiple trades on the project, and the extended time frame of the project. The EO issued by President Obama repealed an EO issued on February 17, 2001, by President George W. Bush. The President Bush EO said Federal Agencies were prohibited from requiring contractors to enter into PLAs.[71] The stated purpose of the President Bush EO was to promote open competition, maintain Government neutrality, reduce construction costs, and prevent discrimination based on union affiliation.[72]

The supporters of PLAs in the United States argue that its advantages are: (1) uniform wages, overtime pay, hours of work, and work rules; (2) reliable supply of workers at predictable costs; (3) large projects are easier to manage because there is one collective agreement and not several agreements; (4) there is an assurance that the project will be completed on time and within budget; (5) better training for workers by requiring apprenticeship programs; and (6) improved workers' safety.

The opponents of PLAs in the United States argue that PLAs: (1) can increase construction costs because non-union contractors cannot win bids based on lower costs, and non-union contractors may not bid on the project resulting in fewer bids at a higher costs; (2) where there is hiring through a union hiring hall, a non-union contractor may not be able to use its own workers; (3) a non-union contractor's workers may have to join a union and pay union dues; (4) if a non-union contractor pays into a pension plan, then its employees may not work on the project long enough to benefit; and (5) non-union contractors are unable to use their training and safety programs.[73]

Another argument used to support PLAs in the United States is that on some large projects, without a PLA, there could be a question of whether the work was in the general construction,

[71] Mayer at 3.
[72] Dunlop at 19.
[73] Mayer at 4-5.

heavy civil and highway, pipeline or tunnel sector, and there could be a dispute about what sector agreement applies. By using a PLA, the terms and conditions are settled in advance and there is no issue of which sector collective agreement applies. Also, where there is a shortage of skills, then recruitment on a nation wide basis is enhanced by use of a PLA.[74]

The strongest opponents of PLAs are non-union contractors, their associations and political allies.[75] The non-union builders association, Associated Builders and Contractors Association has launched legal attacks against the use of PLAs. For example, an unsuccessful attack was made on the use of a PLA for the Boston Harbour Project on the basis that it violated competitive bidding legislation. Where a PLA has been specifically authorized by Federal or State legislation, the courts are more likely to uphold the PLA. When union market share dropped in the 1970's and 1980's and the non-union sector became better organized, challenges to PLAs became more common. Governors in several States have issued EOs supporting PLAs, by either endorsing a specific PLA or directing State Agencies to use PLAs.

There are no documented attacks on PLAs in the private sector, presumably on the basis that private property owners have the right to place whatever stipulations they choose on their projects.[76]

The scope of each PLA is important with respect to what work is covered and what work is not. The PLA may apply to work on adjacent sites, material yards or production facilities. The scope of work may exclude other employees of an owner or contractor who may be performing work on the site not related to the project.[77]

In 1997, the Building Construction Trades Department of the AFL-CIO adopted a model PLA. Local union councils were required to send locally negotiated PLAs to Washington for approval. There was a concern that local PLAs might grant concessions that would undercut union

[74] Dunlop at 16.
[75] Bodah at 23.
[76] *Ibid*.
[77] Bodah at 30.

bargaining strength. A review of the terms and conditions of several PLAs found that the model PLA is closely followed, although most PLAs are not sent to Washington for approval.[78] The provisions of the standard form of agreement proposed by the Building and Construction Trades Department include: (1) all contractors are bound by the agreement; (2) the terms of the project agreement prevail in the event of conflict with local agreements; (3) no contractor is obligated to sign any other collective bargaining agreement; (4) non-union contractors can bid on the project; (5) there is to be no strike, slowdown or lockout for the duration of the project; (6) there is a grievance procedure with binding arbitration; and (7) wages and benefits and hours of work are to be settled by local bargaining. PLAs are typically signed on the union side by National building trades union Presidents and officers of the Building and Construction Trades Department, in addition to local union officers.[79]

Research on the effect of PLAs on construction costs is inconclusive.[80] It is difficult to find and compare projects that use or do not use PLAs. Some studies may not include variables that account for the quality of the work or whether it was finished on time. The United States Government Accountability Office Report in 1998 summarized three studies, one of which showed higher costs and two of which showed reduced costs. A 2003 study of 92 new school projects in Massachusetts, Rhode Island and Connecticut found there was no statistically significant effect on the cost of construction when several characteristics of the projects were controlled. A qualitative research study in 2007 for the Electrical Contractors Association showed that the greatest benefits of PLAs were on-time completion of the project, a steady flow of qualified labour, and the quality of workmanship. The main criticisms of PLAs expressed in the 2007 study were that PLAs can increase the bargaining power of unions, and that in areas where a large share of the jobs are covered by PLAs, the construction trades unions may make greater demands during negotiation over new contracts.[81]

[78] Bodah at 29.
[79] Dunlop at 16.
[80] Mayer at 5.
[81] Mayer at 5-7.

The key points to emerge from the Consultant's review of the Project Labour Agreements in the United States, are as follows: (1) Project Labour Agreements are supported for reasons that are similar to the reasons advanced to support special project collective agreements in Canada; (2) PLAs in the United States are prevalent in both private and public sectors, and are not limited to the development of a natural resource or establishment of a primary industry; (3) there does not appear to be widespread concern that PLAs undermine construction labour relations generally except in areas where a large share of the jobs are covered by PLAs; (4) PLAs usually apply to a project, and are not necessarily limited to a geographic site; (5) other workers employed by contractors or owners may perform other work unrelated to the project on the same site and not be covered by the PLA; and (6) one of the perceived advantages of using a PLA is that it may be applied across sectors in the construction industry, thereby eliminating any dispute about which sector agreement applies.

9. Submissions to the Consultant

The Consultant met with stakeholders and received several written submissions. This section of the Report summarizes the views expressed about Special Project Orders in the submissions. The content of the submissions is also discussed later in the report with respect to the issues considered by the Consultant.

The Resource Development Trades Council of Newfoundland and Labrador ("RDC") is the umbrella labour organization for 16 building and construction trades unions and their international affiliates operating in the Province. The RDC was initially established as the Oil Development Council ("ODC") to supply the labour requirements of the Hibernia Construction Project. Currently the RDC is supplying the construction workforce for the Long Harbour Project and the Hebron Project. The RDC submitted that it is the only construction trades union council in the Province that is able to facilitate the successful and productive integration of different trades unions on one project. The objectives of Special Project Orders were labour stability and the maximization of opportunities for citizens of the Province. The RDC submitted that any amendments to the *Labour Relations Act*, to provide flexibility, should only be made if they are compatible with these overall objectives. Greater flexibility should not be used to thwart the interests of the people of the Province. The RDC observed that the Provincial Government has an oversight role with respect to Special Project Collective Agreements. This role is best served by the Provincial Government and not any other party that has a vested interest. The RDC submitted that local construction wage rates are the lowest in Canada, and that project labour agreement rates have been higher in order to attract and retain a workforce for the time period required. The existence of project labour agreements in the Province injects a sense of reality and stability in the construction industry, as it increases the incentive to negotiate reasonable Provincial collective agreements.

The submission of Vale Newfoundland and Labrador Limited ("Vale") was based on its experience as the owner of three special projects to date, the Voisey's Bay Mine and

Mill/Concentrator Plant, the Argentia Demonstration Plant and the Long Harbour Processing Plant. Vale requested that any changes to the legislation be prospective in nature and not affect current Special Project Orders. Vale described its experience with special projects as generally satisfactory. It submitted that one of the many advantages of using Special Project Orders for major developments was to include special conditions, such as the representation of the Labrador Innu and Inuit during the Voisey's Bay Project. Special Project Orders should continue to be available as a mechanism to ensure stable labour relations on major projects.

