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LEGISLATIVE SUMMARY

Bill C-3:

An Act to enact the Aviation Industry Indemnity Act, to amend the Aeronautics Act, the Canada Marine Act, the Marine Liability Act and the Canada Shipping Act, 2001 and to make consequential amendments to other Acts

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

Legislative Summary of Bill C-3
(Legislative Summary)

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CONTENTS

LEGISLATIVE SUMMARY OF BILL C-3: AN ACT TO ENACT THE AVIATION INDUSTRY INDEMNITY ACT, TO AMEND THE AERONAUTICS ACT, THE CANADA MARINE ACT, THE MARINE LIABILITY ACT AND THE CANADA SHIPPING ACT, 2001 AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 BACKGROUND

Bill C-3, An Act to enact the Aviation Industry Indemnity Act, to amend the Aeronautics Act, the Canada Marine Act, the Marine Liability Act and the Canada Shipping Act, 2001 and to make consequential amendments to other Acts (short title: Safeguarding Canada's Seas and Skies Act) was introduced in the House of Commons by the Minister of Transport on 18 October 2013.

The bill contains five parts, each of which has a distinct purpose:

- Part 1 enacts the Aviation Industry Indemnity Act, which authorizes the minister of Transport to undertake to indemnify certain aviation participants in the event of loss or damage resulting from what are commonly called "war risks" (clauses 2 to 9).
- Part 2 amends the *Aeronautics Act* to establish a new procedure for investigating aviation accidents or incidents involving civilians and military aircraft or aeronautical installations (clauses 10 to 26).
- Part 3 amends the *Canada Marine Act* in relation to the effective date of the appointment of a director of a port authority (clause 27).
- Part 4 amends the *Marine Liability Act* to implement the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* (clauses 28 to 57).
- Part 5 amends the *Canada Shipping Act, 2001* to introduce new requirements for operators of oil handling facilities (clauses 58 to 79).

Bill C-3 was previously introduced in the 1st Session of the 41st Parliament as Bill C-57, which died on the *Order Paper* when Parliament was prorogued on 13 September 2013. At the time, Bill C-57 was awaiting second reading in the House of Commons. In the Speech from the Throne of 16 October 2013, the federal government announced its intention to re-introduce the bill.[1]

1.1 THE AVIATION INDUSTRY INDEMNITY ACT

After the attacks on the United States on 11 September 2001, insurance companies stopped offering air carriers liability insurance coverage for what are commonly called "war risks" in the insurance industry.[2] These risks generally include war, hijacking and all related perils, including acts of terrorism. The lack of insurance coverage for war risks offered on the market could put air carriers out of compliance

with requirements for adequate insurance coverage, in which case they would have to cease operating.[3]

In response, the Government of Canada is providing temporary protection for the Canadian airline industry against war risks, under the Aviation War Risk Liability Program.[4] Under the program, the government has undertaken to indemnify an airline, an airport operator, NAV CANADA or any supplier of goods or services to an airport operator, an airline in Canada or NAV CANADA for damage relating to war risks to the extent that protection against such risks is not commercially available.[5] At present, that undertaking is not taken under an Act of Parliament.[6]

Bill C-3 seeks to establish a statutory framework (the Aviation Industry Indemnity Act) that allows the minister of Transport to provide aviation industry participants with protection against war risks.

1.2 THE *AERONAUTICS ACT*

Bill C-3 establishes a new process in the *Aeronautics Act* for investigations of accidents that involve a civilian and a military aircraft or installation. New powers, comparable to those exercised by the Canadian Transportation Accident Investigation and Safety Board, are given to the Canadian Forces Airworthiness Investigative Authority to enable it to investigate military–civilian occurrences.

The provisions in Part 2 of the bill had been included in two bills that preceded Bill C-57. The first of these bills was Bill C-6, An Act to amend the Aeronautics Act and to make consequential amendments to other Acts, which was passed at the report stage in the House of Commons during the 1st Session of the 39th Parliament. The bill was reintroduced at the third reading stage in the following session as Bill C-7 but did not pass third reading before the dissolution of the 39th Parliament.

1.3 THE *CANADA MARINE ACT*

The *Canada Marine Act*[7] governs the creation and operation of Canadian port authorities, among other things. Port authorities are shared-governance corporations[8] whose role is to administer ports that are considered to be essential to domestic and international trade, and the associated port facilities. At present, 18 Canadian port authorities are operating in Canada.[9]

Each Canadian port authority is governed by a board of directors whose membership is laid down in its letters patent. The boards are generally composed of:

- one director appointed by the Governor in Council on the recommendation of the minister of Transport;
- one director appointed by the municipalities referred to in the letters patent;
- one or two directors appointed by the province, under the provisions of the letters patent; and
- directors appointed by the Governor in Council in consultation with the users or classes of users referred to in the letters patent.[10]

Bill C-3 changes the time when port authority board appointments made by the Governor in Council come into effect.

1.4 THE *MARINE LIABILITY ACT* AND THE *INTERNATIONAL CONVENTION ON LIABILITY AND COMPENSATION FOR DAMAGE IN CONNECTION WITH THE CARRIAGE OF HAZARDOUS AND NOXIOUS SUBSTANCES BY SEA, 2010*

The *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* (HNS Convention) establishes a liability scheme designed to compensate victims in the event of a spill of hazardous and noxious substances (HNS), such as chemicals, at sea. The HNS Convention was first signed in 1996.[11] Canada was one of the signatories, but this version of the HNS Convention never came into force because of barriers to implementation in numerous states.[12] The work of the International Maritime Organization led to a protocol being produced in 2010 that resolved the difficulties that had led to the HNS Convention not being ratified in the 1990s.

The provisions of Part 4 of the bill amend the *Marine Liability Act*[13] (MLA) to implement in Canada the HNS Convention.

1.4.1 THE *MARINE LIABILITY ACT*

The MLA provides for the liability that ship owners and operators bear for damage caused by pollutants. In particular, it implements in Canada the liability scheme established by:

- the *International Convention on Civil Liability for Oil Pollution Damage*, 1992 (CCL);
- the *International Convention on Civil Liability for Bunker Oil Pollution Damage*, 2001 (Bunkers Convention); and
- the *International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage*, 1992 and the 2003 protocol to that Convention (together also known as the IOPCF Convention), which create the international compensation fund and a supplementary fund (IOPC Fund) to compensate for oil pollution damage covered by the CCL and the Bunkers Convention.

