

**BILL C-5: THE CANADA EDUCATION SAVINGS ACT**

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## LEGISLATIVE HISTORY OF BILL C-5

### HOUSE OF COMMONS

Bill Stage	Date
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Statutes of Canada 2004, c. 26

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

Legislative history by Peter Niemczak

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BILL C-5: THE CANADA EDUCATION SAVINGS ACT\*

BACKGROUND

On 8 October 2004, Bill C-5, An Act to Provide Financial Assistance for Post-Secondary Education Savings, was introduced in the House of Commons by the Honourable Joe Volpe, Minister of Human Resources and Skills Development. The bill was given first reading that day. Clause 1 of Bill C-5 states that the Act will be known by the short title of *Canada Education Savings Act*. Bill C-5 will be referred to either as “the bill” or as *CESA* for the remainder of this paper.

A government press release issued on the same day the bill was introduced noted that the savings programs contained in the proposed Act will help low- and middle-income families to save for their children’s post-secondary education.

This bill encourages families to set up Registered Education Savings Plans (RESPs). Families who set up an RESP may be eligible to receive the new Canada Learning Bond (CLB).

A. Chronology

1972            The Government of Canada first introduced RESPs in 1972.<sup>(1)</sup> They were intended to assist families in saving for their children’s education.

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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.

(1) Department of Finance Canada, *Budget 1999 – Building a Strong Economy Through Knowledge and Innovation*, Ottawa, February 1999, p. 11; available on-line at: <http://www.fin.gc.ca/budget99/eco/ecoe.pdf> (date accessed: 15 April 2004).

1996 A process of reform was initiated in 1996. The 1996 federal budget<sup>(2)</sup> proposed to increase the annual limit on contributions to RESPs from \$1,500 to \$2,000. Also, the lifetime contribution limit was increased from \$31,500 to \$42,000.

1997 The 1997 federal budget<sup>(3)</sup> proposed to increase the annual limit on contributions from \$2,000 to \$4,000. More significantly, the requirement that all RESP income must go to education purposes was eliminated. Contributors whose children chose not to go on to post-secondary education could preserve their investment income by transferring it into a Registered Retirement Savings Plan (RRSP). If unused RRSP contribution room was unavailable, contributors were permitted to receive the income directly, subject to a charge of 20% in addition to regular taxes.

The budget also proposed to lift the ban on RESP beneficiaries receiving educational assistance payments from the plan if they were taking distance education courses (e.g., correspondence courses). Instead, all full-time students enrolled in qualifying educational programs at eligible institutions became eligible for educational assistance payments. Finally, it was recognized that many group RESPs were set up in a way that prevented children who chose to attend post-secondary institutions from benefiting from income accumulated for a brother or sister who chose not to. The budget proposed that other siblings be permitted to benefit from this accumulated income. This was achieved by waiving the RESP over-contribution penalty for these kinds of transfers within group plans.

1998 The 1998 federal budget<sup>(4)</sup> announced the inception of Canada Education Savings (CES) grants. The CES grant is a contribution by the Government of Canada towards RESPs. The grant consisted of 20% of the first \$2,000 in annual contributions made to an RESP in respect of children up to age 18. The maximum annual grant was \$400 per child. The grant was not counted in calculating the maximum annual and lifetime RESP contribution limits. Unused grant contribution room could be carried forward to future years. However, if no child ever benefited from the RESP the full amount of the CES grant would revert to the federal government.

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(2) Department of Finance Canada, *Budget 1996 – Budget in Brief*, Ottawa, 6 March 1996, p. 16; available on-line at: <http://www.fin.gc.ca/budget96/binb/brief.pdf> (date accessed: 15 April 2004).

(3) Department of Finance Canada, *Budget 1997 – Budget Plan*, Ottawa, 18 February 1997, pp. 180-183; available on-line at: <http://www.fin.gc.ca/budget97/binb/bp/bp97e.pdf> (date accessed: 14 April 2004).

(4) Department of Finance Canada, *Budget 1998 – The Canadian Opportunities Strategy: The Canada Education Savings Grant*, Ottawa, February 1998, pp. 2-4; available on-line at: <http://www.fin.gc.ca/budget98/pamph/edupae.pdf> (date accessed: 14 April 2004).

2004 The 2004 federal budget<sup>(5)</sup> proposed the introduction of the CLB. The CLB was to be paid directly into an RESP. It was to consist of \$500 provided at birth for children in families that qualified for the National Child Benefit (NCB) supplement. Children who were not eligible for the CLB at birth but who would qualify in a later year were to receive \$500 at that time. All children in families that qualified for the NCB supplement in years following receipt of the initial award were to receive an additional CLB of \$100 per year until age 15. A one-time payment of \$25 was to be added to the initial \$500 CLB due to the cost of setting up an RESP. The maximum lifetime CLB was to be \$2,000 per child.

The budget also proposed changes to RESPs. CES grant matching rates were to be increased from 20% to 40% for families with incomes up to \$35,000 and from 20% to 30% for families with incomes between \$35,000 and \$70,000. However, the new rates would apply only to the first \$500 contributed annually to a child's RESP.

In the 5 October 2004 Speech from the Throne, the Government of Canada pledged to introduce legislation to implement its "Learning Bond."<sup>(6)</sup>

On 8 October 2004, Mr. Volpe introduced *CESA* in the House of Commons.