The Hebron Project Employers' Association Inc. ("HPEA") was constituted for the purpose of negotiating and administering a project labour agreement for construction at the Bull Arm site. HPEA is comprised of two prime contractors, Kiewit Kvarner Contractors and Worley Parsons, and other subcontractors. The HPEA submitted that it was in an excellent position to provide feedback on Special Project Orders having just negotiated the most recent Special Project Labour Agreement in the Province. The HPEA is a party to the Hebron Project Labour Agreement which was negotiated with the RDC between January and September, 2011. The negotiations included 25 meetings pertaining to the master portion of the Agreement, together with additional meetings for trade appendices. The HPEA submitted that proponents of major construction projects were most interested in the completion of the project in a safe manner, within budget, on schedule and with quality assurance and reliability. The Canadian construction industry has had major concerns about the impact of Special Project Orders on the construction industry in general. The negotiation of special terms and conditions, particularly the escalation of wage rates necessary for the project, may have a negative impact on the Province's construction industry. This may be addressed by amending the legislation to allow more flexibility and the adoption of special conditions for major construction projects.

The Canadian Association of Petroleum Producers ("CAPP") prepared a submission with input from the local offshore producing members, Exxon Mobil, Suncor, Husky Energy, Statoil and Chevron Canada. CAPP represents companies that explore for, develop and produce natural gas and crude oil throughout Canada. As the consumers of fabrication and construction work, the

industry's needs are focused on five elements, cost, quality, safety, on time delivery and adequate supply of the skilled workforce. These factors are all important when undertaking projects of the scale, complexity and capital costs associated with offshore drilling and production. CAPP recommended that Special Project Orders continue to be available through the Lieutenant Governor-in-Council to facilitate stable fabrication and construction projects. The assurance of a stable labour relations environment is a key element of the competitiveness of the Province to secure fabrication and construction work related to offshore production in the global marketplace. CAPP requested the opportunity to review the Consultant's Report before legislative amendments were passed.

Nalcor Energy ("Nalcor") submitted that it is leading the development of the Province's energy resources. It has five lines of business: Newfoundland and Labrador Hydro; Churchill Falls; Lower Churchill Project; Oil and Gas; and Bull Arm Fabrication. Nalcor's submission was made from two perspectives, (1) as the proponent for the Muskrat Falls and Gull Island Hydro Electric Development Projects in Labrador and the Labrador-Island Link Project; and (2) as a proponent to continue to promote Newfoundland and Labrador as a world class leader in the major construction and fabrication industry, both at the Bull Arm Fabrication Facility and within the Province generally. Nalcor described the Lower Churchill Project ("LCP") as the most attractive, undeveloped hydroelectric project in North America. The combined capacity of the Muskrat Falls and Gull island generating facilities was 3,074 megawatts. The Labrador-Island Transmission Link installation will connect Labrador and its hydro resource to the Island of Newfoundland, with the objective of providing the opportunity for the Province to meet its own domestic and industrial needs in an environmentally sustainable way and also export electricity to other jurisdictions. Nalcor described the Bull Arm site as Atlantic Canada's largest fabrication site, with over 2,560 hectares and infrastructure to support fabrication and assembly in three areas simultaneously. Nalcor supported the continued use of Special Project Orders to provide a stable labour relations environment for major projects. Nalcor submitted that the LCP may be suited for multiple projects or subprojects within one major project. There are three different components of the project requiring varied labour skill sets. These are: (1) the dam and

generating facilities; (2) the Labrador-Island transmission line and associated infrastructure; and (3) wood harvesting for clearing reservoirs and rights-of-way. Nalcor submitted that it was critically important that there be flexibility within the Special Project Order provisions of the *Act* to allow the declaration of multiple special projects within an overall major project to reflect the unique needs and circumstances of each component. Nalcor also recommended that Special Project Orders allow a collective agreement with a single union representing all employees and not be restricted to a Council of Trades Unions. Nalcor also supported the use of Special Project Orders to enforce obligations in relation to gender equity, aboriginal employment and workforce diversity.

Emera Newfoundland and Labrador Maritime Link Inc. ("Emera") submitted that it has an interest in Special Project Order legislation with reference to the proposed Maritime Transmission Link. Emera is proposing to design, consult, obtain environmental assessment and regulatory approvals, develop and operate the project between the Island of Newfoundland and Cape Breton, Nova Scotia. The Maritime Link is a new 500 megawatt high voltage direct current ("HVDC") transmission system that includes three main components, (1) in Newfoundland, a new transmission line and related infrastructure; (2) across the Cabot Strait, two subsea cables; and (3) in Nova Scotia a new transmission line. In addition to supply/demand management, a key component of the project is the need to reduce or eliminate dependency on carbon based generation facilities. Emera submitted that Special Project Order legislation provides a valuable mechanism to facilitate labour relations stability and productivity on major projects. It provides the parties with flexibility to negotiate an agreement designed to address the specific needs of the project while also providing a common set of terms and conditions of employment.

The Construction Labour Relations Association of Newfoundland and Labrador Inc. ("CLRA") submitted that the use of Special Project Orders is good for the Province. They provide a comfort to investors and proponents on labour relations stability. The CLRA submitted that the purpose of employer accreditation was to stabilize construction labour relations. Collective

agreements negotiated between the CLRA and a Trade Union were binding on the CLRA, the Union and each unionized employer and its employees, in the accredited sector. The legislation ensures that all unionized employers operating in the sector are subject to the same rules. The conferring of exclusive bargaining authority on the CLRA serves the public policy objective of a balanced and stable construction industry. The use of Special Project Orders has evolved to the point where there are systemic challenges that need to be addressed, in particular, that the CLRA is left out of the bargaining process for Special Project Orders; that special project collective agreements affect the entire construction industry, not just the special projects; that Special Project Orders have the potential to cause industry instability to the broader construction industry; that outside negotiators, who are brought in by project proponents, do not have intimate and full knowledge of the local industry and the labour relations climate that exists in the Province; that outside negotiators are not addressing local benchmarks; that each successive use of a Special Project Order leads to "leapfrogging" with the effect that the next special project collective agreement must outdo the previous one; there is a significant disconnect between Special Project Orders and Provincial collective agreements negotiated by the CLRA; and that the CLRA is an objective representative of all employers and does not favour one employer over another. The CLRA proposed that it be more involved in the negotiation of special project collective agreements. The CLRA proposed an agency arrangement similar to the one used on projects for the Iron Ore Company of Canada, the Transshipment Facility at Whiffen Head, and the North Atlantic Refinery Limited.

The Newfoundland and Labrador Construction Association ("NLCA") submitted that it is in the best interests of the Province that the CLRA remain in the negotiation process for project collective agreements. The NLCA believed it was in the best interests of the Province that mega projects be granted special project status, however there need to be conditions so as not to affect the construction industry in a detrimental way. The Provincial Collective Agreements should be the template for negotiations for special projects. The Province was asked to consider establishing a review board with representation from Government, and industry, to assess each project and decide whether it warrants special project status. The mechanism should be retained

to permit open shop contractors to participate on special project sites without committing to unionized work forces outside the sites in question. The current criteria for special projects should not be altered in a significant way to expand the projects obtaining special status.

The Newfoundland and Labrador Employers' Council ("NLEC") submitted that Special Project Order legislation is of great value to the Province, but is not without potential long term negative impacts. The impact of special project collective agreement premium wages continues long after the project is completed, contributes to wage inflation and negatively impacts the competitiveness of the Province. The NLEC supported flexibility in the Special Project Order provisions to meet the needs of future projects.

The St. John's Board of Trade submitted that it was important that the Province maintain a balanced labour relations environment for both major developments and in the industry generally. The reputation of the Province is vital to attracting investment. It is a challenge to provide a skilled and qualified workforce for special projects. The Board welcomed the opportunity for further consultation with Government.

10. Discussion

10.1 Policy Issues related to Special Project Orders

The stakeholders in Newfoundland and Labrador are generally supportive of Special Project Orders. The reasons advanced in support of Special Project Orders in this Province are the same as those in other Provinces and in the literature. The Consultant notes that there is a mature Special Project Order labour relations environment in the Province at this time, based on the experience of project proponents, contractors, the building trades unions and the Resource Development Council with the five Special Project Orders issued since 1990.