These three international conventions provide for compensation for damage caused by oil, based on a two-tier scheme. First, liability for damage is assigned to a ship owner, who must assume liability and compensate victims up to a certain monetary limit. Second, beyond that limit, compensation is paid to victims from an international fund (IOPC Fund) created by levies paid by shippers and receivers of oil that are in states that are parties to the IOPCF Convention.

In addition to implementing the international scheme for compensation for damage caused by oil, the MLA created the Ship-source Oil Pollution Fund. This is a national fund established in a special account in the accounts of Canada[14] and financed by levies paid by shippers and receivers of oil in Canada. Levies were paid into the Fund between

1972 and 1976,[15] but no levy has been imposed since then,[16] although the minister of Transport has the power to impose levies under the MLA.[17]

The purpose of the Ship-source Oil Pollution Fund is to pay compensation for damage caused by oil pollution in shipping. Compensation is to be paid up to a certain amount, established by the MLA,[18] even where compensation by the owner and the IOPC Fund is not possible. Where damage of this nature occurs, persons who wish to receive compensation may apply directly to the Ship-source Oil Pollution Fund.[19] If the claim is deemed to be justified, the Fund will pay compensation to the claimant, and the Fund is subrogated to the claimant's rights. The Fund then initiates measures to recover the compensation paid from the ship owner and the IOPC Fund, within the limits of their respective liability under the CCL and the Bunkers Convention.[20] Persons who so wish may also make a claim for compensation directly to the owner of the ship responsible for the damage and the IOPC Fund, in which case the Ship-source Oil Pollution Fund will compensate the claimant only to the extent that the claimant has not been adequately compensated by them.[21]

In addition to paying compensation where damage is caused by oil, the Ship-source Oil Pollution Fund is responsible for paying the levies from Canadian oil shippers and receivers to the IOPC Fund.[22]

1.4.2 The HNS Convention

The liability scheme established by the HNS Convention is similar to the liability scheme that now applies to damage caused by oil, as set out in the CCL, the Bunkers Convention and the IOPCF Convention. However, unlike the current scheme, the HNS Convention unites the creation of the liability scheme and the creation of the international compensation fund in a single instrument.[23]

The HNS Convention was open for signatures between 1 November 2010 and 31 October 2011. During that period, eight states signed,[24] including Canada on 25 October 2011,[25] but no state has yet ratified the Convention. Ratification by at least 12 states is needed in order for the Convention to come into force. States that so wish may still adhere to and ratify the HNS Convention.

1.4.2.1 Application

The HNS Convention provides for compensation for damage – including injury or death, damage to property and environmental contamination – resulting from the shipping of nearly 6,500 HNS.[26] Oil is also covered by the HNS Convention where the damage it causes is not covered by the CCL and the Bunkers Convention.[27]

1.4.2.2 Compensation

The HNS Convention follows the two-tier model of compensation for damages established by the CCL and the IOPCF Convention. Ship owners are held liable for damage resulting from the shipping of HNS, but their share of the liability is limited **by the HNS Convention to an amount that varies, depending on the size of the ship, from 10 to 115 million Special Drawing Rights[28] (approximately C$17 to**

C$200 million based on the value of the Canadian dollar relative to the U.S. dollar on 27 February 2014). Damages in excess of the ship owner's liability are to be paid, up to a total amount of 250 million Special Drawing Rights (approximately C$430 million based on the value of the Canadian dollar relative to the U.S. dollar on 27 February 2014), by an international fund (HNS Fund) composed of contributions from HNS shippers and receivers. If the value of the damage exceeds the amount of compensation covered by the HNS Fund, compensation to victims is to be prorated to the value of the damage they suffer.

The HNS Convention provides that ship owners' share of liability must be covered by insurance. It requires that each State Party ensure that ships carrying HNS in their waters have proof of insurance, irrespective of where the vessel is registered.

1.4.2.3 Composition of the HNS Fund and Contributions

The HNS Fund is constituted after the occurrence of an event that results in damage covered by the Convention. Following the occurrence of such an event, the director of the HNS Fund will determine what amount is required in order for the Fund to be able to meet its obligations. HNS shippers or receivers that have received more than a certain quantity of HNS must then pay a levy to the Fund, calculated on the basis of the quantities of HNS received. The levies may be spread out over several years, depending on the rate at which the claim resolution process proceeds.

1.5 The *Canada Shipping Act, 2001*

On 18 March 2013, the Government of Canada announced measures to create what it refers to as "a World-Class Tanker Safety System."[29] Eight measures aimed at increasing tanker safety were announced, along with amendments to the *Canada Shipping Act, 2001* (which are contained in Bill C-3 and its predecessor, Bill C-57) and the creation of a Tanker Safety Expert Panel to review Canada's Marine Oil Spill Preparedness and Response Regime and to propose further measures to strengthen it.[30] The Tanker Safety Expert Panel began its review in March 2013 and held consultations until the end of June 2013.[31] The panel will report to the minister of Transport in November 2013 (addressing the current regime south of 60°N latitude) and in September 2014 (addressing issues north of 60°N latitude, and hazardous and noxious substances).[32]

Part 5 of Bill C-3 amends the *Canada Shipping Act, 2001* (CSA, 2001) to implement some of the measures announced on 18 March 2013. The bill adds new types of violations and enforcement measures under the CSA, 2001 in order to better manage the risk of accidental discharges of petroleum products in Canadian waters. It also contains new requirements for operators of oil handling facilities to demonstrate their oil spill preparedness and response capacity to Transport Canada. Some of the amendments contained in this bill are intended to consolidate some of the provisions respecting "pollution prevention" and "pollution response" officers and then eliminate the term "pollution prevention officer." The bill also makes the enforcement measures existing in Part 11 of the CSA, 2001 applicable for the requirements of Part 8 (Pollution Prevention and Response) of the CSA, 2001.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: AVIATION INDUSTRY INDEMNITY ACT – INDEMNITY FOR "WAR RISKS" (CLAUSES 2 TO 9)

2.1.1 NEW AVIATION INDUSTRY INDEMNITY ACT (CLAUSE 2)

Bill C-3 enacts the new Aviation Industry Indemnity Act (AIIA), which authorizes the minister of Transport to undertake to indemnify aviation industry participants for loss or damage caused by a war risk (section 3 of the AIIA). A war risk is specifically defined as an act of unlawful interference with an aircraft, airport or air navigation facility, including an act of terrorism, or an act in the course of armed conflict of any sort (section 2 of the AIIA, definition of "event"). The industry participants who may benefit from the minister's undertaking under the new Act are Canadian air carriers, NAV CANADA, airports and suppliers of goods or services that directly support the operation of an aircraft (section 2 of the AIIA, definition of "aviation industry participant").

