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LEGISLATIVE SUMMARY

Bill C-31:

An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures

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

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

Legislative Summary of Bill C-31
(Legislative Summary)

Publication No. 41-2-C31-E

Ce document est également publié en français.

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LEGISLATIVE SUMMARY OF BILL C-31: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON FEBRUARY 11, 2014 AND OTHER MEASURES*

1 BACKGROUND

Bill C-31, An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures (short title: Economic Action Plan 2014 Act, No. 1) was introduced by the Minister of Finance and read for the first time in the House of Commons on 28 March 2014.

As its short and long titles show, the purpose of Bill C-31 is to implement the government's overall budget policy introduced in the House of Commons on 11 February 2014. Bill C-31 is the first budget implementation bill of 2014. According to established legislative practice, a second budget implementation bill should follow in the fall.

Bill C-31 is divided into six parts. The first three provide for measures proposed in the budget of 11 February 2014. Part 1 implements income tax measures (clauses 2 to 39). Part 2 implements certain goods and services tax/harmonized sales tax (GST/HST) measures (clauses 40 to 61). Part 3 implements excise measures (clauses 62 to 90).

Part 4 amends the *Customs Tariff* (clauses 91 to 98), and Part 5 implements the *Canada–United States Enhanced Tax Information Exchange Agreement Implementation Act* (clauses 99 to 101). Lastly, Part 6 enacts and amends several Acts in order to implement various measures, including the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, the *Hazardous Products Act*, the *Customs Act*, the *Judges Act*, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *Trade-marks Act* and the *Old Age Security Act* (clauses 102 to 486).

The summary that follows provides a brief description of the main proposals in Bill C-31. The document addresses the substance of each part of the bill. For ease of reference, the information is presented in the same order as it appears in the summary found in Bill C-31.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: INCOME TAX AND RELATED MEASURES PROPOSED IN THE 11 FEBRUARY 2014 BUDGET

2.1.1 ADOPTION EXPENSE TAX CREDIT

Clause 6(1) amends section 118.01(2)(*a*) of the *Income Tax Act* (ITA) to increase the maximum amount of eligible expenses per adopted child for the purposes of the Adoption Expense Tax Credit to $15,000 for the 2014 taxation year. Previously, the maximum amount was $10,000. The new amount is indexed to inflation for taxation years after 2014.

2.1.2 EXPANSION OF THE MEDICAL EXPENSE TAX CREDIT

Clause 10(1) amends section 118.2(2)(*l*) of the ITA to add the cost related to the acquisition, the care and the maintenance of a dog for the medical expense tax credit if the dog is acquired to assist a person who suffers from severe diabetes.[1] This amendment applies to expenses incurred after 2013.

Clause 10(2) adds section 118.2(2)(*l.92*) to the ITA, making remuneration paid for the design of an individualized therapy plan part of the list of eligible medical expenses if the following conditions are respected:

- the therapy set out in the plan is prescribed by and, if undertaken, administered under the general supervision of a medical doctor or an occupational therapist (or, in the case of a mental impairment, a medical doctor or psychologist);
- an individualized therapy plan is required to access public funding for specialized therapy, or a medical doctor or an occupational therapist (or, in the case of a mental impairment, a medical doctor or psychologist) prescribes an individualized therapy plan;
- the plan is designed for an individual with a severe and prolonged mental or physical impairment who is, because of the impairment, eligible for the disability tax credit; and
- the amounts are paid to persons ordinarily engaged in the business of providing such services to unrelated individuals.

This amendment also applies to expenses incurred after 2013.

2.1.3 SEARCH AND RESCUE VOLUNTEERS TAX CREDIT

Clause 8(1) of Bill C-31 adds new section 118.07 to the ITA, which enables an individual to claim the new non-refundable Search and Rescue Volunteers Tax Credit if he or she performed, in the taxation year, eligible search and rescue volunteer services and performed not less than a total of 200 hours of:

- eligible search and rescue volunteer service for an eligible search and rescue organization; or
- eligible volunteer firefighting services for one or more fire departments.