The advantages of Special Project Orders include the following: (1) they provide labour peace and stability for the length of the project; (2) Special Project Orders can incorporate the terms of Development Agreements and Impact and Benefit Agreements; (3) special project collective agreements can incorporate terms such as aboriginal employment, gender equity and diversity programs; (4) Special Project Orders avoid sector disputes, such as whether the industrial and commercial sector or another sector of the construction industry applies, since the project collective agreement will apply regardless of sector; (5) the proponent does not need to bargain separately with each building trade union, since there is a requirement that a group of trade unions form a council and bargain together as one bargaining agent; (6) there is no risk of labour disruption caused by the expiry of existing construction trades collective agreements during the term of the project; (7) there may be standardized terms of employment, such as hours of work and work schedules applicable to all trades in the project collective agreement; (8) special project collective agreements may establish provisions for effective labour relations during the project such as liaison committees and union site representatives; (9) the owner may exert greater control over the cost and management of the project; (10) special projects promote investment in the Province; (11) the use of Special Project Orders has been recommended in prior labour relations reports in the Province, such as the Cohen Report, the Easton Report and the Cooper 2001 Report; (12) Special Project Orders and collective agreements can provide for effective jurisdictional dispute resolution mechanisms; and (13) non-union contractors can employ union

members under the special project collective agreement without becoming unionized for work outside the special project.

There are also concerns about the effect of Special Project Orders, in particular, that excessive use of special projects may undermine construction industry labour relations in the Province. Concerns have been raised about the escalating labour costs of special project collective agreements and the possible “leapfrogging” effect that one special project collective agreement has on another and on other collective agreements in the construction industry. Also, when a Special Project Order is issued, the union or council of trades unions is selected before any work starts on the project, by reason of the fact that the proponent and the Union or Council negotiate the special project collective agreement, and then the proponent applies for the Special Project Order.

The Consultant observes that there are many benefits of special projects, and there is widespread support for their continued use. Although there are concerns about special projects, the benefits are significant, and justify the continued use of Special Project Orders under the legislation.

Recommendation No. 1 - That Special Project Order legislation be continued with the effect that special projects are encouraged as a means to secure stable construction industry labour relations and to promote economic development.

10.2 Legislation in Newfoundland and Labrador compared to other jurisdictions

The current model for Special Project Order legislation in this Province is appropriate for the policy objectives. The legislation in other jurisdictions was reviewed by the Consultant. The model for the legislation in other Provinces was not found to be preferable to the legislation in this Province. One of the features of the legislation in Newfoundland and Labrador is the availability of review by Government of the constitution of the Employer organization, the constitution of the Council of Trades Unions and the special project collective agreement.

Providing authority to review those items assures greater labour stability and less risk of dispute. The Special Project Order legislation in this Province has evolved since it was first introduced in 1968 for the Churchill Falls Project. There have been amendments to the legislation in response to issues that have arisen, and the participants have adapted to these changes. The existing model has served the Province well. It is appropriate to build on the existing model rather than to establish a completely new model. Changes to the legislation are needed to provide flexibility for upcoming major projects and to address issues raised in the terms of reference and by the stakeholders.

The Consultant has studied the features of Special Project Order legislation in other Provinces that merit close scrutiny. Under the legislation in Alberta, Special Project Orders authorize an employer or employer association to negotiate a collective agreement. The employer may then select the union or council. Under the Alberta model, the Government does not have the same authority to prescribe the terms of the association or council constitution or the collective agreement, because there is a different process followed. The Consultant concludes that it is desirable that Government have the authority that is presently included in the legislation.

In the New Brunswick legislation, a Special Project Order is issued by the Lieutenant Governor-in-Council. In New Brunswick, the project description includes a geographic site, but regulations may exclude unrelated work from the project area. New Brunswick also has a process where special project applications are reviewed by a major project advisory committee prior to a recommendation to the Minister and the Lieutenant Governor-in-Council. One stakeholder submission to the Consultant suggested that Government establish a board to advise Government on special project applications. In the Consultant's view, the current model provides flexibility for the Government to review applications for special projects on a timely basis to ensure that special project collective agreements comply with development agreements and other commitments made by the proponent. The Consultant does not recommend any change in the current model that provides for the issuance of Special Project Orders by the

Lieutenant Government-in-Council.

Recommendation No. 2 - That the Lieutenant Governor-in-Council continue to have authority to issue Special Project Orders.

10.3 Role of Construction Labour Relations Association

The Consultant's Terms of Reference include a review of the nature of any participation of the CLRA with respect to Special Project Orders. The Consultant has considered the submissions made in writing and at meetings held with the stakeholders, the history of the negotiation and administration of special project collective agreements, previous reports to Government that address this issue, and legislation in other jurisdictions.

The CLRA has not had a leading role in the negotiation or administration of any special project collective agreements to date in this Province. The CLRA was accredited in 1976. The first special project collective agreement negotiated after accreditation was for the Hibernia Project, which was negotiated by the Hibernia Employers Association, not the CLRA. Subsequent special project collective agreements have been negotiated and administered by employer associations on behalf of project owners. The CLRA has provided information for various project negotiations when requested. The CLRA did not have a role in the negotiation of the Hebron Special Project Collective Agreement, however, the Hebron Project Employers Association and the CLRA have an arrangement for assistance and cooperation.

The Cooper 2001 Report considered the issue of participation of the CLRA with respect to Special Project Orders. The Report concluded that it should be the decision of the proponent whether or not to engage the services of the CLRA.

The CLRA submitted to the Consultant that the *Labour Relations Act* should provide a role for the CLRA at the bargaining table on special projects. The CLRA pointed out that it was established and given authority by the *Act*, and it should therefore have a statutory role in special projects. The CLRA also submitted that Government ought to promote the role of the CLRA to

the project proponents. The NLCA supported the involvement of the CLRA in the process. The other submissions received by the Consultant that commented on this issue all recommended against any statutorily mandate role for the CLRA. Some submissions stated it was a potential conflict of interest for CLRA to be at the bargaining table, because CLRA represents the interests of the contractors and not the proponents. The RDC submitted that gains have been obtained by the use of Special Project Order legislation that would not have been obtained through normal rounds of bargaining with the CLRA. The RDC assured the Consultant that project proponents have engaged professional local expertise in the negotiation and administration of collective agreements. Some submissions pointed out that Section 61(2) of the *Act* states that the Labour Relations Board shall not accredit an association such as the CLRA to bargain on behalf of a unionized employer for a special project. It was also submitted that the involvement of the CLRA would perpetuate many of the terms, conditions and practices associated with its collective agreements with the Building Trades Council. It was argued that the proponent is incurring the financial risk and it is inconsistent that an organization representing contractors, who do not have the same risk, should have a statutorily mandated role. The HPEA submitted that a statutorily mandated role for the CLRA would take risk management out of the hands of the owner, and owners are reluctant to hand over control. Nalcor submitted that the proponent must have freedom to negotiate a collective agreement to meet the unique needs of the major construction projects through a process in which they can exercise direct control, and thereby minimize project risk from a safety, cost and schedule standpoint. Nalcor recognized that the CLRA would likely be viewed as an important source of information and guidance to any proponent of a project and that there is no reason not to have open channels of communication between the CLRA and project proponents and contractors.

The impact of special project collective agreements on the collective agreements between CLRA and the Building Trades Unions was reviewed with the stakeholders. There were differences of opinion as to whether a project proponent or the CLRA would have greater interest in controlling the labour cost of a project collective agreement. The Consultant does not accept that a project proponent has any less interest in controlling costs than the CLRA. The proponent has a vested

interest in controlling costs having regard to the impact on the cost of the project. However, there is also validity to the claim that the interests of the proponent include timely project completion, while the CLRA's interests include the long term impact of the project agreement.

There is no statutorily mandated role for an accredited employer organization to bargain on behalf of a project proponent in other jurisdictions under a Special Project Order. Under the structure of the legislation in some jurisdictions, collective agreements negotiated by the accredited employers' organization may continue to apply, except as modified by the project agreements.

Having considered the submissions, the preference of owners to control project risks, the legislative history and the legislation in other jurisdictions, the Consultant does not recommend a statutorily mandated role for the CLRA.