## B. Highlights

The highlights of the bill are that it:

- provides an incentive for low-income families to set up an RESP. Families who set up an RESP may be eligible to receive the CLB;
- provides a CLB of \$500 in the first year to children born on or after 1 January 2004 to families entitled to the NCB supplement. The initial payment may be followed by up to 15 annual entitlements of \$100 for each year the family continues to be entitled to the NCB supplement for that child;
- increases CES grant match rates for all low- and middle-income families. For families earning \$35,000 or less, match rates will rise from 20% to 40% on the first \$500 of contributions made to an RESP each year. For families earning more than \$35,000 but not more than \$70,000, match rates will rise from 20% to 30% on the first \$500 of contributions made to an RESP each year;

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(5) Department of Finance Canada, *Budget 2004 – Learning: Cornerstone of Canada's Economic and Social Progress*, Ottawa, 23 March 2004, pp. 2-3; available on-line at: <http://www.fin.gc.ca/budget04/PDF/paleae.pdf> (date accessed: 15 April 2004).

(6) Speech from the Throne to Open the First Session of the Thirty-Eighth Parliament of Canada, Ottawa, 5 October 2004, p. 4; available on-line at: <http://www.pm.gc.ca/eng/sft-ddt.asp> (date accessed: 13 October 2004).

- indexes the \$35,000 and \$70,000 thresholds to inflation in accordance with indexation of the personal income tax brackets;
- maintains existing match rates at 20% on RESP contributions of more than \$500 per year.

## DESCRIPTION AND ANALYSIS

This paper describes some of Bill C-5's key provisions and how these key provisions differ from those in the legislation currently in force governing CES grants. Current legislation governing CES grants is Part III.1 of the *Department of Human Resources Development Act (DHRDA)*<sup>(7)</sup> and the *CES Grant Regulations*<sup>(8)</sup> made pursuant to the *DHRDA*.

### A. Short Title and Definitions

Clause 1 of Bill C-5 states that the Act will be known by the short title of *Canada Education Savings Act*.

Clause 2 defines various important provisions or key words in *CESA*. It is interesting to note that, with respect to the definitions of various terms, the only new term explicitly defined in relation to *CESA* alone is the term "Canada Learning Bond," which is defined as "the bond payable or paid under section 6."<sup>(9)</sup> Most of the other terms defined in clause 2 are defined in relation to other statutes. The lone exception is the word "prescribed," which is given its regular meaning of "prescribed by regulations."

For example, in clause 2(1) of the bill, "child tax benefit" and "national child benefit supplement" are given the meanings that they hold under various sections of the *Income Tax Act*.<sup>(10)</sup> Similarly, "adjusted income," "eligible individual" and "qualified dependant" are given the meanings provided by s. 122.6 of the *Income Tax Act* (the portion of the *Income Tax Act* dealing with the calculation of the Canada Child Tax Benefit (CCTB)), unless a contrary intention appears elsewhere in *CESA* (clause 2(2)(a)). In comparable fashion, the words

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(7) S.C. 1996, c. 11.

(8) SOR/98-528.

(9) In clause 2(1) of *CESA*, "CES grant" is partially defined in relation to clause 5 of *CESA*. However, "CES grant" is also defined in relation to Part III.1 of the *DHRDA*, which *CESA* is designed to repeal and replace. The definition of "CES grant" in clause 2(1), as well as the subject of CES grants generally, will be discussed in further detail later in this paper.

(10) R.S.C. 1985, c. 1 (5th Supp.).

“beneficiary,” “contribution,” “promoter,” “registered education savings plan” “subscriber” and “trust” are given the meanings provided in s. 146.1 of the *Income Tax Act* (the portion of the *Income Tax Act* dealing with RESPs), unless a contrary intention appears elsewhere in *CESA* (clause 2(2)(b)). All other expressions used in *CESA* also have the meaning given to them in the *Income Tax Act* unless a contrary intention appears (clause 2(2)(c)). The types of referential definitions found in clause 2(1) of *CESA* appear designed to take into account the fact that the provisions governing the CCTB and RESPs in the *Income Tax Act* are quite lengthy and complicated, and are potentially subject to change on a frequent basis. By making the definitions in *CESA* dependent on the definitions found in the *Income Tax Act*, an attempt has been made to limit the number of consequential amendments to *CESA* required in the event of amendments to relevant sections and definitions in the *Income Tax Act*.

Other terms in *CESA* defined in relation to other Acts are “primary caregiver” and “CES grant.” “Primary caregiver” is defined in clause 2(1) of *CESA* as either the eligible individual to whom a child tax benefit is payable (as stated previously, both “child tax benefit” and “eligible individual” are defined in relation to the *Income Tax Act*) or the federal or provincial ministry, federal or provincial child protective services department or other individual (such as a foster parent) to whom a special allowance is paid under the *Children’s Special Allowances Act*.<sup>(11)</sup>

With respect to the term “CES grant,” clause 2(1) of the bill defines this as either “a Canada Education Savings grant payable or paid under section 5” of *CESA* or a CES grant payable under Part III.1 of the *DHRDA* as it existed prior to the coming into force of clause 19 of *CESA*. This definition is designed to reflect the fact that one of the primary purposes of *CESA* is to repeal and replace the former CES grant provisions under the *DHRDA* with new provisions found in this bill.

