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LEGISLATIVE SUMMARY



Bill C-36: An Act to amend the Statistics Act

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Francis Lord

Economics, Resources and International Affairs Division
Parliamentary Information and Research Service

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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(Legislative Summary)

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CONTENTS

1	BACKGROUND.....	1
2	DESCRIPTION AND ANALYSIS	1
2.1	Independence of the Chief Statistician (Clauses 2 and 11).....	1
2.2	Powers of the Chief Statistician	2
2.2.1	Operations and Statistical Studies (Clauses 5, 13 and 14)	2
2.2.2	Control of Staff (Clauses 2 to 4)	3
2.2.3	Evidence of Appointment, Removal and Instructions (Clause 7)	3
2.3	Other Amendments.....	4
2.3.1	Mandatory Request for Information (Clause 13)	4
2.3.2	Punishment (Clauses 5 and 15 to 17)	4
2.3.3	Protection of Identifying Information (Clauses 1 and 8 to 10)	4
2.3.4	Canadian Statistics Advisory Council (Clause 5)	5
2.3.5	Neutral Methodology (Clauses 7, 13 and 14)	5
2.3.6	Technical Amendments.....	6
2.4	Transitional Provision (Clause 18).....	6

LEGISLATIVE SUMMARY OF BILL C-36: AN ACT TO AMEND THE STATISTICS ACT

1 BACKGROUND

Under the *Statistics Act*, Statistics Canada is required, among other things, to “collect, compile, analyse, abstract and publish statistical information relating to the commercial, industrial, financial, social, economic and general activities and condition of the people.”¹ The statistical information and analysis provided by Statistics Canada generally facilitates the development and evaluation of public policies and programs as well as public-sector and private-sector decision making.

Statistics Canada carries out its activities under the authority of a minister designated by the Governor in Council to administer the *Statistics Act*. The Governor in Council may also appoint an officer to hold office during pleasure – called the Chief Statistician – to control the operations of Statistics Canada as the Minister’s deputy. The Chief Statistician acts under the Minister, who is ultimately responsible for managing Statistics Canada staff.

On 7 December 2016, the Minister of Innovation, Science and Economic Development introduced in the House of Commons Bill C-36, An Act to amend the *Statistics Act*.² Bill C-36 aims to:

- strengthen the independence and powers of the Chief Statistician;
- ensure greater transparency regarding the directives issued to the Chief Statistician;
- establish the Canadian Statistics Advisory Council;
- protect personal information provided in response to Statistics Canada’s requests; and
- remove imprisonment as a penalty for individuals who refuse or neglect to respond to Statistics Canada’s requests or who provide false information.³

2 DESCRIPTION AND ANALYSIS

2.1 INDEPENDENCE OF THE CHIEF STATISTICIAN (CLAUSES 2 AND 11)

Clauses 2 and 11 replace sections 4 and 22, respectively, of the *Statistics Act* to strengthen the independence of the Chief Statistician vis-à-vis the Governor in Council and the Minister designated for the purposes of the Act.

New section 4(1) provides that the Chief Statistician is no longer the deputy of the Minister but is instead the deputy head of Statistics Canada. The Governor in Council appoints the Chief Statistician for a term of not more than five years during good behaviour, but the Chief Statistician may be removed for cause by the Governor in

Council (new section 4(2)). New section 4(3) provides that the Chief Statistician may be reappointed for an additional term of five years.

Under new section 4.1(1), the Chief Statistician no longer acts under the Minister but can receive directives “on any methods, procedures or operations” of Statistics Canada only from the Governor in Council, by order and on the recommendation of the Minister. New section 4.1 (2) specifies that the Minister must table a copy of the order in each House of Parliament within 15 days of its being made.

New section 4.2 provides that, subject to the powers of the Governor in Council to issue directives to the Chief Statistician on the operations of Statistics Canada, the Minister can issue directives to the Chief Statistician pertaining to statistical programs referred to in section 22 of the *Statistics Act*.⁴ Before acting on these directives, the Chief Statistician may request that they be made in writing and made public. Bill C-36 retains the powers of the Minister and the Governor in Council to prescribe other matters to be the subject of statistical studies by Statistics Canada.

Pursuant to new section 4(5), the Chief Statistician must carry out statistical programs “based strictly on professional statistical standards that he or she considers appropriate.” The Chief Statistician also is responsible for determining the content and methods of dissemination of Statistics Canada publications. In each fiscal year, the Chief Statistician must submit a report to the Minister on the activities of Statistics Canada, which must be included with the Minister’s annual report to Parliament (new section 4(6)).

2.2 POWERS OF THE CHIEF STATISTICIAN

As the deputy head, the Chief Statistician leads Statistics Canada studies and shares with the Minister the duty to manage Statistics Canada staff.