Recommendation No. 3 - That there be no statutorily mandated role for the Construction Labour Relations Association of Newfoundland and Labrador ("CLRA") in the negotiation or administration of special project collective agreements.

Recommendation No. 4 - That project proponents be encouraged by the Government of Newfoundland and Labrador to provide a meaningful role for the CLRA with respect to the negotiation and administration of special project collective agreements.

10.4 Description of "Special Project"

This section of the Report examines the scope of special projects in Newfoundland and Labrador as set out in the definition section and other sections of the *Labour Relations Act*.

The current definition of "special project" in paragraph 2(1)(u) of the *Act* states:

> "special project" means an undertaking for the construction of works designed to develop a natural resource or establish a primary industry that is planned to

> require a construction period exceeding 3 years, and includes all ancillary work, services and catering within a prescribed geographic site relating to the undertaking or project.

In order to be declared a special project by the Lieutenant Governor-in-Council under paragraph 70(1)(a), the project must meet the definition in paragraph 2(1)(u). Alternatively, a project at the Bull Arm site may be declared a special project under paragraph 70(1)(b) as "an undertaking for the construction or fabrication of works at the Bull Arm site, including all ancillary work and services". In this part of the Report, I will review how a special project is described, by reference to the elements of "geographic site", "construction period exceeding 3 years", "develop a natural resource or establish a primary industry", "ancillary work, services and catering" and "fabrication".

Paragraph 70(2)(a) states that the Lieutenant Governor-in-Council may prescribe "the geographic site to which the declaration relates". Although a geographic site may be prescribed in the Special Project Order, at the discretion of the Lieutenant Governor-in-Council, the definition requires a project within a geographic site. The reference to "geographic site" was added to the definition in 1990. At first the amended definition read "geographic site, if any", but in the 1990 consolidated version of the *Act*, and all subsequent versions, the words "if any" were removed. In the Consultant's opinion, under the current definition, a geographic site is required in order to meet the definition of special project. The Special Project Orders issued to date by the Lieutenant Governor-in-Council have prescribed a geographic site, whether the project was located at the Bull Arm site or elsewhere in the Province. The designation of the geographic site has been amended when required. For example, the Hibernia Special Project Order was amended to include offshore construction and commissioning work. The Voisey's Bay Special Project Order was amended to add the geographic site of the Argentia Hydrometallurgical Demonstration Plant. The Lieutenant Governor-in-Council has also excluded areas from the prescribed geographic sites. For example, in the Hebron Special Project Order, electric power lines, towers and rights of way were specifically excluded from the Special Project Order designation.

One of the advantages of designating a geographic site is that it provides certainty with respect to the scope of the Special Project Order. Work that is done outside the boundaries of the geographic site, such as fabrication work in an offsite shop or yard, does not come within the scope of the special project collective agreement. The proponents and/or contractors involved with special projects to date have preferred the certainty of a site specific designation. The nature of the Special Project Orders issued to date is such that site specific designations were suitable because a specific site could be identified and delineated in the Special Project Order.

The geographic site description is not easily applied to some major construction projects, for example, projects that include electricity transmission lines or pipelines. The Lower Churchill Project proposed by Nalcor and the associated Nova Scotia Link Project, proposed by Emera, include construction of transmission lines that are not easily described geographically. The Lower Churchill Project also includes wood harvesting to clear the reservoir, another part of the project not easily described geographically. To allow these components of the Lower Churchill Project to proceed as special projects, it is desirable to amend the requirement for a "geographic site" in the definition of "special project" in the *Act*.

The submissions to the Consultant expressed different points of view on this issue, although most submissions were in favour of removing "geographic site" from the definition of "special project". Nalcor requested that a project be described by a description of the work, not by the geographic site. Emera recommended a description of the work based on the scope of the work and/or geographic site. The RDC submitted that there was no need to retain geographic site and that the site could be extended to the entire Province. The HPEA submitted that there should be flexibility to issue a Special Project Order based on the nature of the work or the geographic site. CAPP preferred designation by geographic site to avoid disputes about the scope of the work and whether work done in outside yards was captured by the Special Project Order. Vale preferred to retain geographic site in the definition, arguing that it enhances labour relations stability. The NLCA submitted that the criteria for special projects should not be changed in any way that will have the effect of expanding future projects that received special project status.

The legislation in other jurisdictions does not require a geographic site, with the exception of New Brunswick. In some other jurisdictions, such as Alberta, a geographic site may be designated, but is not required.

The Consultant considers it necessary to amend the definition of "special project" to allow flexibility for projects that otherwise qualify as special projects, but are not appropriately described by geographic boundaries. There are important reasons to prescribe geographic sites for those projects that are suitable. Therefore the Lieutenant Governor-in-Council should retain the ability to prescribe the geographic site in appropriate cases.

Recommendation No. 5 - That a special project be permitted without the necessity for a geographic site. The words "within a prescribed geographic site" should be deleted from the definition of "special project" in paragraph 2(1)(u) of the *Act*.

Recommendation No. 6 - That a special project should have a prescribed geographic site or scope of work where deemed appropriate. The Lieutenant Governor-in-Council should have the authority to prescribe the geographic site or scope of work for the special project under subsection 70(2). Paragraph 70(2)(a) should be amended to read "the geographic site or scope of work to which the declaration relates".

The definition of "special project" includes a requirement that the project "is planned to require a construction period exceeding 3 years". The 3 year period has been a requirement of the legislation since 1968. One of the reasons stated in the House of Assembly in 1997 to add paragraph 70(1)(b), to prescribe construction or fabrication at Bull Arm to be a special project, was that it avoided the requirement for a 3 year project. At that time, the Terra Nova Project was expected to be a project of 18 to 24 months duration. In other jurisdictions there is no statutory minimum duration required for a special project.

The Consultant received submissions with respect to reducing the required length of a project. Vale submitted that a special project could be for less than 3 years, as that would extend the benefit of labour relations stability to other projects. CAPP recommended removing the 3 year time limit. Emera also recommended reducing the 3 year time limit.

The Consultant has considered that the definition of "special project" has several qualifications in the definition. The Consultant does not favour eliminating any minimum requirement for the duration of the project. However, a reduction of the time limit to 2 years would allow for other projects that otherwise qualify to be declared special projects. In the Consultant's opinion, this would not be an excessive expansion of the definition of "special project".

Recommendation No. 7 - That the definition of "special project" in paragraph 2(1)(a) be amended so that it will require a construction period exceeding "2 years", in place of "3 years".

The definition of "special project" refers to "the construction of works designed to develop a natural resource or establish a primary industry". This part of the definition has remained unchanged since 1968. In other jurisdictions, the scope of projects entitled to special project designation is more widely framed, although there are other restrictions. For example, in Ontario, a special project may be proposed by a project proponent who believes it is economically significant. In New Brunswick, a special project may be declared taking into account the social and economic effects of the project.

The Consultant received some comment from stakeholders with respect to this element of the definition. There is no widespread demand to change this part of the definition. In the opinion of the Consultant, to change the type of project, such as by allowing projects that are "in the public interest" or "economically significant" would broaden the definition too much, and potentially undermine the stability of construction labour relations generally.

There is no reference to “fabrication” in the definition of “special project”. However, under paragraph 70(1)(b), work at Bull Arm for construction or fabrication may be declared a special project. The Consultant was asked to consider adding fabrication to the definition of “special project”, so that fabrication projects outside Bull Arm could be prescribed as special projects. However, such an expansion of the definition of “special project” would also broaden the definition too much, and is not recommended.

Recommendation No. 8 - That there be no change to that part of the definition of “special project” in paragraph 2(1)(u) that requires “an undertaking for the construction of works designed to develop a natural resource or establishment of a primary industry”, and there be no change to the definition of “special project” to include “fabrication”.

The definition of “special project” also states that the project “includes all ancillary work, services and catering” within the site. The Consultant reviewed submissions that these words in the definition be removed to allow flexibility. The Lieutenant Governor-in-Council would retain the authority to include ancillary work, services and catering where appropriate. In the event of overlapping Special Project Orders, then it will likely be inappropriate that both Special Project Orders include ancillary work, services and catering. This issue also arises in the event of multiple tenants at the Bull Arm site.