The credit amount is determined by multiplying $3,000 by the base rate for the taxation year (15% for 2014), for tax savings of up to $450.

The new section 118.07 of the ITA also defines “eligible search and rescue volunteer services” and the criteria that an “eligible search and rescue organization” must meet for the purposes of the new tax credit:

- Eligible search and rescue volunteer services: services provided by an individual as a volunteer to an eligible search and rescue organization that consist primarily of responding to and being on call for search and rescue and related emergency calls, attending meetings held by the organization and participating in required training related to search and rescue services.
- Eligible search and rescue organization: an organization that is a member of the Search and Rescue Volunteer Association of Canada, the Civil Air Search and Rescue Association or the Canadian Coast Guard Auxiliary or whose status as a search and rescue organization is recognized by a provincial, municipal or public authority.

Note that an individual cannot deduct an amount for the Search and Rescue Volunteers Tax Credit for a given taxation year if he or she has deducted an amount for the Volunteer Firefighters Tax Credit for the same taxation year.

This amendment applies to the 2014 and subsequent taxation years.

2.1.4 Extension of the Mineral Exploration Tax Credit

Clause 18(1) amends the definition of the term “flow-through mining expenditure” in section 127(9) of the ITA to extend the eligibility period. With this change, the Mineral Exploration Tax Credit is available for eligible exploration expenses incurred by a corporation after March 2014 and before 2016 under a flow-through share[2] agreement entered into after March 2014 and before April 2015.[3]

The Mineral Exploration Tax Credit was first announced in the *Economic Statement and Budget Update* of 18 October 2000. It has since been extended several times, most recently in the 2013 federal budget.[4]

2.1.5 Transfer Limits for Underfunded Pension Plans

Clause 36 amends section 8517 of the *Income Tax Regulations* (ITR)[5] to expand the criteria for determining eligibility for the increased pension transfer limit. In particular, the criteria are expanded to include individuals leaving an underfunded defined-benefit registered pension plan (RPP) that is being wound up by the pension plan administrator.

With this change, these individuals can transfer a higher lump-sum amount on a tax-deferred basis from a defined benefit RPP to a defined contribution RPP, a registered retirement savings plan or a registered retirement income fund.

2.1.6 Receipt of the GST/HST Tax Credit Without Having to Apply

The ITA provides for the calculation of the Goods and Services Tax/Harmonized Sales Tax (GST/HST) Credit. To receive the GST/HST Credit for a taxation year, section 122.5(3) provides that an eligible individual must file an income tax return for the year and specifically apply for the credit, even if the individual did not receive any income during the year.

Clause 17 amends this section to remove the requirement that an individual apply for the credit on his or her income tax return.

These amendments apply for the 2014 and subsequent taxation years.

2.1.7 Tax Incentives for Donations of Ecologically Sensitive Land

Clauses 5 and 9 amend the ITA to extend the carry-forward period for claiming the charitable donations deduction and the charitable donations tax credit to 10 taxation years after the calendar year in which the ecologically sensitive land is donated by a corporation or individual. The amendment applies to gifts made after 10 February 2014. With this change, donors will have a longer period in which to earn income that will be reduced by the deduction or tax credit.

By way of comparison, it can be noted that for donations of other types of property, the deduction and credit, which are provided in sections 110.1 and 118.1 of the ITA respectively, can be claimed by a taxpayer in the year that the donation is made or in any of the five subsequent taxation years.

2.1.8 Tax Shelters and Donations of Cultural Property

Clause 30(2) amends section 248(37)(*c*) of the ITA to deem the fair market value of donated cultural property to be the lesser of the property's appraised or fair market value and the original purchase price paid by a donor. The amendment applies to certified cultural property acquired by donors as part of a gifting arrangement that is a tax shelter, and limits donors' use of such shelters to reduce their tax payable.