2.2.1 OPERATIONS AND STATISTICAL STUDIES (CLAUSES 5, 13 AND 14)

Clause 5 replaces sections 7 to 9 of the *Statistics Act*. New section 7 of the Act allows the Chief Statistician, rather than the Minister, to prescribe any rule, instruction or request for information that he or she considers necessary for conducting the business of Statistics Canada. However, clarification is made that any such rule, instruction or request for information is not a regulation within the meaning of the *Statutory Instruments Act*.⁵

New section 8 gives the Chief Statistician the power to determine whether a Statistics Canada request for information is mandatory or voluntary. The Chief Statistician must publish any mandatory request for information before the request is made and must notify the Minister at least 30 days before the request is published. However, the Governor in Council retains the exclusive authority to prescribe the questions to be asked in the population census and the agriculture census.⁶ Because both of these censuses are mandatory under the Act, the Chief Statistician cannot determine whether they are mandatory or voluntary. Lastly, the Chief Statistician – like the Minister and the Governor in Council – must not, in the performance of his or

her duties, discriminate between individuals to the prejudice of those individuals (new section 9(1)).

Clause 13 replaces section 23(1) of the Act to allow the Chief Statistician to make a request for information by any method.

Clause 14 replaces sections 26 to 29 of the Act to transfer to the Chief Statistician the powers of the Minister to determine the manner in which criminal statistics are furnished by the clerk of any court or tribunal, the warden of any penitentiary and reformatory, the sheriff of any county and the Minister of Public Safety.

2.2.2 CONTROL OF STAFF (CLAUSES 2 TO 4)

Clause 2 replaces section 4 to give the Chief Statistician, as the deputy head, control over the operations and staff of Statistics Canada.

Clause 3(1) replaces section 5(1) of the Act to authorize the Chief Statistician to employ and determine the duties of commissioners, enumerators, agents or other persons that are necessary for the collection of information that the “Minister considers useful and in the public interest.”

Clause 3(2) replaces section 5(3) of the Act to provide that persons retained “under contract to perform special services for the Chief Statistician,” as well as the employees and agents of those persons, are deemed to be employed under the *Statistics Act* while performing those services.

The *Statistics Act* requires the Chief Statistician and every person employed under the Act, including incorporated contractors, to take a prescribed oath or solemn affirmation pledging to fulfill their duties in conformity with the requirements of the Act and not to disclose anything that they learn through their work. Clause 4 amends sections 6(2) to 6(4) of the Act to transfer to the Chief Statistician the responsibility to designate the person before whom those persons must take the oath or solemn affirmation and to specify that the oath or solemn affirmation must be returned and recorded in the manner directed by the Chief Statistician.

2.2.3 EVIDENCE OF APPOINTMENT, REMOVAL AND INSTRUCTIONS (CLAUSE 7)

Clause 7 replaces section 14 of the Act to provide that any letter purporting to be signed either by the Chief Statistician or by any person he or she may authorize is evidence of the appointment or removal of any person employed under the Act, as well as any instructions for that person.

2.3 OTHER AMENDMENTS

2.3.1 MANDATORY REQUEST FOR INFORMATION (CLAUSE 13)

Clause 13 replaces section 23(2) of the Act to require a person to whom Statistics Canada makes a mandatory request for information to provide the information, properly certified as accurate, within the time prescribed by the Chief Statistician.

2.3.2 PUNISHMENT (CLAUSES 5 AND 15 TO 17)

The *Statistics Act* requires individuals to provide documents and truthful responses to requests for information from Statistics Canada, to complete and provide schedules within a stated time and to not obstruct the work of its staff. Pursuant to sections 31 and 32 of the Act, anyone who violates these requirements, depending on the circumstances, is liable to a fine of up to \$500 or up to \$1,000, or imprisonment for a maximum term of three months or of six months, or both.

Clause 5 adds section 8(4) to the *Statistics Act* to provide that a person who refuses to answer, neglects to answer or wilfully answers falsely a voluntary request for information is not guilty of an offence under section 31(a) of the Act.

Clauses 15 and 16(1) amend sections 31 and 32 of the Act respectively to remove the terms of imprisonment currently prescribed in these sections.

Clause 17 adds section 32.1 to the Act to provide that no imprisonment may be imposed on a person found guilty of an offence under sections 31 and 32 of the Act, despite section 787(1) of the *Criminal Code*.⁷

2.3.3 PROTECTION OF IDENTIFYING INFORMATION (CLAUSES 1 AND 8 TO 10)

The *Statistics Act* prohibits the disclosure of returns filled out in response to requests for information from Statistics Canada.

Clause 1 amends section 2 of the *Statistics Act* to introduce the concept of “identifying information,” defined as “any information that makes it possible to identify an individual person, business or organization.”