## B. Purpose

Clause 3 of *CESA* states that its purpose is to “encourage the financing of children’s post-secondary education through savings, from early childhood, in registered education savings plans.”

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(11) R.S. 1992, c. 48, Sch. See, in particular, ss. 3 and 4 of the *Children’s Special Allowances Act*.



### C. Responsible Minister/Ministry

Clause 4 gives the Governor in Council authority to designate a member of cabinet to be the minister responsible for this Act. Presumably, this minister will be the Minister of Human Resources and Skills Development. As was stated at the beginning of this paper, it was the Minister of Human Resources and Skills Development who introduced this bill at first reading in the House of Commons on 8 October 2004. It seems likely, therefore, that the Department of Human Resources and Skills Development will be charged with administering *CESA*.

### D. CES Grant Payments

As stated previously, *CESA* is designed to repeal and replace the provisions governing CES grants found in Part III.1 of the *DHRDA* (see clause 19 of *CESA*). Before explaining what the new provisions relating to CES grants, primarily found in clause 5 of *CESA*, are designed to do, it may be useful to describe how CES grants currently work.

#### 1. Under the Current *DHRDA* Legislative Scheme

##### a. Conditions for Making a CES Grant Payment Under Part III.1 of the *DHRDA*

Under Part III.1 of the *DHRDA*, the Minister is authorized to pay CES grants (also known as Canada Education Savings grants) to trustees of trusts who administer RESPs. Before the Minister can or will pay this money to the trustee, certain conditions must be met. These conditions are as follows:

- the CES grant must be applied for in a form and manner approved by the Minister (s. 33.3(1), *DHRDA*);<sup>(12)</sup>
- the RESP subscriber (the person who has taken out the RESP for the purposes of later benefiting his/her child by covering the costs of all or a portion of the child's post-secondary education) must have made a contribution to the RESP in the year that the CES grant is applied for (s. 33.3(1), *DHRDA*);

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(12) Both the prescribed form and the prescribed manner are described in full in the *CES Grant Regulations* made pursuant to the *DHRDA*. The application may be made only by the trustee of the trust administering the RESP, at the request of the RESP subscriber. For further information, see s. 5 of the *CES Grant Regulations*.

- the RESP contribution, which forms the basis for the CES grant, must have been made in 1998 or later (s. 33.3(1), *DHRDA*);
- the beneficiary of the RESP (the child) must be resident in Canada at the time that the RESP contribution is made by the subscriber (s. 33.3(2)(b), *DHRDA*);
- the beneficiary's Social Insurance Number (SIN) must be provided to the Minister (s. 33.3(2)(a), *DHRDA*);
- the RESP beneficiary (child) must be under 17 on 31 December of the year before the contribution by the subscriber (s. 33.3(1), *DHRDA*); and
- the CES grant payment from the government must be made on terms and conditions specified in the RESP agreement between the Minister and the RESP trustee or trustees (s. 33.3(1), *DHRDA*).<sup>(13)</sup>

b. Maximum Amount of CES Grant Payable Under Part III.1 of the *DHRDA*

Part III.1 of the *DHRDA*, in conjunction with s. 4 of the *CES Grant Regulations*, outlines how the Minister will calculate the level of CES grant payable with respect to RESP contributions made by a subscriber in any given year. Basically, if an RESP subscriber makes a contribution to an RESP in any given year in accordance with Part III.1 of the *DHRDA* and the *CES Grant Regulations*, the Government of Canada will also make a contribution. CES grant contributions will be made by the federal government only in respect of RESP contributions made by subscribers from the year 1998 onward. In addition, there is a maximum contribution that the federal government is permitted to make in any given year, from 1998 onward, and a maximum lifetime contribution that the government will make with respect to any beneficiary, regardless of the amount contributed to the RESP by the subscriber.

The amount of contribution payable in any given year will be equal to 20% of the RESP subscriber's contribution, up to a maximum of \$400, whichever is the lesser amount (ss. 33.3(1)(a) and 33.3(1)(b)(i), *DHRDA*). If, however, the person has unused RESP contribution room from preceding years (1998 onward), then he or she may carry forward some of this room, as long as the beneficiary was under 17 years of age on 31 December of the year preceding the contribution from the subscriber. However, even in the case where a subscriber has unused CES grant room, the amount of CES grant payable by the Minister in any given year

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(13) The terms and conditions for payment of CES grants are set out in s. 5 of the *CES Grant Regulations*, while the terms and conditions that must be included in every CES grant agreement between RESP trustees and the Minister are set out in s. 7 of the *CES Grant Regulations*.

cannot exceed \$800 (ss. 33.3(1)(a) and 33.3(1)(b)(ii), *DHRDA*, and s. 4, *CES Grant Regulations*). The amount of CES grant payable under the *DHRDA* and *CES Grant Regulations* is thus entirely dependent on: (a) the amount of money contributed to the RESP by the subscriber in any given year from 1998 onward; (b) the maximum contributions allowable under the *DHRDA*; and (c) whether or not the subscriber has carried forward any unused RESP contribution room from 1998 onward that he or she could potentially use to obtain a “top-up” of the grant.