For an example of a dispute regarding the value of certified cultural property for purposes of a charitable donation, see the Tax Court of Canada's decision in *Aikman v. The Queen*.[6]

According to section 248(37)(*c*) of the ITA, certification by the Canadian Cultural Property Export Review Board is required in order for a property to be deemed a "certified cultural property"; such property can include paintings, sculptures and books. Moreover, according to section 237.1, a "tax shelter" is an investment property or gifting arrangement in which the property or arrangement is promoted as offering income tax savings – such as losses, deductions or credits – for the buyer or donor.

2.1.9 Ability of the Minister of National Revenue to Refuse to Register or Revoke the Registration of a Charity or a Canadian Amateur Athletic Association

The ITA provides the rules that must be met for charities to obtain and keep registered charity status. Registered charities enjoy the privilege of being exempt from taxes on revenue that would otherwise be taxed, and they may issue receipts which allow donors to claim a charitable tax credit.

Clause 21 adds sections 149.1(4.1)(*f*) and 149.1(4.2)(*d*) to the ITA and broadens the scope of section 149.1(25) of the ITA to confer on the Minister of National Revenue the authority to revoke the registration of, or refuse to register, any charity or Canadian amateur athletic association that accepts or has accepted a gift from a foreign state, as defined in the *State Immunity Act*, that is set out in the list referred to in section 6.1(2) of that Act.

The Governor in Council may, by order, set out the name of a foreign state in this list if, on the recommendation of the Minister of Foreign Affairs made after consulting with the Minister of Public Safety and Emergency Preparedness, the Governor in Council is satisfied that there are reasonable grounds to believe that the foreign state supported or supports terrorism.

When these sections were introduced in Parliament, only the Islamic Republic of Iran and the Syrian Arab Republic were on the list.

This amendment applies to donations accepted after 10 February 2014.

2.1.10 Reduced Frequency of Payments of Source Deductions for Small and Medium-Sized Employers

The rules concerning payment to the Receiver General of source deductions made by employers and other payers of remuneration are set forth in section 108 of the ITR. Source deductions include amounts withheld as income tax, contributions to the Canada Pension Plan and employment insurance contributions.

The required frequency of payments during a given calendar year depends on the size of the average monthly amount withheld by the payer two years before a particular calendar year.

In certain cases, however, the ITR permits employers and other payers of remuneration, when it is advantageous for them, to make their payments based on the average monthly withholding amounts in the calendar year preceding the year in question, rather than those two years before the year in question.

In both cases, clause 33 amends section 108(1.1) of the ITR so as to increase the thresholds of average monthly withholding amounts used to establish the frequency of source deduction payments, as follows:

- the threshold applicable to persons required to make payments up to twice per month rises from $15,000 to $25,000; and

- the threshold applicable to persons required to make payments up to four times per month rises from $50,000 to $100,000.

Clause 38 of the bill introduces similar amendments to section 8 of the *Canada Pension Plan Regulations*.

Clause 39 of the bill introduces similar amendments to section 4 of the *Insurable Earnings and Collection of Premiums Regulations*.

These amendments are applicable to amounts deducted or withheld after 2014.

2.1.11 Disclosure of Taxpayer Information to the Financial Transactions and Reports Analysis Centre of Canada

Clause 28(1) adds section 241(4)(*d*)(xv) to the ITA to allow taxpayer information to be provided to an official of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). This creates a new exception to the general prohibition against disclosure of taxpayer information, to enable FINTRAC to evaluate the usefulness of information it provides to the Canada Revenue Agency.

Moreover, clause 28(2) adds section 241(4)(*s*) to allow taxpayer information to be provided to an official of FINTRAC for the purpose of ensuring compliance with Part 1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. This information can be provided only if it is relevant to a determination of whether a reporting entity, as defined in new section 244.1, has complied with its obligation to file information returns relating to international electronic funds transfers. Information is not permitted to be shared if it reveals the identity of a client, as defined in section 244.1.