In the Consultant’s view it is more likely to be appropriate to prescribe “ancillary work, services and catering” as part of a Special Project Order where a geographic site is prescribed. In that event, the camp, cafeteria and related services within the site may be included in the Special Project Order. Where a project is described by scope of work it may also be appropriate to include “ancillary work, services and catering”. However, this is a matter for the discretion of the Lieutenant Governor-in-Council when prescribing the Special Project Orders.

Recommendation No. 9 - That “ancillary work, services and catering” be removed from the definition of “special project” in paragraph 2(1)(u). “Ancillary work and services” should

also be removed from the description of special projects at the Bull Arm site under paragraph 70(1)(b). "Ancillary work, services and catering" may be prescribed as part of the special project under subsection 70(2).

10.5 Alternate Tenants at Bull Arm Site

Bull Arm is Atlantic Canada's largest industrial fabrication site, located close to international shipping lanes and Europe, and with unobstructed deep water access to the Atlantic Ocean, as described by Nalcor. It is located 130 kilometers from St. John's. Bull Arm has integrated and comprehensive infrastructure to support fabrication and assembly in three project functions: topsides fabrication and assembly; dry dock fabrication and construction; and the deep water site. The topsides fabrication and assembly function is a 120,000 square meter area with facilities to support fabrication, assembly and load-out of topsides components. The 54,000 square meter module hall has two 75 tonne overhead cranes and a 39 X 39 meter vertical lift door. The assembly pier is capable of supporting a 40,000 tonne topsides structure. The dry dock fabrication and construction site encompasses approximately 140,000 square meters, including pipe shop/rebar building, carpentry/warehouse building and marine facilities, including the former dry dock and seven quays located inside and outside the dry dock area. The deepwater site includes laydown and docking facilities to support deep water construction operations. The site has a water depth of 150 to 180 meters. The Bull Arm site includes the related infrastructure of roads, water and sewage system, power supply, parking areas, camp and catering areas. There is a single access road from the Trans Canada Highway, and a total 10.2 kilometer paved road system. There are separate branches of the road leading to the areas of the dry dock, the topsides fabrication and assembly area and the ferry terminal used for the deep water site.

The Bull Arm site was used for the Hibernia Project from 1990 to 1997, and the Terra Nova Project from 1998 to 2001. The Bull Arm site has since been used for various projects, none of which were the subject of Special Project Orders. These projects included: White Rose FPSO module, Voisey's Bay ship loader, Henry Goodrich drill rig refit, Terra Nova FPSO ALQ/SLE, White Rose extension subsea integration and testing and Glomar Grand Banks drill rig refit.

Currently the Hebron Project is the sole tenant of the Bull Arm site. Hebron plans to utilize all areas of the site to complete a GBS platform. There may be some areas of the site that become available for alternate use during the final stages of construction. Those areas could potentially be leased by Nalcor to other tenants, subject to the terms of the Hebron Lease.

The Bull Arm facility has potential for use as a fabrication and construction facility for many years following the completion of the Hebron Project. It is possible that more than one tenant could use the site at the same time after the Hebron Project is completed. To date, Special Project Orders at the Bull Arm site have included the entire site and have described the geographic boundaries of the site. In the case of the Hebron Project, the geographic site excluded an area for power transmission lines.

The Consultant reviewed submissions with respect to alternate tenants at the Bull Arm site. The HPEA was opposed to alternate tenants being issued a Special Project Order while the Hebron Special Project Order remained in effect. The HPEA submitted that the use of the site by more than one tenant at the same time is fraught with difficulties that do not arise when there is a single labour agreement that applies to all work taking place at the site. No major client would accept the possibility of disruption of a project's labour relations environment by having different project agreements with different terms and conditions at the same site. The HPEA was opposed to an alternate tenant at the Bull Arm site while the Hebron Special Project Order is in effect. However, the HPEA pointed out that problems could be minimized through an arrangement to allow access by third party tenants where there is excess capacity on the site, where areas of access are clearly defined and there is no sharing of buildings or equipment. The RDC submitted that it could be problematic to have workers at the same site being paid different rates of pay for the same work, depending on the applicable project agreement. If the Bull Arm site could be effectively divided into exclusive areas for the use of each tenant, then there could be more than one project collective agreement and Special Project Order applicable at the same time. Each Special Project Order could make reference to the scope of work and the exclusion of

the scope of work of the alternate project. At the Bull Arm site, it is not possible to have exclusive access, because there is a shared infrastructure, such as the access road.

The Consultant concludes that the potential labour relation difficulties of having alternate tenants at the Bull Arm site at the same time would be minimized by issuing overlapping Special Project Orders. Any legislative changes affecting the Bull Arm site should not alter any vested interests of HPEA the current tenant of the site.

Recommendation No. 10 - That alternate tenants at the Bull Arm site be permitted by using multiple Special Project Orders that overlap temporally and geographically. Subsection 70(2) of the *Act* should be amended to permit the Lieutenant Governor-in-Council to prescribe the scope of work or geographic area of the Bull Arm site that is included in or excluded from the Order, and the extent to which ancillary work and services are included in the Order.

10.6 Overlapping Special Project Orders

The Consultant has considered the issue of flexibility to provide for Special Project Orders that overlap temporally and geographically. Prior Special Project Orders have been issued for a specific geographic site, and for a term that continues until the completion of the project. The geographic sites have all been distinct, with the exception of the three projects that have used the Bull Arm site. The projects at the Bull Arm site did not overlap because one project was completed before the next project started.

There may be a need to provide for overlapping special projects in future. The possibility of overlap was raised by Nalcor in relation to the Lower Churchill Project. One of the options under consideration with respect to special project designation would be to divide the project into three sub projects, the dam and generating facility, the transmission line construction, and the wood harvesting to clear the reservoir and the transmission lines. In the event that the project is subdivided for the purpose of issuing multiple Special Project Orders, then it is likely there could

be overlapping Special Project Orders, both temporally and geographically. By removing the requirement for geographic site in the definition of "special project", and by prescribing the project by "scope of work" as recommended by the Consultant, there is greater potential to permit overlapping projects.

The submissions received by the Consultant that commented on this issue were generally in favour of overlapping Special Project Orders. The HPEA recommended that the *Act* be amended to allow Special Project Orders that overlapped temporally and geographically. The HPEA identified issues to be addressed in that regard, in particular, the need for an adequate supply of skilled tradespersons, the need to engage members of special interest groups, the need to make employment and training opportunities on major projects available to all potential workers, the need to enable projects to access a much broader supply base of contractors and tradespersons, and the adoption of practices to minimize labour instability with different work forces on the same major construction project. Nalcor recommended that the Lieutenant Governor-in-Council have authority to issue more than one Special Project Order in relation to the same major project. Nalcor recommended this could be achieved by allowing a special project to be declared without reference to geographic site. The Newfoundland and Labrador Employers' Council recommended that the Special Project Order legislation be flexible enough to allow for designation by geographic site and/or scope of work, depending on the circumstances of the request.

It is desirable to provide flexibility to issue Special Project Orders that overlap temporally and geographically. Labour stability may be addressed by clearly describing the scope of work of the project, where a scope of work is prescribed. It may also be necessary to exclude a scope of work or geographic site of another project from a Special Project Order for the purpose of clarification. The *Act* should provide for exclusions from Special Project Orders to facilitate any overlap.

Recommendation No. 11 – That a subsection be added to section 70 of the *Act* to state that a Special Project Order is not invalid by reason of the fact it overlaps temporally and geographically with another Special Project Order.

Recommendation No. 12 – That the Lieutenant Governor-in-Council be authorized to prescribe in subsection 70(2), that a scope of work or geographic area be excluded from a Special Project Order, such authority may be used to give effect to the overlap temporally or geographically of Special Project Orders.