The undertaking provided for in the AIIA must be limited to losses or damage suffered by aviation industry participants that are not otherwise covered by insurance; in addition, they may not amount solely to the participants' loss of income (section 3(2) of the AIIA). The minister may attach terms and conditions to an undertaking (section 3(3) of the AIIA), and each undertaking can cover only one aviation industry participant, in accordance with the regulations made by the Governor in Council (section 12 of the AIIA). The power granted to the minister to issue an undertaking under the AIIA may be exercised only by the minister and may not be delegated (section 3(6) of the AIIA).

The *Statutory Instruments Act*[33] does not apply to an undertaking given by the minister (section 4(1) of the AIIA). Nonetheless, any amendments to an undertaking issued by the minister under the Act, or any revocation of an undertaking, must be published in the *Canada Gazette* (section 4(2) of the AIIA).

After issuing an undertaking, the minister may request that aviation industry participants who are covered by the undertaking provide the minister with any information that will enable him or her to determine their eligibility and their existing level of insurance coverage for the events in question (section 5 of the AIIA).

When an event covered by an undertaking issued by the minister occurs, aviation industry participants have two years to submit a claim (section 6 of the AIIA). The minister must assess the claim and determine whether an indemnity should be paid, and if so, the minister must establish the amount of the claim (section 7 of the AIIA). The minister need not pay an indemnity if the damage suffered is the fault of the claimant (section 7(5) of the AIIA). Any indemnity must be paid out of the Consolidated Revenue Fund (section 8 of the AIIA), and the Crown is subrogated to the rights of a participant who has been paid for a claim (section 9 of the AIIA).

At least once every two years, the minister must reassess whether it is feasible for aviation industry participants to obtain insurance coverage for "risks of war" (section 10 of the AIIA).

The minister must report to Parliament on his or her activities under the Act within 90 days of the day on which he or she issued, amended or revoked an undertaking, or at least every two years (section 11 of the AIIA).

2.1.2 Consequential Amendments (Clauses 3 to 9)

Clauses 3 to 9 of the bill amend an existing statute called the *Marine and Aviation War Risks Act*[34] to remove from it all references to the aviation industry. At present, to ensure that ships and aircraft are not laid up by reason of lack of insurance, that Act allows the minister of Transport to enter into an agreement with any person for insurance or reinsurance against war risks.[35] The minister entered into an agreement for this purpose with the Canadian Shipowners Mutual Assurance Association on 20 February 1988.[36]

The *Marine and Aviation War Risks Act* will now apply only to the marine shipping industry. Bill C-3 replaces the title of the Act with *An Act respecting marine war risks insurance and reinsurance agreements* (short title: *Marine War Risks Act*) (clauses 3 and 4 of the bill). Every reference to the former title of that Act in federal legislation is also replaced by a reference to its new title (clause 9 of the bill).

2.2 Part 2: Amendments to the *Aeronautics Act* – Investigations of Occurrences Involving Civilians (Clauses 10 to 26)

2.2.1 Amendments to the Existing Provisions of the *Aeronautics Act* (Clauses 10 to 14 and 20)

Bill C-3 amends section 4.2 of the *Aeronautics Act* to provide that investigations into occurrences involving a military aircraft or installation and civilians will be conducted under the new Part II of that Act (clause 11 of the bill). Certain provisions of the Act, in particular the definition of “minister,” are amended for greater clarity and to reflect the new Part II (clauses 10, 12 to 14 and 20).

2.2.2 New Part II of the *Aeronautics Act*: Military Investigations Involving Civilians (Clause 19)

Clause 19 adds new Part II: Military Investigations Involving Civilians to the *Aeronautics Act*, in which the new investigation procedure applicable to military–civilian occurrences is set out (new sections 10 to 24.8). Overall, the new sections are comparable to the provisions of the *Canadian Transportation Accident Investigation and Safety Board Act*.[37]

2.2.2.1 Application and Interpretation (New Section 10)

The new Part II applies to any military–civilian occurrence in or over any place in Canada, and outside Canada in certain circumstances (new section 10(2)). A military–civilian occurrence is defined as any accident or incident involving a civilian and an aircraft or installation operated by National Defence, the Canadian Forces or a visiting force (new section 10(1) – definition of “military–civilian occurrence”).

2.2.2.2 Airworthiness Investigative Authority (New Sections 12, 16 and 17)

Under new Part II, an Airworthiness Investigative Authority must be designated from among the members of the Canadian Forces or the employees of the Department of National Defence to investigate military–civilian occurrences (new section 12(1)). When a federal department, including the Canadian Transportation Accident Investigation and Safety Board, learns of a military–civilian occurrence, the Authority must be notified (new section 16). The Authority may then act as an observer at the investigation undertaken by the department in question and review all interim or final reports prepared (new sections 16(2) and 16(3)). The Authority may also undertake his or her own investigation by advising the other departments with an interest in the occurrence and allowing them to attend as observers (new section 17).

The role of the investigator is to identify safety deficiencies and provide recommendations designed to eliminate or reduce those deficiencies (new section 12(1)). The investigator's conclusions may not be construed as assigning or determining civil or criminal liability (new sections 12(2) and 12(3)).

2.2.2.3 Powers of the Airworthiness Investigative Authority and the Investigator (New Sections 13 to 15, 21 and 24.1)

The powers of the Authority in relation to investigations of military–civilian occurrences are set out in new sections 13 to 15. The Authority may act personally as an investigator or designate another person as an investigator (new sections 13 and 21). In the course of his or her investigation, the investigator may search any place where he or she believes on reasonable grounds that there is anything relevant to the investigation and may seize the thing without the consent of the owner if he or she has a warrant issued by a justice (new sections 14(1) to 14(4)).