Take, for example, a one-child family that contributed \$3,000 in 2003 to that child’s RESP. The amount of CES grant that the government would contribute towards the beneficiary’s RESP in 2003 would be either 20% of \$3,000 (\$600) or, alternatively, \$400, whichever is the lesser amount. Thus, the CES grant amount payable by the Minister for 2003 would be \$400 – unless the subscriber has unused RESP room from previous years. In that case, depending upon a combination of factors – the age of the child; the years, if any, that the beneficiary (child) was ineligible to receive the CES grant; the years that the child was not resident in Canada; and the amount of CES grants already paid in previous years in respect of this child – there is a possibility that the 2003 CES grant payment could be topped up, but only to a maximum of \$800 for that year.<sup>(14)</sup>

It is also important to note that, under the current regime, the total amount of CES grant money that can be paid by the Minister in respect of a particular beneficiary during the beneficiary’s lifetime cannot exceed \$7,200 (in other words, \$400 a year for 18 years, presuming that the child was born in 1998 and the subscriber began contributing to an RESP from the year of the beneficiary’s birth).<sup>(15)</sup>

## 2. Under the Proposed *CESA* Legislative Scheme

Under the proposed *CESA* legislative scheme, the existing type of CES grant available under the *DHRDA* and the *CES Grant Regulations* would be retained. Under *CESA*, there is a base CES grant payment, to which any RESP subscriber may be entitled, for the future benefit of the subscriber’s chosen beneficiary, provided that the subscriber makes a contribution to an RESP in accordance with the terms and conditions outlined in *CESA*. Entitlement to this

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(14) The system would work in exactly the same way under *CESA* with respect to “base” CES grants, but not with respect to “enhanced” CES grants. Base and enhanced CES grants will be discussed later in this paper.

(15) See s. 9, *CES Grant Regulations*.

“base” grant is not dependent upon income earned in a given year. The provisions governing this “base” grant in *CESA* largely mirror the provisions found in Part III.1 of the *DHRDA* and the *CES Grant Regulations*.

In addition, *CESA* would create a new type of CES grant – referred to in this paper as the “enhanced” CES grant. This enhanced grant may be available to low- and middle-income families, over and above the base CES grant. However, the enhanced CES grant is available only on a contribution amount of up to \$500, regardless of the actual amount of contributions in any given year. In other words, regardless of the amount the subscriber contributes to the RESP in a given year, the enhanced CES grant will be calculated only on the first \$500 or less contributed in a given year. With respect to low-income families, defined as families earning \$35,000 or less in a given year, the maximum amount of enhanced grant payable in a given year cannot exceed \$100. With respect to middle-income families, defined as families earning more than \$35,000 and less than \$70,000, the maximum amount of enhanced CES grant payable in a given year cannot exceed \$50.

It is important to note that, just as is the case under the current regime, pursuant to clause 5(10) of *CESA*, the total amount of CES grant money that can be paid by the Minister in respect of a particular beneficiary over the beneficiary’s lifetime cannot exceed \$7,200, regardless of whether or not the payments made by the Minister are “base” or “enhanced” CES grant payments.

a. Conditions for Making a CES Grant Payment Under *CESA*

The same conditions that must be fulfilled before a CES grant payment is made by the Minister pursuant to the *DHRDA* must still be fulfilled under *CESA*. In other words, before the Minister will make a payment to an RESP trustee on behalf of the beneficiary:

- the CES grant must be applied in a form and manner approved by the Minister (clause 5(1), *CESA*);<sup>(16)</sup>
- the RESP subscriber (the person who has taken out the RESP for the purposes of later benefiting his/her child by covering the costs of all or a portion of the child’s post-secondary education) must have made a contribution to the RESP in the year that the CES grant is applied for (clause 5(1), *CESA*);

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(16) The prescribed form and the prescribed manner will presumably be outlined in regulations made under clause 13(1) of *CESA*.

- the RESP contribution, which forms the basis for the CES grant, must have been made in 1998 or later (clause 5(1), *CESA*);
- the beneficiary of the RESP (the child) must be resident in Canada at the time that the RESP contribution is made by the subscriber (clause 7(c), *CESA*);
- the beneficiary's SIN must be provided to the Minister (clause 7(a), *CESA*);
- the RESP beneficiary (child) must be under 17 on 31 December of the year before the contribution is made by the subscriber (clause 5(1), *CESA*); and
- the CES grant payment from the government must be made on terms and conditions specified in the RESP agreement between the Minister and the RESP trustee or trustees (clause 5(1), *CESA*).<sup>(17)</sup>

The above conditions apply regardless of whether or not the payment made is a base CES grant payment or an enhanced CES grant payment.

b. Maximum Amount of Base CES Grant Payable Under *CESA*

Clauses 5(2) and 5(3) of *CESA* essentially replicate the formula outlined in s. 33.3(1)(a) and (b) of the *DHRDA* and s. 4 of the *CES Grant Regulations* (the provisions currently in force) with respect to calculating the amount of base CES grant payable by the Minister in any given year. The only change worthy of note is that the proposed provisions found in clauses 5(2) and 5(3) of *CESA* make it clear that when calculating the amount of unused CES grant room available to a subscriber in any given year, amounts of enhanced CES grants paid by the Minister in respect of the beneficiary in previous years will not be taken into account (see clauses 5(2)(b)(iii) and 5(3) of *CESA*).