10. 7 Special Project Order Application Process

The *Labour Relations Act* provides two procedures to apply for a Special Project Order, namely, by application to the Labour Relations Board under Section 69, or by Order of the Lieutenant Governor-in-Council under Section 70. After the Churchill Falls Project, all Special Project Orders that led to completed projects were declared by the Lieutenant Governor-in-Council. The Lieutenant Governor-in-Council process will be addressed first. Subsection 70(1) of the *Act* states that the Lieutenant Governor-in-Council may declare an undertaking to be a special project in two circumstances (1) where it meets the definition in paragraph 2(1)(u); or (2) where it is a project for construction or fabrication of works at the Bull Arm site. Subsection 70(2) of the *Act* specifies the items that may be prescribed by the Lieutenant Governor-in-Council including (a) the geographic site; (b) the employees, employers' organizations, trade unions and councils of trade unions that may be involved in collective bargaining; (c) the bargaining unit; (d) the collective agreement; and (e) other conditions and qualifications considered necessary or desirable.

The *Labour Relations Act* does not describe the process for a proponent to apply for a Special Project Order to the Lieutenant Governor-in-Council. The practice has developed with respect to Special Project Orders granted to date, that the project proponent consults with the Labour Relations Agency and appropriate Government officials, with respect to a potential Special Project Order. Application is made through the Minister Responsible for the Labour Relations

Agency for approval by the Lieutenant Governor-in-Council. Prior to issuing a Special Project Order, the Labour Relations Agency, or appropriate official on behalf of Government, will review the constitution of the employer's organization for the purpose of compliance with subsection 70(9), review the constitution of the Council of Trades Unions for the purpose of compliance with subsection 70(10), review the terms of the collective agreement for the purpose of determining if it is a collective agreement for the purpose of the special project, and consider any conditions and qualifications to be included in a Special Project Order.

There is no written description of the process available for project proponents. Although the information is available upon inquiry to the Labour Relations Agency, it would be preferable that a description of the requirements are published to assist project proponents in the application procedure. The Alberta Government has prepared a "protocol" document outlining the application process. A similar procedure would be desirable in this Province.

Recommendation No. 13 - That the Labour Relations Agency prepare and publish a document outlining the procedure for a proponent to apply for a Special Project Order issued by the Lieutenant Governor in Council.

Subsection 70(11) of the *Act* permits an application by "the Minister, an employer, employers' organization, trade union or council of trade unions" to the Labour Relations Board to determine various questions of status with respect to whether a person is an employee, an organization is an employers' organization, a council is a council of trade unions, and whether a collective agreement has been entered into. This section was raised in the application by the CLRA to the Labour Relations Board in connection with the Long Harbour Project. An issue was raised in the documents filed with the Board as to whether subsection 70(11) was restricted in its application to questions raised before the Special Project Order was declared. In the Consultant's opinion, subsection 70(11) only applies "where an undertaking has been declared by order to be a special project", and is not available to address any question before a Special Project Order is issued. In the submission of some of the stakeholders to the Consultant, it was suggested that subsection

70(11) should be amended so that questions may only be directed to the Labour Relations Board before a Special Project Order is issued, and that only the Minister be authorized to make an application to the Board. However, there may be a good reason for other parties to make such an application to the Board. Therefore, the Consultant does not recommend any change to subsection 70(11).

Recommendation No. 14 - That the Labour Relations Board continue to have authority to decide questions related to special projects under subsection 70(11) of the *Act*.

An issue was raised in the Labour Relations Board application concerning the Long Harbour Project, as to whether a collective agreement negotiated by a project proponent is valid, having regard to the exclusive authority of the CLRA to bargain in the industrial and commercial sector, under subsection 64(2). The intent of the Special Project Order legislation is that special project collective agreements are valid whether the CLRA has a role in their negotiation or not. This is confirmed by subsection 61(2), which states that the Board shall not accredit an employer's organization to bargain for a special project. For greater certainty, the *Act* should be amended to clarify that a collective agreement designated under a Special Project Order, is valid notwithstanding subsection 64(2) of the *Act*.

Recommendation No. 15 - That a collective agreement prescribed by the Lieutenant Governor-in-Council for the purpose of the special project under paragraph 70(2)(d) of the *Act*, is a valid collective agreement notwithstanding subsection 64(2) of the *Act*.

The Consultant received several submissions with respect to alternative union or council of union structures with respect to Special Project Orders. It was submitted that it may be appropriate for some projects that a single union be the bargaining agent, and not a council of trade unions, in particular, where the project requires only one trade or a small number of different trades.

Concerns were also raised with the Consultant about whether union membership rules, initiation fees or referral to work practices prevent contractors from having access to certain skilled workers. For example, the Newfoundland and Labrador Employers' Council referred to challenges to its members on the ability to meet labour demand caused by the barriers of lack of accountability of building trade unions to recruit and retain workers, barriers to entry for other associations willing to supply skilled labour, and trade union rules regarding the eligibility list. Subsection 70(12) of the *Act* authorizes the Labour Relations Board to hear complaints under section 30 of the *Act* with respect to special projects. Subsection 30(1) requires that a trade union make membership available to all employees in the unit that the union represents. Subsection 30(3) provides that where an employee claims to have been unfairly denied admission to or expelled from a trade union, the employee may complain to the Board. A person seeking a referral to work who is not an employee does not have status to file a complaint under section 30. Whether or not section 30 should be amended to expand the scope of persons who can file a complaint is an issue that requires further study, and would have implications beyond the scope of special projects. It is also noted that special project collective agreements may provide for the employment of persons who are not union members, with union members having priority for employment. The Consultant does not find it appropriate to make any recommendation for legislative change at this time. It is appropriate that Government monitor these issues, in particular the need for any amendment of section 30.

The Hibernia Special Project Order included a condition related to union membership fees and referral to work. In the event the Lieutenant Governor-in-Council believed it appropriate to include such a term in a future Special Project Order, then the authority to do so is already set out in paragraph 70(2)(e). It is unnecessary to amend the *Act* to provide such authority.

The Consultant considered submissions that paragraph 70(2)(c) be amended to allow for an "all employee" bargaining unit. However, the current section authorizes the Lieutenant Governor-in-Council to prescribe the bargaining unit, and does not make any reference to whether the unit is

to be prescribed by trade or as an all employee unit. It is unnecessary to amend the *Act* to provide for an all employee bargaining unit.

Submissions were made with respect to facilitating the engagement of non-union contractors to work on special projects. However there is currently a provision in the legislation in subsection 70(5) that addresses this issue. Subsection 70(5) has the effect that when non-union employers work on special projects, the employees on the special project may not be included as union members in the event of any certification application. In effect, a non-union employer may operate under the special project collective agreement without being required to be unionized for other projects. There is no need for any amendment to the *Act* in this regard.

The HPEA recommended that the labour relations environment for special projects allow all contractors, whether unionized or not, and all unions and all workers, whether represented by a third party or not, to participate in major construction projects. The HPEA described a significant impediment to be the monopolistic role of the RDC that seemed to have been created following amendments to the *Labour Relations Act* after the Cooper 2001 Report. The HPEA submitted that to avoid shortages of the skilled tradesperson resource, the Province must adopt strategies to facilitate optimum employment opportunities. Employment and training opportunities on major construction projects must be made available to all potential workers not only those who are members of or only acceptable to the Building Trades Unions. CAPP submitted that the legislation should authorize alternative trade union models, and that it was inappropriate to place the sole responsibility for the labour supply on the Building Trades Council.

There is a perception that the effect of the 2001 amendments to the *Act* in effect gave the RDC a monopoly to be the Council of Unions designated for special projects. In the Consultant's view, the legislation does not establish a monopoly for any one group. The Lieutenant Governor-in-Council can designate the "trade unions and councils of trade unions" that may be involved in collective bargaining". When the legislative history is reviewed, the first reference to "unions"

was in the 1990 amendments which stated in subsection 70(2) that the Lieutenant Governor-in-Council may prescribe "the employers and the trade unions" that may be involved in collective bargaining. The 2001 amendments added "councils of trade unions" to subsection 70(2) at the same time as other amendments authorized the Lieutenant Governor-in-Council to review the constitution of the council of trade unions. The reference in the legislation to trade unions does not preclude the possibility that a single union may be a party to a Special Project Order or special project collective agreement. However, it would be appropriate to amend the legislation to clarify this issue.