Section 241 prohibits the use or communication of taxpayer information except as otherwise permitted in that section or in certain other provisions of the ITA, while section 241(4) identifies circumstances under which a governmental official may communicate taxpayer information.

2.1.12 Tabling in Parliament of Outstanding Tax Measures

Clause 31 adds section 162 to the *Financial Administration Act*. According to section 162(2), the Minister of Finance is required to table a list of legislative proposals to amend “listed tax laws” if those proposals:

- were publicly announced by the government following the last general election and before 1 April of the fiscal year preceding the particular fiscal year; or
- have not been enacted or made before the date on which the list is tabled in substantially the same form as the proposal or in a form that reflects consultations and deliberations in relation to the proposal.

According to section 162(1), the "listed tax laws" are the following:

- the *Income Tax Act* and the *Income Tax Regulations*;
- the *Income Tax Conventions Interpretation Act*;
- the *Excise Tax Act* and regulations made under it;
- the *Excise Act, 2001* and regulations made under it;
- the *Air Travellers Security Charge Act* and regulations made under it;
- the *Excise Act* and regulations made under it; and
- the *Customs Tariff* and regulations made under it.

Under section 162(3), the list of proposals will not include either a specific proposal that has been publicly withdrawn by the government or an announcement of a general intention to develop a specific legislative proposal. Moreover, section 162(4) provides that, if there are no legislative proposals in relation to the listed tax laws, the obligation to table a list would not apply.

The list is to be tabled in the House of Commons no later than the fifth sitting day that follows 31 October of a particular fiscal year.

To some degree, section 162 is consistent with the provisions contained in Bill C-549, An Act to amend the Financial Administration Act (unlegislated tax measures), introduced in the House of Commons by MP Mike Allen on 6 November 2013.

2.1.13 Labour-Sponsored Venture Capital Corporations Tax Credit

Clauses 24 and 25 amend the ITA, and clause 35 amends the *Income Tax Regulations*, to provide transitional rules in relation to the phase-out of the federal labour-sponsored venture capital corporations (LSVCCs) tax credit. (An LSVCC is a type of mutual fund corporation that makes investments in small and medium-sized businesses.)

Clause 24(1) amends section 204.81(8.3) of the ITA to expand the conditions under which a federally registered LSVCC can revoke its registration without penalty, while clause 25(1) amends section 204.85(3)(*d*) to specify a new condition under which a LSVCC will not be deemed registered upon the merger of two LSVCCs.

The clauses are deemed to have come into force on 27 November 2013.

2.1.14 International Electronic Funds Transfers

Clause 29(1) adds Part XV.1 to the ITA to require reporting in relation to certain electronic funds transfers. Part XV.1 comprises sections 244.1 to 244.7.

Section 244.1 defines the terms "cash," "casino," "client," "credit union central," "electronic funds transfer," "entity," "funds," "money services business" and "reporting entity."

Section 244.2(1) requires every reporting entity that sends or receives at least one electronic funds transfer totalling at least $10,000 into or out of Canada to file an information return. Section 244.2(2), clarifies this by providing that no information return is required if the reporting entity sends the electronic funds transfer to – or receives it from – an entity in Canada, regardless of where the electronic funds transfer originated or will end up.

Section 244.2(3) requires a reporting entity to file a return in two cases: if it directs a second reporting entity to send an electronic funds transfer out of Canada at the request of a client, or if it receives an electronic funds transfer for a beneficiary in Canada from a reporting entity where the initial sender is outside of Canada. This requirement does not apply if the name and address of the client or beneficiary is provided with the transfer.

According to section 244.2(4), if a reporting entity authorizes a second reporting entity to act on its behalf in respect of an electronic funds transfer, the former entity is required to file the return.

Pursuant to section 244.4(1), if – within a 24-hour period – a single reporting entity sends or receives two or more international electronic funds transfers that are individually less than $10,000 but that total $10,000 or more, an information return must be filed. Section 244.4(2) provides an exception from this requirement if the transfers are requested by certain government bodies, pension funds, hospitals or corporations and the funds are sent to two or more beneficiaries.