In other words, just as under Part III.1 of the *DHRDA* and the *CES Grant Regulations* currently in force, if an RESP subscriber makes a contribution to an RESP in any given year in accordance with clause 5(1) and clause 7 of *CESA*, the federal government will also make a contribution. Base CES grant contributions will be made by the federal government only in respect of RESP contributions made by subscribers from the year 1998 onward. In addition, there is a maximum base CES grant contribution that the federal government is permitted to make in any given year, from 1998 onward.

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(17) Presumably, the terms and conditions for payment of CES grants, as well as the terms and conditions that must be included in every CES grant agreement between RESP trustees and the Minister, will be outlined in regulations made pursuant to clauses 13(1)(b) and (d) of *CESA*.

The amount of contribution payable in any given year will be equal to 20% of the contribution made by the RESP subscriber, up to a maximum of \$400, whichever is lesser (clauses 5(2) and 5(3)). If, however, the person has unused RESP contribution room from preceding years (1998 and onward), then he or she may carry forward some of this room, as long as the beneficiary was under 17 years of age on 31 December of the year preceding the contribution from the subscriber (clauses 5(2)(b) and 5(3)). Even when unused contribution room is carried forward, however, the amount of CES grant payable by the Minister in any given year cannot exceed \$800 (clause 5(2)(b)). The amount, if any, of unused RESP room available to be used as a “top-up” to the base CES grant payable in any given year would thus be dependent on:

- the age of the beneficiary during the year preceding the particular year at issue;
- the years, if any, that the beneficiary was ineligible to receive the base CES grant payment;
- the years that the beneficiary was not resident in Canada; and
- the previous CES grants paid by the Minister in respect of the beneficiary, excluding any “enhanced” CES grant payments made by the Minister in respect of the beneficiary.

Taking as an example the same one-child family that was used as an illustration in the preceding section: suppose that the family contributed \$3,000 in 2006 to that child’s RESP, and that *CESA* was in force at that time, as is, without amendments. The amount of base CES grant that the government would contribute towards the beneficiary’s RESP in 2006 would thus be either 20% of \$3,000 (\$600) or, alternatively, \$400, whichever is the lesser amount. Thus, the base CES grant amount payable by the Minister for 2006 would be \$400 – unless the subscriber had unused RESP room from previous years. In that case, the amount of any additional base CES grant amount payable would depend upon the factors listed above. Previous enhanced CES grant payments would not be counted for the purpose of this calculation. Thus, just as is currently the case under the existing legislation, there would be a possibility under *CESA* that the 2006 CES grant payment could be topped up, but only to a maximum of \$800 for any given year.

c. Maximum Amount of Enhanced CES Grant Payable Under *CESA*

Clauses 5(4) and 5(9) of *CESA* describe who is eligible for an enhanced CES grant payment from the Minister, and how the amount of that grant is calculated in any given year.

Pursuant to clause 5(9), enhanced CES grant payments are available only with respect to contributions made by RESP subscribers on behalf of an RESP beneficiary from 2005 onward. In other words, presuming *CESA* comes into force prior to 2005, an enhanced CES grant under *CESA* will not be available for the years 1998 to 2004. Only the base CES grant payment will be available for those years, regardless of income level.

With respect to who is eligible to receive payments of enhanced CES grants, clause 5(4)(a)(i) and clause 5(4)(a)(ii) of *CESA* state that in order to receive these benefits, the RESP beneficiary must be a “qualified dependant of an eligible individual whose adjusted income used to determine the amount of a child tax benefit in ... [a] particular year is \$35,000 or less,” or someone who receives a special allowance pursuant to the *Children’s Special Allowances Act* for at least one month in the particular year, or a “qualified dependant of an eligible individual whose adjusted income used to determine the amount of a child tax benefit in ... [a] particular year is more than \$35,000 but not more than \$70,000.” In other words, those eligible for these payments are children in care, who are being supported by the federal or provincial government, or children whose families fall within the two lowest federal income tax brackets in the 2004 taxation year (and who are thus eligible for the child tax benefit under the *Income Tax Act*). Clause 5(8) of *CESA* allows for these amounts (\$35,000 and \$70,000) to be indexed for each year after 2004 in the manner allowed by s. 117.1 of the *Income Tax Act*.

Clause 5(4) sets out how the Minister will determine the maximum amount of enhanced CES grant payable on contributions made by RESP subscribers on behalf of beneficiaries, in 2005 or in subsequent years, in the case of persons whose adjusted income is \$35,000 or less for the purposes of child tax benefit calculations, or in the case of children in care who are the beneficiaries of RESPs and whose primary caregivers have received at least one month of special allowance benefits pursuant to the *Children’s Special Allowances Act* during that year. The amount payable each year, presuming eligibility, is the lesser of the following two amounts:

- an amount equivalent to 20% of the subscriber’s contribution in that year, calculated on the first \$500 of RESP subscriber contributions in that year only; or
- the amount by which \$100 exceeds the total amount paid on behalf of the beneficiary under clause 5(4) before that time but in that same year, in respect of contributions made in a particular year.