In the event that there is more than one union, then the Lieutenant Governor-in-Council may require that a council of trade unions be formed and that the constitution of the council be reviewed under subsection 70(10). Whether or not it would be desirable for a single trade union to be a party to a special project collective agreement, is a matter to be assessed by the Lieutenant Governor-in-Council depending on the circumstances of the project. However, for greater certainty, the legislation should be amended to clarify that a single employer or union may be prescribed.

Recommendation No. 16 - That paragraph 70(2)(b) be amended to include the singular "employer" and "trade union".

The *Act* provides for an application to the Labour Relations Board under section 69. There have been no applications to the Board under this Section since 1983, and only one order was issued which was in 1975. Section 70(4) states that an application to the Board for a Special Project Order is void when a declaration has been issued by the Lieutenant Governor-in-Council. Section 69 provides for the Board to determine whether an undertaking is a special project, but the application of the section is limited to "a certified bargaining agent, an employer or employers' organization". There is no reference to a council of trade unions in section 69. Also Section 69 does not include the provisions that were added to section 70 in the 2001 amendments. These sections provide oversight of the terms of the collective agreement and the

constitution of an employers' organization or council of trade unions. To continue to allow for the Labour Relations Board to issue a Special Project Order without the additional oversight functions would appear to be counter to the intent of the legislation. There is no practical reason for the Labour Relations Board to retain jurisdiction to issue Special Project Orders. Section 69 should be repealed, subject to review of any unintended legal consequence.

Recommendation No. 17 - That the Labour Relations Board no longer have the authority to issue a Special Project Order, and that section 69 of the *Act* be repealed.

10.8 Special Project Collective Agreements

Successful labour relations at special projects is determined in part by the relationship of the parties. The terms of the collective agreement such as a liaison committee, site representatives, and a method for resolving jurisdictional disputes will facilitate effective labour relations. Two issues with respect to the provisions of project collective agreements were raised in submissions to the consultant.

The first issue concerns "union label" provisions that are included as a standard term in the collective agreements of certain building trades. This issue was addressed in the Cooper 2001 Report recommendations and the 2001 amendments to the legislation. The Consultant notes that a refusal to work based on a "union label" provision is inconsistent with the no strike/no lockout provision of special project collective agreements. However, the Consultant was not provided sufficient reason based on any recent events to make any recommendation on this issue.

Another issue was raised with respect to the trade jurisdiction dispute resolution mechanism. Nalcor proposed that a specific criteria be added to the dispute resolution procedure. Jurisdictional disputes are resolved on the basis of several factors and established precedent. It is important that whatever system is used, it be easy to access, efficient and provide for a speedy resolution. The criteria used in the process to resolve jurisdictional disputes is a matter most appropriately addressed by the parties in collective bargaining of the special project collective

agreement. Whether or not a trade jurisdiction dispute resolution procedure is adequate is a factor that could be reviewed prior to a collective agreement being ordered under paragraph 70(2)(d) as a collective agreement for the purpose of the Special Project Order.

Recommendation No. 18 - That a special project collective agreement be reviewed to determine whether it contains an adequate trade jurisdiction dispute resolution procedure, prior to being prescribed by the Lieutenant Governor-in-Council as a collective agreement for the purpose of a Special Project Order.

10.9 Other Issues

The stakeholders with special projects currently in operation requested that any legislative changes not affect existing Special Project Orders. It is understandable that the parties to existing Special Project Orders have made arrangements based on current legislation. This request is reasonable.

Recommendation No. 19 - That amendments to the *Labour Relations Act* not affect existing Special Project Orders.

Several stakeholders requested the opportunity to comment on the Consultant's Report prior to any legislative amendments. The Consultant supports this request.

Recommendation No. 20 - That the stakeholders and the public be consulted prior to amendment of the Special Project Order provisions of the *Labour Relations Act* arising from the Consultant's Report.

10.10 Summary – Comments on the Terms of Reference

The Consultant refers to the statement of work in the Terms of Reference. This section of the Report will summarize the Consultant's recommendations with reference to the statement of work in the Terms of Reference. The parts in italics are excerpts from the Terms of Reference.

1. *Review the special project order provisions of the Labour Relations Act to ensure they provide the flexibility to respond to upcoming major projects* - The Special Project Order provisions were reviewed in the legislative history section of the Report and in the discussion of the Special Project Orders that have been issued in Newfoundland and Labrador from the Churchill Falls Project to the Hebron Project. Potential upcoming major projects include the Lower Churchill Project, the Maritime Transmission Link, future mining construction projects, and future offshore oil and gas fabrication and construction projects. The issue of flexibility is addressed in the recommendations concerning the definition of "special project" in paragraph 2(1)(u) of the *Labour Relations Act*, in the authority of the Lieutenant Governor-in-Council to prescribe the geographic site or scope of work of the special project under subsection 70(2) of the *Act* and the recommendations concerning Special Project Orders that overlap temporally and geographically, see Recommendations 1, 2, 5, 6, 7, 8, 9, 10, 11 and 12.

(i) *Assessing the impact of Special Project Orders on the Province and construction industry in general* - As discussed in the Report, there is widespread support for the continued use of Special Project Orders, based on generally favourable experience with Special Project Orders. The advantages of Special Project Orders include the assurance of labour peace for the duration of the project by operation of the no strike/no lockout provision in special project collective agreements, common terms and conditions of employment for multiple trades working on the same project, and the opportunity to enforce as terms of the Special Project Orders the terms of Development Agreements or Impact and Benefit Agreements, such as provisions for aboriginal employment, womens' employment and diversity programs. The impact of Special Project Orders has been favourable with respect to attracting investment to the Province and encouraging economic development.

Reviewing the nature of any participation of the Construction Labour Relations Association of Newfoundland and Labrador with respect to Special Project Orders – The Consultant has reviewed the history of the negotiation and administration of Special Project Orders and whether

there has been any participation by CLRA. The CLRA has been a source of information to persons negotiating on behalf of project proponents. The CLRA has also entered into an arrangement for assistance and cooperation with the HPEA. The Consultant has reviewed the written submissions and has discussed the issue with the CLRA and with other stakeholders. The Consultant concludes that the CLRA has the experience and expertise to provide services to project proponents. Project proponents should be encouraged to engage the CLRA in a meaningful role. However the role of the CLRA should not be statutorily mandated. The project proponent should decide how it wishes to exercise control over the project. This issue is addressed in Recommendations 3 and 4.

(ii) *Exploring the legal and labour relations implications of alternate tenants operating at the Bull Arm site . . . identify possible legislative amendments to facilitate this initiative* – The current tenant at the Bull Arm site, HPEA, has leased the entire site and is not agreeable to alternate tenants during the term of its occupancy. There may be areas of the Bull Arm site that may not be used in the latter stages of the Hebron Project. Without the consent of the HPEA, it is not practical to consider alternate tenants at the Bull Arm site until the Hebron Project is completed. Following completion of the Hebron Project, there may be opportunities for alternate tenants at the Bull Arm site. The Consultant recommends against having a Special Project Order and another labour relations regime operating at the Bull Arm site at the same time. The common access road and infrastructure at the site would have the effect that it would not be possible to guarantee labour peace and stability for the duration of a special project, in the event there is another labour relations regime operating at the same site, with the possibility that employees are in a legal strike position. However, the objective of Special Project Orders could be met by having more than one Special Project Order operating at the Bull Arm site at the same time, provided that the scope of work and the areas of the site used for each project may be clearly described. The Consultant has made recommendations for the amendment of subsection 70(2) of the *Act* to give effect to this arrangement, and refers to Recommendation 10.

(iii) *Assessing the potential to issue future Special Project Orders that overlap temporally and geographically and, if required, make observations regarding potential legislative change allowing such an overlap to occur and the potential implications for labour stability* – The Consultant has reviewed the legislation and considered the written submissions from the stakeholders. There is support for allowing the flexibility to have Special Project Orders overlap temporally and geographically. Some of the special projects that may occur in the future may be appropriate for Special Project Orders that overlap temporally and geographically. The Consultant has made recommendations to facilitate the overlap, by making changes to the definition of "special project" and by making changes to section 70 of the *Act*, as set out in Recommendations 5, 6, 7, 11 and 12.