Section 487.1 of the *Criminal Code*[38] applies to the seizure, to the extent that any procedure set out in that section is not precluded by regulations made by the Governor in Council (new section 14(5)). The investigator may retain the thing seized and prohibit access for any period necessary for the purposes of the investigation, while minimizing any resulting disruption to transportation services (new sections 14(7) to 14(9)). The investigator may also cause tests to be conducted on the thing, including tests to destruction, after inviting the owner to be present (new section 14(6)). The thing seized must be returned to the owner as soon as possible or when so ordered by a court, unless the thing has been tested to destruction (new section 15).

In addition, the investigator has the following powers:

- To require a person to produce information he or she has and require the person to give a statement to that effect (new section 14(10)(*a*)). The statement and the identity of the person who made it must remain confidential and may be disclosed only to a coroner who requests it or a person carrying out an investigation by the Canadian Transportation Accident Investigation and Safety Board (new section 24.1). It also may not be used in legal or disciplinary proceedings except in a perjury case (new sections 14(13) and 24.1(6)).

- To require a person who is involved in the operation of an aircraft to submit to a medical examination and require the physician to provide information that is relevant to the investigation (new sections 14(10)(*b*) and 14(10)(*c*)). The requirement by an investigator that a person submit to a medical examination cannot require that the person submit to any procedure involving surgery (new section 14(15)). Information obtained as a result of a medical examination is privileged, except where the Airworthiness Investigative Authority considers it necessary to use it in the interests of aviation safety (new section 14(12)).
- To require that an autopsy be done on the body of a deceased person (new section 14(10)(*d*)).

No person shall refuse to comply with the requirements of the investigator (new section 14(11)). The investigator may use force to execute a warrant if he or she is accompanied by a peace officer (new section 14(16)) and may also apply to the Federal Court or a superior court of a province for an order, including for contempt of court, against a person who refuses to do as required (new section 14(17)).

2.2.2.4 Report of the Investigator (New Sections 12, 18 to 20, 24.3 and 24.4)

In the course of the investigation, a minister responsible for a department that has a direct interest in the investigation may ask the Airworthiness Investigative Authority to prepare an interim report. If a death is involved, the Authority must prepare an interim report to the coroner investigating the occurrence (new section 19).

On completion of the investigation, the Airworthiness Investigative Authority must prepare a report containing his or her conclusions and recommendations. The report must be sent to any department that has a direct interest in the investigation, and the department may make representations before the final report is written. The Authority must consider the representations when preparing the final report to the minister of Defence (new section 18).

The Authority may, at any time, reconsider the findings and recommendations in his or her report, and will be required to do so if new material facts appear (new section 20).

Any department that has an interest in the investigation will also be notified of the investigation's findings and recommendations. The departments must inform the minister of Defence and the Authority within 90 days (which may be extended by the Authority, if necessary) of any action taken or proposed to be taken in relation to the recommendations made by the Authority, or provide reasons if the action taken differs from the action that was recommended (new sections 18(9) to 18(11)).

The findings of investigations by the Airworthiness Investigative Authority are not binding on the parties to any legal, disciplinary or other proceedings (new section 12(4)). The Airworthiness Investigative Authority or an investigator designated by the Authority may not be compelled to testify before a court or administrative body unless the court or other person or body so orders for special cause (new section 24.3). The Authority or investigator may not in any event give their opinion in a legal or disciplinary proceeding (new section 24.4).

2.2.2.5 Regulation-Making Power (New Section 24.5)

Under new section 24.5, the Governor in Council may make regulations regarding such matters as:

- the preservation of records, documents and other evidence;
- the definition of the rights and privileges of persons attending investigations as observers; and
- the forms of warrants issued under section 14 and the modifications to be made to section 487.1 of the *Criminal Code* in its application to section 14.

2.2.2.6 Contraventions and Penalties (New Sections 24.6 and 24.7)

Contraventions of the provisions of new Part II are punishable under new sections 24.6 and 24.7. In particular, every person who resists or obstructs an investigator or gives false or misleading information is guilty of an indictable offence and liable to a term of imprisonment not exceeding two years.

2.2.2.7 Application to Military Investigations (New Section 24.8)

The following sections also apply to an investigation conducted by the Department of National Defence into occurrences other than military–civilian occurrences: new section 14 relating to the powers of investigators, new sections 18(1) to 18(9) relating to communication of the report to the minister, and new sections 22 to 24.4 relating to the protection of on-board recordings, communication records and statements (new section 24.8).

2.2.3 Other Provisions

2.2.3.1 Board of Inquiry (Clauses 15 and 16)

Clauses 15 and 16 of Bill C-3 abolish the power of the minister of Transport to establish a board of inquiry to inquire into the circumstances of an accident or incident involving an aircraft or contraventions of the *Aeronautics Act*.

2.2.3.2 Clarifications (Clauses 17 and 18)

Clause 17 of the bill clarifies the application of section 6.7 of the *Aeronautics Act*, which provides that sections 6.71 to 7.21 concerning the issuance of Canadian aviation documents do not apply to members of the Canadian Forces or foreign military personnel.

Clause 18 of the bill enacts new section 8.7(1.01) of the *Aeronautics Act* to allow the minister of Transport to exercise the powers granted to the minister in section 8.7(1) with regard to matters relating to defence with the authorization of the minister of National Defence.

2.2.4 Consequential Provisions (Clauses 21 to 23)

Clauses 21 to 23 of the bill make consequential amendments to the *Access to Information Act*, the *National Defence Act* and the *Canadian Transportation Accident Investigation and Safety Board Act* so that they reflect new Part II of the *Aeronautics Act*.

2.2.5 Transitional Provisions (Clauses 24 and 25)

Clauses 24 and 25 of the bill determine the manner in which investigations already begun when new Part II of the *Aeronautics Act* comes into force will be handled.

The new provisions of Part II will apply to investigations into a military–civilian occurrence already begun when Part II comes into force; the Airworthiness Investigative Authority is then responsible for completing the investigation. If an investigation into a military–civilian occurrence has been completed but no report on it has been provided to the minister of National Defence before new Part II comes into force, only the new provisions relating to communication of the report to the minister (new sections 18(1) to 18(9)), on-board recordings, communications records and statements (new sections 22 to 24.1) and reporting by civilians (new section 24.2) apply to the investigation (clause 24 of the bill).

These new provisions also apply to existing military investigations that, under new Part II, do not relate to a military–civilian occurrence (clause 25 of the bill).