In other words, in any given year, the enhanced CES grant payable in respect of a child in care who is a beneficiary under an RESP, or a child whose primary caregiver made \$35,000 or less during that year, might be anywhere between \$0 and a maximum of \$100.

With respect to the maximum amount of enhanced CES grant payable on contributions made by RESP subscribers on behalf of beneficiaries, in 2005 or in subsequent years, in the case of persons whose adjusted income for the purpose of child tax benefit calculations under the *Income Tax Act* is over \$35,000 but less than \$70,000, the amount payable is the lesser of the following two amounts:

- an amount equivalent to 10% of the subscriber's contribution in that year, calculated on the first \$500 of RESP subscriber contributions in that year only; or
- the amount by which \$50 exceeds the total amount paid on behalf of the beneficiary under clause 5(4) before that time but in that same year, in respect of contributions made in a particular year.

In other words, in any given year, the enhanced CES grant payable in respect of a child whose primary caregiver made more than \$35,000 but less than \$70,000 during that year might be anywhere between \$0 and a maximum of \$50.

d. Other Provisions With Respect to the Enhanced  
CES Grant Payable Under *CESA*

In addition to clauses 5(4), 5(8), 5(9) and 5(10) referred to above, *CESA* also contains provisions that allow an enhanced CES payment to be calculated even for a newborn or a new immigrant to Canada who did not enter the child tax benefit system under the *Income Tax Act* until after January of the relevant year, because of the child's date of birth or admission into Canada (clause 5(5)), or because they were born in December of a given year (clause 5(6)). These provisions are important because clause 5(4) bases eligibility for an enhanced CES grant payment on income from a child tax benefit in respect of January in a particular year. These people (babies born in December of a given year, newborns born after January of a given year, and new immigrants coming to Canada after January of a given year) would not be eligible for an enhanced CES grant payment immediately upon their birth or arrival in Canada were it not for clauses 5(5) and 5(6) of *CESA*.<sup>(18)</sup>

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(18) It is important to note that clauses 5(5) and 5(6) of *CESA* do not modify any of the other conditions outlined in clause 5(4) respecting enhanced CES grant eligibility.



Clause 5(7) and clause 7(b) of *CESA* are also important. Clause 5(7) states that in order to be eligible for an enhanced CES grant payment, the primary caregiver of the beneficiary (defined in clause 2(1) of *CESA*), must indicate in writing the RESP trust into which this payment will be paid. Clause 7(b) states that the primary caregiver must provide his/her/its SIN or business number to the Minister. Presumably, these provisions are designed to allow for relevant income testing of the primary caregiver, since payment of the enhanced CES grant is linked to income, and income testing requires the consent of the primary caregiver.

In addition, pursuant to clause 8 of *CESA*, interest would likely be payable on any CES grant amount payable.<sup>(19)</sup>

#### E. The Canada Learning Bond (CLB)

Clause 6 of *CESA* sets out the specific rules for the CLB. As stated previously in this paper, the CLB is an entirely new type of contribution which the government may make to a beneficiary's RESP, provided the relevant eligibility criteria are met.

##### 1. Eligibility Criteria for the CLB

Clause 6(1) of *CESA* states that, in order to be eligible to receive a CLB, the following criteria must be met:

- an application for a CLB must be made to the Minister in the approved form and manner;<sup>(20)</sup>
- the CLB can be paid only in respect of someone who is a beneficiary under an RESP;
- the beneficiary must have been born in 2004 or later; and
- the beneficiary must be under 21 years of age at the time of application for a CLB.<sup>(21)</sup>

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(19) Interest would likely be calculated in accordance with regulations made pursuant to clause 13(1) of *CESA*. Interest is also payable on CES grants under the current *DHRDA* legislative scheme.

(20) Presumably, the approved form and manner will be established by regulations made in accordance with clause 13(1) of *CESA*.

(21) This condition was presumably added to allow children, whose caregivers never subscribed to RESPs on their children's behalf when they were minors, to open RESP accounts for themselves upon reaching the age of majority and obtain CLB payments from the Minister.

Clause 6(1) also states that, presuming the above eligibility criteria are met, the amount of CLB to which the beneficiary is entitled in any given year is paid to the trustee of an RESP trust, and that the payment is to be made on terms and conditions specified in the RESP agreement between the Minister and the trustee.<sup>(22)</sup>

## 2. Maximum Amount of CLB Payable Under *CESA*

It is important to note that not everyone will be entitled to a CLB. According to clause 6(2) of *CESA*, in order to be entitled to any type of CLB payment for a given year, the beneficiary must be a person for whom the National Child Benefit (NCB) pursuant to the *Income Tax Act* was payable for at least one month of that year or for which a special allowance was payable under the *Children's Special Allowances Act* for at least one month of that year. As stated previously, the special allowance benefit is generally payable to children in care. The NCB is a top-up to the Canada Child Tax Benefit (CCTB) available under the *Income Tax Act* for certain low-income families. Currently, a family that makes less than \$22,615 per year will receive the entire amount of the NCB top-up. The NCB top-up is reduced by the percentage of family income above \$22,615.