Clause 8(1) amends section 17(1)(a) of the Act to ensure that only a person employed or deemed employed under the *Statistics Act* can examine identifying information provided to Statistics Canada for the purposes of the Act.

Clause 9 replaces sections 18(1) and 18(2) of the Act to prevent identifying information from being used as evidence in court proceedings, except for the purposes of a prosecution under the *Statistics Act*. Moreover, no court, tribunal or other body can order a person who has taken the oath or solemn affirmation under section 6 of the Act to give identifying information provided to Statistics Canada for

the purposes of the Act or to give oral testimony with respect to information obtained under the Act.

Clause 10 replaces sections 18.1(1) and 18.1(2) of the Act to authorize the disclosure of a return or identifying information provided to Statistics Canada for the purposes of the Act 92 years after it is provided, but only for censuses between 1910 and 2005, and in or after 2021. As for the 2005, 2011 and 2016 censuses, as well as the 2011 National Household Survey, a return or identifying information can be disclosed 92 years after the census or survey was conducted only if the person to whom the return or identifying information relates consents.

2.3.4 CANADIAN STATISTICS ADVISORY COUNCIL (CLAUSE 5)

The bill establishes the Canadian Statistics Advisory Council, which replaces the National Statistics Council,⁸ a group of experts appointed by the Minister to advise the Chief Statistician about the activities of Statistics Canada.

Clause 5 adds section 8.1 to the Act to formally establish the Canadian Statistics Advisory Council. The Council must make public an annual report on the state of the national statistical system and advise the Minister and the Chief Statistician on any question on the overall quality of this system that they refer to the Council.

The Council is composed of a maximum of 10 members and the Chief Statistician, who is an ex officio member. The Governor in Council appoints one of the members as chairperson for a five-year term, renewable for an additional three-year term. The Governor in Council appoints the other members for a three-year term, renewable for an additional term of the same period.

2.3.5 NEUTRAL METHODOLOGY (CLAUSES 7, 13 AND 14)

Bill C-36 amends the *Statistics Act* by replacing with more general wording the terms describing the statistical methods the Chief Statistician may use. This type of amendment modernizes the Act while giving the Chief Statistician greater flexibility in the statistical methods that may be used under the Act.

Clause 7 amends section 15 of the Act by replacing the words “Any document or paper, written or printed” with “Any request for information.”

As mentioned in section 2.2.1 of this Legislative Summary, clause 13 replaces section 23(1) of the Act. The current section refers to the collection of statistics by agents or employees of Statistics Canada and through “a form” prescribed by the Minister. The new section states that requests for information may be “made by any method authorized by the Chief Statistician.”

Clause 14 amends sections 26 to 29 of the Act to replace the word “schedules” with “information requested” and “requests for information.”

2.3.6 TECHNICAL AMENDMENTS

Bill C-36 also makes changes to modernize and improve the readability of the *Statistics Act*.

For example, the French version of clause 3(2) amends section 5(3) to improve by using the verb “fournir”: “Les personnes engagées à contrat pour fournir des services spéciaux” (previously “Les personnes engagées à contrat pour des services spéciaux”).

Amendments are also made for similar reasons to the French version of sections 13 (clause 6), 17(2) (clause 8(2)), 22.1(1) (clause 12) and 32(a) (clause 16(2)) of the *Statistics Act*.

The English version of clause 16(3) makes an amendment of a technical nature to section 32(b) of the Act. The amended version matches the French version of this amended provision.

2.4 TRANSITIONAL PROVISION (CLAUSE 18)

Clause 18 provides that the Chief Statistician holding office immediately before the coming into force of An Act to amend the Statistics Act will continue to hold office during pleasure until the Act has come into force and the Governor in Council has appointed a Chief Statistician under the new provisions of the *Statistics Act*.

NOTES

1. [Statistics Act](#), R.S.C. 1985, c. S-19, s. 3(a).
2. [Bill C-36, An Act to amend the Statistics Act](#), 1st Session, 42nd Parliament.
3. See House of Commons, [Debates](#), 1st Session, 42nd Parliament, 30 January 2017 (Hon. Navdeep Bains, Minister of Innovation, Science and Economic Development); and Innovation, Science and Economic Development Canada, [“Reinforcing Statistics Canada’s Independence,”](#) Backgrounder.
4. These matters include population, law enforcement, labour and employment.
5. [Statutory Instruments Act](#), R.S.C. 1985, c. S-22.
6. *Statistics Act*, ss. 19–21.
7. Section 787(1) of the [Criminal Code](#) (R.S.C. 1985, c. C-46) states: “Unless otherwise provided by law, everyone who is convicted of an offence punishable on summary conviction is liable to a fine of not more than five thousand dollars or to a term of imprisonment not exceeding six months or to both.”
8. Statistics Canada, [Advisory groups: The National Statistics Council](#).