2.2.6 Coming into Force (Clause 26)

The provisions of Part 2 of the bill will come into force 60 days after the Act receives Royal Assent, except for clause 10(2) and clause 15 (which repeals section 6.3 of the Act, relating to boards of inquiry), which will come into force on a date fixed by order of the Governor in Council.

2.3 Part 3: Amendments to the *Canada Marine Act* – Effective Date of Appointment of Directors of Port Authorities (Clause 27)

At present, section 14(2.2) of the *Canada Marine Act* provides that a director's appointment takes effect on the day on which notice of the appointment is received by the port authority. Clause 27 of the bill amends that section to specify that only "a director's appointment made by a municipality or province" takes effect on the day on which notice of the appointment is received by the port authority (clause 27). The effect of the change is that the appointment of a director by the Governor in Council may take effect at a different time.

2.4 Part 4: Amendments to the *Marine Liability Act* – Implementation of the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* (Clauses 28 to 57)

In order to implement the HNS Convention in Canada, the bill essentially adapts the existing provisions of Parts 6 and 7 of the MLA. It amends a number of existing

provisions of the MLA that implement the present international oil pollution damage compensation scheme in order to extend their application to the new scheme established by the HNS Convention. It also enacts new sections 74.01 to 74.4, which apply exclusively to the HNS.

2.4.1 Implementation of the HNS Convention in Canada (Clauses 31 to 33 and 56)

Bill C-3 makes Canada a State Party to the HNS Convention and gives articles 1 to 5, 7 to 23, 37 to 41, 45, 48 and 52[39] of the Convention (new sections 74.01, 74.1 and 74.2) force of law. These articles are reproduced in Schedule 9 to the MLA, which may be amended as needed by regulations made by the Governor in Council to reflect any amendment to the Convention, in particular regarding the limits of liability, and to reflect all declarations made by Canada that the HNS Convention does not apply in certain circumstances (new sections 74.22 and 74.23 and new Schedule 9).

In addition, the bill extends the liability of a ship owner under the HNS Convention to costs incurred, in particular by Fisheries and Oceans Canada, in response to an HNS spill (new section 74.24).

2.4.2 Jurisdiction of the Admiralty Court (Clause 33)

Bill C-3 gives the Admiralty Court (the Federal Court of Canada) jurisdiction with respect to litigation concerning compensation by a ship owner for damage caused by HNS under the HNS Convention.

A ship owner (or its insurer) may limit its liability in respect of an event for which it may be held liable, as provided by the HNS Convention, by constituting a fund in the Admiralty Court representing its maximum share of liability under articles 9 and 10 of the HNS Convention. Notice of the fund's constitution must be given in both the *Canada Gazette* and a local newspaper. Any legal proceedings commenced against the ship owner in another court will then have to be transferred to the Admiralty Court. When a fund is constituted, no legal proceedings may be commenced against the property of the ship owner in question (new sections 74.25 to 74.27 of the MLA and articles 9 and 10 of the HNS Convention).

2.4.3 Mandatory Insurance (Clause 33)

In accordance with the HNS Convention, Bill C-3 enacts the obligation for ships to carry a certificate attesting that the ship is covered by insurance in the event of HNS pollution. The new provisions of the MLA prohibit any ship, even if it is registered in a state that is not a party to the HNS Convention, from entering or leaving a Canadian port if it does not carry that certificate. The new provisions also prohibit any ship registered in Canada from entering a port outside Canada if it does not carry that certificate (new section 74.28).

The minister of Transport is designated as the authority in Canada responsible for issuing the mandatory insurance certificates for ships registered in Canada. The minister

is also given the power to issue certificates to ships registered in states that are not parties to the HNS Convention (new sections 74.21 and 74.29).

2.4.4 HNS Fund (Clause 35)

The new provisions of the MLA give the HNS Fund created by the HNS Convention the status of a natural person in Canada and designate the Administrator of the HNS Fund as its representative in Canada (new section 74.31). Any legal proceedings commenced in Canada against a ship owner in respect of liability for damage caused by HNS must be served on the Administrator of the HNS Fund, who then becomes a party to the proceeding (new section 74.32).

2.4.5 Recognition of Foreign Judgments (Clause 38)

The bill amends the definition of foreign judgment in section 80 of the MLA so that judgments given outside Canada that are based on the HNS Convention are recognized in Canada.

2.4.6 Returns Filed by Receivers (Clause 36)

The HNS Convention provides that HNS receivers located in a State Party to the Convention must report the quantity of HNS they received in the course of a year (article 21 of the HNS Convention). That information must enable the Director of the HNS Fund to determine each receiver's contribution to the Fund. The bill enacts new provisions establishing the manner in which this information will be reported in Canada.

HNS receivers located in Canada must report to the minister of Transport, in the form established by regulation, the quantity of HNS *other than oils* that they received. The minister of Transport must then provide the Secretary-General of the International Maritime Organization and the Administrator of the HNS Fund with this information. In addition, the minister may examine the books and records of HNS receivers to ensure the veracity of their returns (new section 74.4).

The information about HNS *that are oils* and have been received by Canadian receivers will be communicated under section 117 of the MLA, as amended by Bill C-3. The manner in which the information is communicated to the HNS Fund is similar to the manner the information is provided to the IOPC Fund under the current liability regime. This is described in section 5.2.11 of this legislative summary, which discusses the amendments to section 177 of the MLA.

2.4.7 Affiliated Bodies (Clause 34)

Two affiliated bodies within the meaning of section 2 of the *Canada Business Corporations Act* are deemed to be "associated persons" within the meaning of the HNS Convention for the purposes of determining the amount of the contributions they must pay to the HNS Fund (new section 74.3).

2.4.8 Regulation-Making Power (Clause 39)

The bill amends section 90 of the MLA, which gives the Governor in Council the power to make regulations. Section 90, as amended, allows the Governor in Council, among other things, to extend the application of the HNS Convention to ships or classes of ships that the Convention does not cover (new section 90(*d.1*)).

2.4.9 Compensation by the Ship-source Oil Pollution Fund (Clauses 41 to 46)

The bill amends the MLA so that the Ship-source Oil Pollution Fund assumes the liability of ship owners under the HNS Convention for damage caused by HNS that are oils in the same way as it assumes such liability under the CCL and the IOPCF Convention. Accordingly, the Fund must pay a person who makes a claim in respect of damages or cost, actual or anticipated, resulting from oil pollution from a ship owner under the HNS Convention (amended section 103 of the MLA).