Under section 244.6, the return must be filed with the Minister of National Revenue within five working days after the day of the transfer(s).

Section 244.7 outlines the record-keeping requirements in relation to the information returns. It also ensures that the definitions of the terms “casino” and “money services business” are consistent with Part 6, Division 19, of Bill C-31 when it comes into force.

2.1.15 Amendments Relating to the Introduction of the Offshore Tax Informant Program

The ITA sets out the amounts to be included in the calculation of taxpayer income for a taxation year in section 3, which is quite broad in scope, and in section 56(1), which specifically lists all the amounts to be included in that calculation.

Clause 2 adds new section 56(1)(*z.4*) to the ITA. This provision adds to the list any amount received by the taxpayer under a contract between the taxpayer and the Canada Revenue Agency (CRA) to provide information to the CRA under a program administered by the CRA to obtain information relating to tax non-compliance.

Consequently, any amount received in the year by the taxpayer under the CRA’s Offshore Tax Informant Program or any similar program is now included in the calculation of taxpayer income.

Clause 3 adds section 60(*z.1*), which allows a taxpayer to deduct, when computing income for a taxation year, any repayment that year of an amount included in computing the taxpayer's income for the year or for a preceding taxation year because of section 56(1)(*z.4*).

Clause 3 of the bill therefore allows a taxpayer to deduct, when computing income for a taxation year, any repayment of amounts received under the CRA's Offshore Tax Informant Program or any similar program.

These changes come into force on the day on which the bill receives Royal Assent.

2.1.16 Disclosure of Taxpayer Information to a Police Organization

Clause 28(3) amends section 241 of the ITA to permit the disclosure of taxpayer information by a CRA official to a law enforcement officer of an appropriate domestic or foreign police organization. The information will be disclosed when the official has reasonable grounds to believe that it will afford evidence of a listed offence. Listed offences include bribery and the corruption of government officials as described in the *Corruption of Foreign Public Officials Act*[7] and in the *Criminal Code*[8] and crimes mentioned in section 742.1 of the *Criminal Code* with conditional sentences that were amended by the *Safe Streets and Communities Act*.[9]

At present, section 241(3) of the ITA permits a CRA official to provide taxpayer information to anyone for the purposes of criminal proceedings commenced under an Act of Parliament. With this change, an official will be able to provide information to law enforcement authorities on his or her own initiative, irrespective of whether criminal proceedings under an Act of Parliament have commenced.

2.1.17 Financial Institutions and Mark-to-Market Rules

Clause 37 amends section 9000 of the ITR so that the Business Development Bank of Canada (BDC) and BDC Capital Inc., a wholly owned subsidiary of the BDC, are not defined as financial institutions for purposes of the ITA's mark-to-market rules. The change applies to taxation years that end after 29 November 2013.

Under the mark-to-market rules, at the end of a taxation year, certain securities held by a financial institution must be valued at their fair market value and any accrued gain or loss must be reported for tax purposes.

2.2 Part 2: Implementation of Certain Goods and Services Tax and Harmonized Sales Tax Measures Proposed in the 11 February 2014 Budget

2.2.1 Expanding the GST/HST Exemption for the Service of Designing a Training Plan

Clause 54(1) amends section 14 of Part II of Schedule V of the *Excise Tax Act* (ETA), which pertains to goods and services exempted from the application of the

GST/HST, to include the provision of services of designing training plans to assist individuals with a disorder or a disability in managing, alleviating or eliminating the effects of the disorder or disability.[10] In order for the service of designing this type of training plan to qualify for the GST/HST exemption, it must meet one of the conditions listed in sections 14(*b*)(i) to 14(*b*)(iii), as is already the case for the provision of training services.[11] This amendment applies to services provided after 11 February 2014 (clause 54(3)).