In terms of the CLB amounts payable by the Minister, \$500 is payable in respect of the first year in which the person meets the entitlement criteria outlined above, and \$100 is payable for each succeeding year in which the beneficiary meets the entitlement criteria, until the beneficiary reaches 15 years of age (clauses 6(2)(a) and (b)). Presuming that the beneficiary was born in Canada in 2004, and was entitled to the NCB or a special allowance under the *Children's Special Allowances Act* for at least one month of 2004, and in one month of every year that followed until the beneficiary turned 15, the maximum amount of CLB payable by the Minister would therefore be \$2,000. Just as with the CES grant payments, interest would likely be payable on the Minister's CLB contribution amounts (see clause 8).

The "benefit year" for the purpose of paying the CLB benefit is the period starting on 1 July of any given year and ending on 30 June of the next year (clause 6(3)). Presumably, this time period was chosen because it matches the period used to calculate the NCB under the *Income Tax Act*.

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(22) Presumably, these terms and conditions will be established by regulations made in accordance with clause 13(1) of *CESA*.

In addition, the primary caregiver of the beneficiary must indicate the RESP trust into which the annual amounts of the CLB payments are to be deposited (clause 6(4)). Once the beneficiary turns 18, he or she can make this designation, but he or she must do so before he or she turns 21 (clause 6(4)). The primary caregiver must also provide his/her/its SIN or business number to the beneficiary (clause 7(b)). This is likely because these numbers are necessary in order to do the income testing necessary to determine eligibility for the CLB.

#### F. Source of Revenue for CES Grant Payments and CLB Payments

Pursuant to clause 9 of *CESA*, all amounts payable by the Minister in the form of CLBs or CES grants shall be paid out of the Consolidated Revenue Fund.

#### G. Provincial Agreements

Pursuant to clause 12(1) of *CESA*, the Minister may enter into agreements with a province or territory (under s. 35(1) of the *Interpretation Act*,<sup>(23)</sup> a reference to a “province” in a statute includes a “territory”), to administer provincial programs consistent with the purpose of *CESA*, as long as the Minister has the approval of the Minister of Finance. Presumably, this provision is designed to allow for parallel provincial programs to the CES grant and the CLB under *CESA*. The provision does not explicitly state that such programs are to replace the *CESA* programs in provinces that have signed and negotiated such agreements with the Minister.

The Minister may charge fees for services provided under these agreements as long as the fees do not exceed the cost of providing the service (clauses 12(2) and (3)). The fees collected may be used to cover the costs of administering these provincial programs, subject to conditions imposed by Treasury Board (clause 12(4)).

#### H. Administrative Provisions

In addition to the substantive provisions of *CESA*, which operate to alter the existing CES grant system and create the CLB, the bill also contains certain administrative provisions.

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(23) R.S.C. 1985, c. I-21.

For example, clause 10 of *CESA* states that in the event of an overpayment under *CESA*, or any other amount that may need to be recovered, such amounts, along with any applicable interest, constitute a debt owing to the Crown, recoverable in Federal Court or in any other court of competent jurisdiction. However, clause 10 does not apply to any federal/provincial administration agreements established pursuant to clause 12.

*CESA* also contains provisions dealing with access to and protection of personal information. Clauses 11(1) and (2) of the bill state that any information collected in the course of administering *CESA*, the CES grant program, the CLB program, or a program established by provincial agreement made pursuant to clause 12 of *CESA*, including a SIN of an individual obtained for these purposes, is privileged information, and shall not be released except for the purposes of administering and enforcing *CESA*, programs established under *CESA*, or the *Income Tax Act*.

Having said this, however, clauses 11(1) and (2) are made subject to clause 11(3) of *CESA*. Pursuant to clause 11(3), except as otherwise prescribed, ss. 104 to 104.03, 104.05 to 104.08 and 104.11 of the *Canada Pension Plan*<sup>(24)</sup> apply to *CESA* as if they were contained in *CESA*.

The sections of the *Canada Pension Plan* referenced in clause 11(3) of *CESA* allow an individual, whose information has been provided to the government for *CESA* purposes, his or her Member of Parliament on behalf of that person, and various other provincial and federal government departments, to access that individual's information if certain conditions are met. The Minister may also make the individual's information available to other third parties if, in the opinion of the Minister, the public interest in the disclosure clearly outweighs the invasion of privacy or if the release of the information would clearly benefit the individual to whom the information relates.<sup>(25)</sup> In such a case (release of other information to other third parties in accordance with s. 104.07 of the *Canada Pension Plan*), the Minister is required to notify the Privacy Commissioner of the disclosure, either before the disclosure or without delay after the disclosure, and the Privacy Commissioner may notify the individual to whom the information relates of the disclosure, if the Privacy Commissioner deems it appropriate to do so.<sup>(26)</sup>

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(24) R.S.C. 1985, c. C-8.

(25) See s. 104.07(1), *Canada Pension Plan*.

(26) See s. 104.07(2), *Canada Pension Plan*.