(iv) *Determining whether the Labour Relations Act provides flexibility for the issuance of Special Project Orders on the basis of the nature of the work or project without reference to the physical location of the work or project* – The Consultant recommends amending the definition of "special project" in paragraph 2(1)(u) by removing the reference to "geographic site", and by permitting the Lieutenant Governor-in-Council to prescribe a special project by geographic site or by scope of work, see Recommendations 5 and 6.

The Consultant will advise on lessons learned and other observations – The Consultant has made other recommendations with respect to specific provisions in the legislation. One of the issues that was raised in several submissions concerned the provision for alternate trade union models for special projects, and the perception that the legislation favours a Council of Trade Unions as a party to a Special Project Order. The Consultant observes that the legislation makes several references to the Council of Unions and the review of the constitution of the Council for specific requirements, the *Act* does not preclude other union models. For clarification, the Consultant recommends that the *Act* be amended to include the singular "employer" and "union" in paragraph 70(2)(b) and refers to Recommendation 16.

2. *Complete a jurisdictional analysis of provincial and national legislative frameworks* – A jurisdictional review is set out in Section 8, and discussed in Section 10 of the Report. The Consultant observes that the Special Project Order legislation in Newfoundland and Labrador has features that are preferable to the legislation in other jurisdictions. The Consultant does not recommend the adoption of a model used in another jurisdiction. The desirable features include the ability to prescribe conditions of the special Project Order and to review the collective agreement and constitution of an employers' organization and council of trade unions.

11. Recommendations

Recommendation No. 1 - That Special Project Order legislation be continued with the effect that special projects are encouraged as a means to secure stable construction industry labour relations and to promote economic development.

Recommendation No. 2 - That the Lieutenant Governor-in-Council continue to have authority to issue Special Project Orders.

Recommendation No. 3 - That there be no statutorily mandated role for the Construction Labour Relations Association of Newfoundland and Labrador ("CLRA") in the negotiation or administration of special project collective agreements.

Recommendation No. 4 - That project proponents be encouraged by the Government of Newfoundland and Labrador to provide a meaningful role for the CLRA with respect to the negotiation and administration of special project collective agreements.

Recommendation No. 5 - That a special project be permitted without the necessity for a geographic site. The words "within a prescribed geographic site" should be deleted from the definition of "special project" in paragraph 2(1)(u) of the *Act*.

Recommendation No. 6 - That a special project should have a prescribed geographic site or scope of work where deemed appropriate. The Lieutenant Governor-in-Council should have the authority to prescribe the geographic site or scope of work for the special project under subsection 70(2). Paragraph 70(2)(a) should be amended to read "the geographic site or scope of work to which the declaration relates".

Recommendation No. 7 - That the definition of "special project" in paragraph 2(1)(a) be amended so that it will require a construction period exceeding "2 years", in place of "3 years".

Recommendation No. 8 - That there be no change to that part of the definition of "special project" in paragraph 2(1)(u) that requires "an undertaking for the construction of works designed to develop a natural resource or establishment of a primary industry", and there be no change to the definition of "special project" to include "fabrication".

Recommendation No. 9 - That "ancillary work, services and catering" be removed from the definition of "special project" in paragraph 2(1)(u). "Ancillary work and services" should also be removed from the description of special projects at the Bull Arm site under paragraph 70(1)(b). "Ancillary work, services and catering" may be prescribed as part of the special project under subsection 70(2).

Recommendation No. 10 - That alternate tenants at the Bull Arm site be permitted by using multiple Special Project Orders that overlap temporally and geographically. Subsection 70(2) of the *Act* should be amended to permit the Lieutenant Governor-in-Council to prescribe the scope of work or geographic area of the Bull Arm site that is included in or excluded from the Order, and the extent to which ancillary work and services are included in the Order.

Recommendation No. 11 – That a subsection be added to section 70 of the *Act* to state that a Special Project Order is not invalid by reason of the fact it overlaps temporally and geographically with another Special Project Order.

Recommendation No. 12 – That the Lieutenant Governor-in-Council be authorized to prescribe in subsection 70(2), that a scope of work or geographic area be excluded from a Special Project Order, such authority may be used to give effect to the overlap temporally or geographically of Special Project Orders.

Recommendation No. 13 - That the Labour Relations Agency prepare and publish a document outlining the procedure for a proponent to apply for a Special Project Order issued by the Lieutenant Governor in Council.

Recommendation No. 14 - That the Labour Relations Board continue to have authority to decide questions related to special projects under subsection 70(11) of the *Act*.

Recommendation No. 15 - That a collective agreement prescribed by the Lieutenant Governor-in-Council for the purpose of the special project under paragraph 70(2)(d) of the *Act*, is a valid collective agreement notwithstanding subsection 64(2) of the *Act*.

Recommendation No. 16 - That paragraph 70(2)(b) be amended to include the singular "employer" and "trade union".

Recommendation No. 17 - That the Labour Relations Board no longer have the authority to issue a Special Project Order, and that section 69 of the *Act* be repealed.

Recommendation No. 18 - That a special project collective agreement be reviewed to determine whether it contains an adequate trade jurisdiction dispute resolution procedure, prior to being prescribed by the Lieutenant Governor-in-Council as a collective agreement for the purpose of a Special Project Order.

Recommendation No. 19 - That amendments to the *Labour Relations Act* not affect existing Special Project Orders.

Recommendation No. 20 - That the stakeholders and the public be consulted prior to amendment of the Special Project Order provisions of the *Labour Relations Act* arising from the Consultant's Report.

Appendix "A"

Terms of Reference

PURPOSE:

A review of the Special Project Order provisions of the *Labour Relations Act* to ensure they provide the flexibility to respond to upcoming major projects.

BACKGROUND:

A special project, as defined by the *Labour Relations Act*, is an undertaking for the construction of works designed to develop a natural resource or establish a primary industry that is planned to require a construction period exceeding 3 years.

Over the past 20 years, the Province of Newfoundland and Labrador has witnessed a marked increase in the number of major construction projects and subsequent requests for special project orders. In response to these requests and in an effort to ensure labour stability during the construction phase of these projects, the Provincial Government has issued five special project orders since 1990.

As development of the Province's natural resources continues, it is anticipated that further requests for special project orders will be forthcoming.

In an effort to ensure the continued utilization of special project orders achieves the intended effect of labour stability and responds to the needs of stakeholders in relation to major projects, there is a need for a review of the relevant sections of the *Labour Relations Act* to determine whether legislative changes may be required.

STATEMENT OF WORK:

The consultant will:

1. Review the special project order provisions of the *Labour Relations Act* to ensure they provide the flexibility to respond to upcoming major projects. This will include but not be limited to the following:

    (i) Assessing the impact of special project orders on the Province and construction industry in general. This will include, but not be limited to reviewing the nature of any participation of the accredited bargaining agent for all unionized employers in the industrial and commercial sector of the construction industry, the Construction Labour Relations Association of Newfoundland and Labrador, with respect to special project orders.

(ii) Exploring the legal and labour relations implications of alternate tenants operating at the Bull Arm site while a special project order is in effect and, as appropriate, identify possible legislative amendments to facilitate this initiative.

(iii) Assessing the potential to issue future special project orders that overlap temporally and geographically and, if required, make observations regarding potential legislative change allowing such an overlap to occur and the potential implications for labour stability.

(iv) Determining whether the *Labour Relations Act* provides flexibility for the issuance of special project orders on the basis of the nature of the work or project undertaken without reference to the physical location of the work or project and assess the labour relations implications of this approach.

The consultant will advise on lessons learned and other observations related to the above statement of work.

2. Complete a jurisdictional analysis of provincial and national legislative frameworks as they relate to #1.

PROJECT SCHEDULE:

The review is anticipated to take in the order of 2-3 months and the report is to be completed by Winter 2012.