Under amended section 101 of the MLA, the Fund must assume the ship owner's share of liability when:

- it is impossible to obtain compensation from the ship owner and the HNS Fund, because, among other reasons, the owner and the HNS Fund are not required to pay compensation under the HNS Convention;
- the damage exceeds the owner's maximum liability and the excess is not covered by the HNS Fund;
- the owner is financially incapable of paying compensation; or
- the cause of the oil pollution damage is unknown, and it cannot be attributed to a particular ship.

However, the Ship-source Oil Pollution Fund does not have to assume the liability of ship owners for damage resulting from HNS pollution other than oil (amended section 101(1) of the MLA), nor does the Fund have to assume the liability of an owner for loss of life or personal injury on board or outside a ship carrying HNS that is caused by those substances (amended section 101(1) of the MLA). The Fund also does not have to compensate for damage caused by oil pollution in a country that is a party to the HNS Convention (amended section 104 of the MLA).

As is the case for the existing liability scheme for oil, the Fund will be a party to all legal proceedings commenced in Canada against the owner of a ship for damage caused by oil pollution under the HNS Convention (amended section 109 of the MLA). When the Fund pays compensation, it is subrogated to the rights of the claimant (amended section 106 of the MLA) and must try to recover the money paid from the ship owner (amended section 102 of the MLA).

In addition, the Fund may commence an action to seize the ship that is responsible for the damage or ask that its owner constitute security in an amount not less than the value of the maximum liability determined under the HNS Convention (amended section 102 of the MLA).

2.4.10 Levies Payable to the HNS Fund (Clauses 47 to 51)

The bill amends sections 112, 116 and 117 of the MLA to provide for the manner in which levies will be paid to the HNS Fund by Canadian entities. Canadian levies payable to the HNS Fund that relate to the receipt of oil will be paid in the same manner as Canadian levies are paid to the IOPC Fund. The levies will be paid to the HNS Fund by the Ship-source Oil Pollution Fund (amended sections 117(1) and 117(2) of the MLA).

Levies paid by Canadian receivers that relate to HNS other than oil will be paid directly by them to the HNS Fund under articles 18 and 19 of the HNS Convention.

2.4.11 Communication of Information to the HNS Fund (Clauses 50 and 51)

The bill amends section 117 of the MLA to establish the manner in which information about HNS that are oils and are received by entities in Canada will be communicated to the HNS Fund.

The information will first be provided by receivers of HNS that are oils to the Ship-source Oil Pollution Fund, and will then be sent by that Fund to the HNS Fund (new section 117(2.2) of the MLA). It will be possible for the Administrator of the Ship-source Oil Pollution Fund to inspect receivers' books (amended section 117(4) of the MLA). Information about receipt of HNS other than oils must be communicated in accordance with new section 74.4 (see section 2.4.6 of this paper).

Section 117 of the MLA is also amended to allow the Governor in Council to make regulations prescribing the manner in which information will be submitted to the minister by persons and receivers who are required to pay levies to the IOPC Fund and the HNS Fund. That power, as it relates to the IOPC Fund, was formerly granted by section 125(*c*) of the MLA, which is repealed by clause 51 of the bill.

2.4.12 Enforcement and Offences (Clauses 52 to 55)

The bill amends sections 129, 131, 132 and 136 so that the provisions of the MLA relating to enforcement and penalties for non-compliance with the Act apply to the new provisions introduced by the bill. In particular, any person who fails to declare the receipt of HNS to the minister of Transport is guilty of an offence and liable to a maximum fine of $1,000 for each day of default (new section 132(4.1) of the MLA). As well, any person who makes a false or misleading statement is guilty of an offence and liable to a maximum fine of $100,000 (new section 132(4) of the MLA).

2.4.13 Other Provisions (Clauses 28, 29, 30, 37 and 40)

Clauses 28, 29 and 40 of the bill amend certain existing interpretation provisions of the MLA so that they reflect the HNS Convention and the new provisions added by the bill.

Clause 30 of the bill corrects an error in the French version of section 54(2) of the MLA. Clause 37 clarifies the English version of section 76 of the MLA.

2.4.14 Coming into Force (Clause 57)

Clauses 29(2) to 29(4), clauses 30, 32, 34, 36, 40(2), 50(1), 50(3), 50(4), 50(6), 50(7), 51 and 54 will come into force when the bill receives Royal Assent.

All other provisions of Part 4 of the bill will come into force on a day to be fixed by order of the Governor in Council.

2.5 Part 5: Amendments to the *Canada Shipping Act, 2001* – Oil Handling Facilities (Clauses 58 to 79)

2.5.1 Definitions (Clause 58)

Clause 58 of Bill C-3 amends the definition of "oil handling facility" contained in section 2 (Interpretation) of the CSA, 2001 to add oil handling facilities that *will* load or unload petroleum in any form to or from vessels. Currently, the definition covers only operating oil handling facilities, not those that plan to operate.

2.5.2 Amendments to Part 1, General (Clause 59)

Clause 59 adds new section 11(2)(*c.1*) to Part 1 (General) under the heading "Inspections by Marine Safety Inspectors and Others." The new section authorizes inspectors to carry out inspections respecting pollution prevention. Currently, section 11(2) authorizes inspectors to inspect hulls, machinery, equipment, and cargo, as well as to carry out an inspection respecting the protection of the marine environment, only.

2.5.3 Amendments to Part 8, Pollution Prevention and Response – Department of Transport and Department of Fisheries and Oceans (Clauses 60 to 71)

Clause 60 of Bill C-3 adds new requirements for oil handling facilities. New sections 167.1 and 167.2 require those who propose to operate an oil handling facility to notify the minister in advance and to submit oil pollution prevention and emergency plans that meet the requirements in the regulations as well as any other documentation required by the minister before commencing operations. New sections 167.3 and 167.4 contain similar requirements for those who already operate oil handling facilities.

Clause 61 of the bill amends existing section 168(1) of the CSA, 2001, which concerns the requirements for oil handling facilities respecting their arrangements with response organizations and plans and procedures in the event of a discharge of oil to allow for new regulatory requirements that may be adopted in relation to pollution prevention and emergency plans.