Pursuant to clause 13(1) of *CESA*, the Governor in Council is empowered to make a number of different types of regulations in order to carry out the purpose and provisions of *CESA*. Clauses 13(1)(a) to (k) provide a specific list of subjects on which the Governor in Council is authorized to make regulations, including, for example, establishing conditions that must be met by an RESP and a person applying for a CES grant or CLB before a grant or bond is paid (clause 13(1)(b)), and the circumstances under which an additional amount may be paid to assist with the costs of administering an RESP (clause 13(1)(e)). However, the list is not exhaustive. It appears, therefore, that the Minister can make regulations on subjects other than those outlined in this list, as long as they are made to carry out the purpose and provisions of *CESA*, and as long as the regulations made pursuant to clause 13(1)(g) of *CESA* (which provides for the making of regulations that would authorize the Minister, in certain circumstances, to waive any requirements outlined in *CESA* respecting CES grants or CLBs to avoid undue hardship) do not waive any requirements to determine eligibility for a Canada Child Tax Benefit, National Child Benefit or an allowance under the *Children's Special Allowances Act*.

#### I. Transitional Provisions and Consequential Amendments

*CESA* also contains a transitional clause (clause 14) and a number of clauses concerning amendments to other statutes, including the *Access to Information Act*,<sup>(27)</sup> the *Children's Special Allowances Act*, and the *Income Tax Act*.

Clause 14 of *CESA* states that every CES grant agreement entered into under Part III.1 of the *DHRDA* is deemed to be an agreement under clause 5 of *CESA*. Clause 19 of *CESA* repeals Part III.1 of the *DHRDA*.

With respect to the consequential amendments to statutory provisions made under *CESA*, most of these amendments are made for the purposes of making sure the correct statute is referred to (*CESA* rather than the *DHRDA*), allowing for and making reference to provincial agreements entered into pursuant to clause 12 of *CESA*, and making sure that appropriate references to *CESA* and the *Children's Special Allowances Act* are made in the relevant sections of the *Income Tax Act*.<sup>(28)</sup>

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(27) R.S.C. 1985, c. A-1.

(28) See clauses 15-18 and 20-22 of *CESA*.

## J. Coming Into Force Information

Most of the provisions in *CESA* are designed to come into force on a day or days to be fixed by the Governor in Council. The only exceptions are: clause 12, dealing with provincial agreements; certain consequential amendments to the *Children's Special Allowances Act* (clause 17); and the consequential amendments to the *Income Tax Act* (clauses 20 to 22),<sup>(29)</sup> which come into force on Royal Assent.

## COMMENTARY

Bill C-5 was only recently introduced in the House of Commons, and has not yet generated significant media attention. However, the proposals for a CLB and enhanced CES grants set out in the 2004 federal budget caused discussion in the months following their announcement. On 26 March 2004, the Ontario Student Trustees' Association criticized the proposed CLB, stating that "although directed to low-income families, the monies fail to follow the unforeseen yet inevitable rises in tuition and the Consumer Price Index."<sup>(30)</sup> Increased RESP contribution limits were also deemed inadequate as "Registered Education Savings Plans cannot ... be properly accessed by low-income families because contribution levels are too high and disproportionate to any disposable income that may exist ... ."<sup>(31)</sup>

On 1 April 2004, the *National Post* published a commentary by Jack M. Mintz, President and CEO of the C. D. Howe Institute and a professor at the Rotman School of Management, University of Toronto. Professor Mintz suggested that CLBs and CES grants are "well-intentioned programs that should have never been started in the first place."<sup>(32)</sup> By way of a rationale, he argued that less than 20% of the CES grant is claimed by families earning less than \$50,000 a year<sup>(33)</sup> and that CLBs and enhanced CES grants were also at risk of falling into the wrong hands. Instead, he proposed bursaries or enhanced student loans for lower-income students, payable when they make a commitment to attend a post-secondary institution.

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(29) See clause 23 of *CESA*.

(30) Ontario Student Trustees' Association, News release, "Ontario students give Paul Martin's budget a failing grade," 26 March 2004, available on-line at: <http://www.newswire.ca/en/releases/archive/March2004/26/c4539.html?view=print> (date accessed: 15 April 2004).

(31) *Ibid.*

(32) Jack M. Mintz, "Learning Bonds not the answer," *National Post*, 1 April 2004.

(33) *Ibid.*

On 25 July 2004, *The Province* reported that many Canadians continue to be unaware of the CES grant program.<sup>(34)</sup> In addition, those who are aware tend to have higher incomes. For example, only 35% of households with an income of less than \$15,000 were aware of the grant, compared to 69.5% of households with an income of more than \$40,000.<sup>(35)</sup> The author suggests that this is part of a continuing problem whereby “dollars earmarked to improve accessibility for low-income families are flowing disproportionately to high-income households ... .”<sup>(36)</sup>

On 13 August 2004, the *Edmonton Journal* pointed to an ancillary problem, commenting that social assistance recipients in Ontario, Quebec and British Columbia are subject to asset rules that could prevent them from taking advantage of the CLB or contributing to RESPs.<sup>(37)</sup> To do so might cause them to be ineligible for provincial benefits. It was later reported that Ontario had amended its policies to address this concern.<sup>(38)</sup>

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(34) Sarah Schmidt, “Parents not aware of grants: Educational plan for low-income families benefits better off,” *The Province* [Vancouver], 25 July 2004.

(35) *Ibid.*

(36) *Ibid.*

(37) Sarah Schmidt, “Many children not eligible for savings plan: Campaign promise short-circuited,” *Edmonton Journal*, 13 August 2004.

(38) Susan Pigott and David Pecaut, “Change in policy allows disadvantaged to save,” *Toronto Star*, 11 October 2004.