Clause 55(1) amends section 15 of Part II of Schedule V of that Act in order to exclude the provision of services of designing training plans from the GST/HST exemption when the training is similar to training offered to the general public. This amendment also applies to services provided after 11 February 2014 (clause 55(2)).

2.2.2 Expanding the GST/HST Exemption for Acupuncture and Naturopathic Services

Clause 53 amends section 7 of Part II of Schedule V of the ETA, which pertains to goods and services exempted from the application of the GST/HST, to add acupuncture and naturopathic services to the list of exempt health care services. In order for the service to qualify for the GST/HST exemption, it must be provided to an individual by an acupuncture or naturopathic practitioner. This amendment applies to services provided after 11 February 2014.

Clause 52 add individuals practising the profession of acupuncture or naturopathy as a naturopathic doctor to the definition “practitioner” in section 1 of Part II of Schedule V. This amendment comes into effect after 11 February 2014.

2.2.3 Adding Electronic Eyewear to the Zero-Rated Medical and Assistive Devices List

Clause 61(1) adds new section 9.1 to Part II of Schedule VI of the ETA, which pertains to zero-rated (GST/HST-free) supplies of goods and services. The new provision adds eyewear specially designed to treat or correct a defect of vision by electronic means to the list of zero-rated medical and assistive devices. In order for the eyewear to be included in the zero-rated list, it must be supplied on the written order of a person who is entitled under the laws of a province to practise the profession of medicine or optometry for the treatment or correction of a defect of vision of an individual who is named in the order. This amendment applies to goods purchased after 11 February 2014 (clause 61(2)).

2.2.4 Election for Closely Related Persons for the Application of the *Excise Tax Act*

Clause 40 amends section 156 of the ETA, which allows certain members of a qualifying group of corporations and/or Canadian partnerships resident in Canada and engaged exclusively in commercial activities to elect to treat certain supplies between them as having been made for no consideration. The effect is that those members need not account for otherwise fully recoverable tax on the supplies.

2.2.4.1 Amendment to the Definition of "Qualifying Member"

Clause 40(1) amends the definition of "qualifying member" in section 156(1)(*c*) to exclude, in addition to financial instruments, property of nominal value (e.g., a pencil) from the property that can be considered for the purposes of determining if a registrant meets the property condition described in this section. Moreover, the addition of section 156(1)(*c*)(iii) amends the definition to allow a registrant with no property (other than financial instruments or property of nominal value) who has not made taxable supplies to satisfy the requirement of section (*c*) if it is reasonable to expect that the registrant will meet all of the following conditions:

- the registrant will be making supplies throughout the next 12 months;
- all or substantially all of these supplies will be taxable supplies; and
- all or substantially all of the property (other than financial instruments or property of nominal value) to be manufactured, produced, acquired or imported by the registrant within the next 12 months will be for consumption, use or supply exclusively in the course of its commercial activities.

In addition, where it is anticipated that the registrant will be merged, amalgamated or wound up within the next 12 months and section 271 or 272 of the ETA applies to the merger, amalgamation or wind-up and it is reasonable to expect that the resulting corporation will meet the three conditions throughout the rest of the year, the registrant will still be regarded as having met the conditions.

These amendments come into force on 1 January 2015.

2.2.4.2 Election for No Consideration

Clause 40(2) amends section 156(2) to provide that, in order for two specified members of a closely related group to treat taxable supplies made between them as having been made for no consideration, one of the specified members must, at any time after 2014, file with the Minister of National Revenue an election made jointly by them. Moreover, new section 156(4)(*b*) provides the requirements that the specified members must meet to validly file the election.

This amendment applies to any supply made after 2014.

2.2.4.3 Elections Filed Before 2015

Clause 40(3) adds a deeming rule to new section 156(2.01) providing that, if an election under section 156(2) between two specified members of a qualifying group has been filed before 1 January 2015, that election is deemed never to have been filed. As a result, if two specified members have made an election under section 156(2) and filed it with the Minister of National Revenue before 1 January 2015, one of the two specified members must file the election again, after 2014, in order for the election to apply to taxable supplies made between them after 2014. This rule applies to all of section 156.