Clause 62 adds new section 168.01 to the CSA, 2001, requiring operators of oil handling facilities who propose to substantially change their existing operations to notify the minister, provide documentation of the change to the minister and to revise their oil pollution prevention and emergency plans in accordance with the regulatory requirements.

Clause 63 adds new sections 168.1 to 168.3 respecting oil handling facilities to the CSA, 2001. These provisions, respectively, authorize:

- the minister to direct oil handling facility operators to update their oil spill prevention or emergency plans;
- marine safety inspectors to direct any person to provide information required for the administration of Part 8 (Pollution Prevention and Response) of the CSA, 2001; and
- the minister to monitor measures taken by an oil handling facility to repair, remedy, minimize or prevent pollution damage or direct the operator of the facility to take specific measures for the same reasons under certain circumstances.

Clause 64 adds new section 171.1 to the CSA, 2001 under the heading “Response Organizations.” The new section authorizes marine safety inspectors to direct a response organization to provide any documentation that it is required to have under Part 8 of the CSA, 2001.

Clauses 65 to 67 eliminate the provisions respecting “pollution prevention” officers contained in sections 174 and 175 of the CSA, 2001, while retaining the provisions respecting “pollution response” officers.

Clause 68 amends sections 181(2) and 181(4) of the CSA, 2001, which concern response organizations. Section 181(2) is amended to clarify that the agents and mandataries of response organizations are not liable for acts and omissions during a response operation in order to provide legal immunity to foreign response organizations that might participate in clean-up operations. Section 181(4) is amended to include discharges and threats of discharges from oil handling facilities in the definition of “response operation.” This extends the legal immunity now afforded to response organizations when they respond to spills from ships; such legal immunity will apply to their responses to oil spills from oil handling facilities as well.

Clause 69 of the bill amends the regulation-making power of the Governor in Council for Part 8 of the CSA, 2001, which is set out in section 182. This clause adds new sections 182(*d.1*) to 182(*d.4*), allowing the Governor in Council to make regulations respecting:

- the establishment of classes of oil handling facilities and the determination of the new requirements regarding notification of operations, submission of plans and other documents that will apply to each class;
- oil pollution prevention plans;
- the procedures, equipment and resources required in the event of a discharge of oil; and

- the information and documents that must be provided to the minister concerning notifications of proposed, existing, or proposed changes to existing oil handling facility operations.

Clause 69 also renumbers existing section 182 as 182(1) and adds new sections 182(2) and 182(3), which allow the minister, despite the regulations, to designate an oil handling facility – whether or not it is part of a class established by the regulations – to be part of a different class established by the regulations. If the minister does so, the operator of the facility must be notified.

Clause 70 of Bill C-3 adds new offences under existing section 183 of the CSA, 2001 that are punishable with a fine of up to $1 million or imprisonment for up to 18 months or both. The punishable new offences are contraventions of new provisions contained in this bill respecting:

- oil pollution prevention and emergency plans (new section 167.2(1));
- the prohibition against commencing operation of an oil handling facility (new section 167.2(3));
- submissions of up-to-date oil pollution prevention and emergency plans (new sections 168(1)(*c.1*) and 168(1)(*d.2*));
- submissions of revised oil pollution prevention and emergency plans (new section 168.01(3));
- the prohibition against making changes to oil handling facility operations (new section 168.01(4));
- a ministerial direction to update or revise an oil pollution prevention or emergency plan (new section 168.1); and
- a ministerial direction to take measures respecting potential or actual pollution damage from an oil handling facility (new section 168.3(*b*)).

Clause 71 clarifies the French version of section 184 of the CSA, 2001 and also adds to the list of offences that are punishable with a fine of up to $100,000 or imprisonment for up to 12 months or both. The new offences are contraventions of new provisions contained in this bill or new regulations respecting:

- notifying the minister about proposed operations of an oil handling facility relating to the loading and unloading of oil to or from vessels (new section 167.1);
- submitting documents requested by the minister regarding proposed operations of an oil handling facility relating to the loading and unloading of oil to or from vessels (new section 167.2(2));
- notifying the minister of operations of an oil handling facility relating to the loading and unloading of oil to or from vessels and providing information or documents requested by the minister within 90 days of new section 167.3 coming into force;
- notifying the minister about changes to operations of an oil handling facility relating to the loading and unloading of oil to or from vessels (new section 168.01(1));

- submitting documents required by regulations or requested by the minister regarding changes to operations of an oil handling facility relating to the loading and unloading of oil to or from vessels (new section 168.01(2));
- directions from a marine safety inspector to provide information to the inspector (new section 168.2); and
- directions from a marine safety inspector to a response organization to provide information to the inspector (new section 171.1).

2.5.4 Amendments to Part 11, Enforcement – Department of Transport (Clauses 72 to 75)

Clause 72 of Bill C-3 amends the definition of "relevant provision" in section 210 in Part 11 (Enforcement – Department of Transport) of the CSA, 2001 to no longer exclude provisions in Part 8 (Pollution Prevention and Response – Department of Transport and Department of Fisheries and Oceans) of the CSA, 2001. The effect of this change is to make the enforcement provisions in Part 11 of the CSA, 2001 applicable for requirements in Part 8 of the CSA, 2001. Such enforcement provisions include inspections, investigations and administrative monetary penalties, among other provisions in Part 11.

Clause 73 of Bill C-3 amends section 211(2) of the CSA, 2001, under the heading "Inspections," to provide additional grounds to authorize a marine safety inspector to enter living quarters. Currently, marine safety inspectors can enter living quarters only with consent or for the purpose of ensuring that a vessel complies with a relevant provision, defined as including provisions of the Act and regulations, except certain provisions or regulations in relation to Parts 5 (Navigation Services), 7 (Wreck) and 10 (Pleasure Craft). This amendment will permit a marine safety inspector acting under a warrant to enter living quarters.

New section 211(2.1) requires a justice of the peace, before issuing a warrant, to consider the necessity of entering living quarters and whether entry is likely to be refused. New section 211(2.2) prohibits the use of force unless the warrant permits it and the inspector is accompanied by a peace officer. Clause 73 also amends sections of the CSA, 2001 that describe what the inspector can do when carrying out an inspection in order to include oil handling facilities. In addition to changes to sections 211(4)(*a*) and 211(4)(*e*) to incorporate oil handling facilities, clause 73 adds new section 211(4)(*d.1*), allowing the marine safety inspector to direct an operator of an oil handling facility or a proposed one to carry out an emergency or safety procedure required by the regulations or contained in their emergency or safety plan.

Clause 74 amends section 228 of the CSA, 2001 to expand the definition of the term "violation" in Part 11 of the CSA, 2001. The term "violation" is currently described as a contravention of a provision that is designated as a violation by the regulations made under Part 11. Clause 74 adds "the contravention of a direction given under a relevant provision" to the definition.

Clause 75 amends existing section 244, which describes the regulation-making power of the Governor in Council for the purposes of carrying out the purposes and provisions of Part 11 of the CSA, 2001. Section 244(*f*) concerns designating

violations that are considered an offence under the CSA, 2001 to which clause 75 adds "the contravention of a direction given under a relevant provision." Clause 75 also adds new section 244(*i*) to allow the Governor in Council to make regulations respecting emergency and safety procedures that a marine safety inspector can order the operator of an oil handling facility to carry out.

2.5.5 Amendments to Part 12, Miscellaneous (Clauses 76 to 78)

Clauses 76 and 77 amend section 252(1), which deals with proof of offences by vessels, and section 268.1, which deals with Crown liability, to remove references to a "pollution prevention" officer; this is consequential to other amendments made in Part 8.

Similarly, clause 78 makes a consequential amendment to the *Coasting Trade Act* to change a reference to a "pollution prevention" officer to a "pollution response" officer.

2.5.6 Coming into Force (Clause 79)

Sections 60 to 62, 69, 70(1) to 70(3), 71(2) and 71(4) will enter into force on a date fixed by an order of the Governor in Council. Other sections will come into force on Royal Assent.

NOTES

1. Government of Canada, *Speech from the Throne*, 2nd Session, 41st Parliament, 16 October 2013.
2. International Air Transport Association, *Fact Sheet: War Risk Insurance*, June 2012.
3. Ibid.
4. Transport Canada, *Aviation War Risk Liability Program*.
5. Transport Canada, *Undertaking with respect to Aviation War Risk Liability (2014-01-01)*.
6. *Authority to continue to provide an indemnity to essential air service operators in Canada for War Risk Liability Insurance Coverage for the period commencing on January 1, 2011 and ending on December 31, 2013*, Order of the Governor in Council, P.C. 2010-1608.
7. *Canada Marine Act*, S.C. 1998, c. 10.
8. Shared-governance corporations are corporate entities without share capital for which Canada, either directly or through a Crown corporation, has a right to appoint or nominate one or more members to their board of directors. See Treasury Board of Canada Secretariat, *Overview of Institutional Forms and Definitions*.
9. Transport Canada, "Map Indicating Port Authorities Across Canada."
10. *Canada Marine Act*, s. 14(1).
11. Transport Canada, *Maritime Transport of Hazardous and Noxious Substances: Liability and Compensation*, Discussion Paper, October 2010, p. 3.
12. Ibid.

13. *Marine Liability Act*, S.C. 2001, c. 6.
14. Office of the Administrator of the Ship-source Oil Pollution Fund, *The Fund*.
15. At the time, it was the Maritime Pollution Claims Fund, which was succeeded by the Ship-source Oil Pollution Fund. See Office of the Administrator of the Ship-source Oil Pollution Fund, *Questions and Answers*.
16. Ibid.
17. *Marine Liability Act*, ss. 112 and 114.
18. During the fiscal year beginning April 2013, the limit on the liability of the Ship-source Oil Pollution Fund is $161,293,660. That amount is indexed annually based on the Consumer Price Index for Canada. See *Marine Liability Act*, s. 101.
19. Office of the Administrator of the Ship-source Oil Pollution Fund, *Fund Liability*.
20. *Marine Liability Act*, s. 106(3).
21. Office of the Administrator of the Ship-source Oil Pollution Fund, *Fund Liability*.
22. *Marine Liability Act*, s. 117(1).
23. Transport Canada (2010), p. 5.
24. The eight states that signed the Convention are Denmark, Canada, France, Germany, Greece, the Netherlands, Norway and Turkey. See International Oil Pollution Compensation Funds, *Status of the HNS Convention and 2010 Protocol*.
25. Transport Canada, "Canada signs important maritime convention to protect the environment," News release, Ottawa, 27 October 2011.
26. Transport Canada (October 2010), p. 5.
27. International Oil Pollution Compensation Funds, *The HNS Convention and the 2010 Protocol*.
28. **A Special Drawing Right (SDR) is a "claim to currency" created by the International Monetary Fund (IMF) and used as the unit of account of the IMF and various other international organizations. The value of the SDR is based on a basket of currencies (U.S. dollar, Euro, Pound Sterling and Japanese Yen). The U.S. dollar-equivalent of the SDR is posted daily on the IMF's website. For more information about SDRs, see International Monetary Fund, "Special Drawing Rights (SDRs)," *Factsheet*, 1 October 2013**.
29. Transport Canada, "Harper government announces first steps towards World-Class Tanker Safety System," News release, Vancouver, 18 March 2013.
30. Ibid.
31. Transport Canada, "Consultations," *Tanker Safety Expert Panel*.
32. Transport Canada, "About the Review," *Tanker Safety Expert Panel*.
33. *Statutory Instruments Act*, R.S.C. 1985, c. S-22.
34. *Marine and Aviation War Risks Act*, R.S.C. 1970, c. W-3.
35. Ibid., s. 3.
36. *Order approving the Second Amending Agreement between Her Majesty the Queen as represented by the Minister of Transport and the Canadian Shipowners Mutual Assurance Association that amends the Canadian Shipowners Mutual Assurance Association Agreement, executed on February 20, 1988, in order to change the name of the manager of the Association as designated in section 15 of the Agreement*, Order of the Governor in Council, P.C. 2010-1381.

37. *Canadian Transportation Accident Investigation and Safety Board Act*, S.C. 1989, c. 3.

38. *Criminal Code*, R.S.C. 1985, c. C-46.

39. The MLA gives the force of law in Canada only to those articles of the *International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 2010* that impose an obligation or grant a right to an entity in Canada. The articles of the Convention that impose an obligation or grant a right to State Parties are binding on Canada vis-à-vis those State Parties, but those articles do not have the force of law in Canada.