This amendment comes into force on 1 January 2015.

2.2.4.4 Form of Election and Revocation

Clause 40(4) amends section 156(4), which provides the requirements that two specified members of a qualifying group must meet to make either a valid election or a valid revocation of an election under section 156(2). The amendment specifies that, in order for such an election or revocation to be valid, the election or the revocation must also be filed with the Minister of National Revenue in the prescribed manner on or before:

- the particular day that is the first day on or before which any of the two specified members is required to file a return under Division V[12] of the ETA for the reporting period of the specified member that includes the effective date of the election or revocation, as the case may be; or
- any day after the particular day that the Minister of National Revenue may allow.

This amendment applies for an election or a revocation with an effective date after 2014 and for an election in effect on 1 January 2015. However, in the case of an election under section 156(2) that is also in effect before 2015 – and in the case of a revocation of an election made under section 156(2) that is in effect before 2015 where that revocation is to become effective before 2016 – new section 156(4)(*b*) is to be read as instead requiring that the particular election, or the revocation of the particular election, must be filed with the Minister of National Revenue after 2014 and before 1 January 2016 or any later day that the minister determines.

2.2.4.5 Joint and Several Liability

Clause 40(5) adds new section 156(5) to introduce a joint and several liability provision with respect to an election made under section 156(2). This new section provides that, where two specified members of a qualifying group jointly make this election, a joint and several, or solidary (for civil law purposes), liability is created under certain conditions. The liability is for all obligations under Part IX[13] of the ETA resulting from a failure to account for or to pay an amount of net tax of either specified member.

The liability is created if two conditions are satisfied:

- The failure is in respect of net tax that is attributable to a particular supply made at any time between the two specified members.
- One of the two following situations exists:
  - An election under section 156(2) made jointly by the two specified members is in effect at the time the particular supply is made, or had ceased to be in effect before the time the particular supply was made, but the two specified members conducted themselves as if the election were in effect.
  - No valid election had been made jointly by the two specified members, but they claim that they have made an election under section 156(2) before the time the particular supply was made, and they are conducting themselves as if an election under section 156(2) made jointly by them were in effect at that time.

This new section applies to supplies made after 2014.

2.2.5 Increasing the Powers of the Minister of National Revenue with Respect to Registration for GST/HST

The ETA currently provides authority for the Minister of National Revenue to register a person applying for registration for GST/HST purposes.

Clause 47 adds new sections 241(1.3), 241(1.4) and 241(1.5) to the ETA. These amendments set out the rules allowing the minister to register a person who has failed to apply for registration as and when required.

New section 241(1.3) of the ETA provides that, if the Minister of National Revenue has reason to believe that a person who is not registered for GST/HST purposes should be registered, the minister may send a notice in writing to the person that the minister proposes to register him or her.

New section 241(1.4) of the ETA provides that, upon receipt of such a notice, the person must apply for registration or establish to the satisfaction of the Minister of National Revenue that the person is not required to be registered for GST/HST purposes.

Finally, new section 241(1.5) provides that if, more than 60 days after such a notice was sent, the person has not applied for registration and the minister is not satisfied that registration is not required, the minister may register the person and notify the person in writing.

These changes come into force on Royal Assent.

2.2.6 Disclosure of Taxpayer Information to the Financial Transactions and Reports Analysis Centre of Canada

Similar to clauses 28(1) and 75(1), clause 50(1) adds a provision to allow the CRA to provide taxpayer information to an official of FINTRAC (new section 295(5)(*d*)(vii) of the ETA). With this information, FINTRAC can evaluate the usefulness of information provided to the CRA.

Section 295 prohibits the use or communication of taxpayer information except as otherwise permitted in that section or in certain other provisions of the ETA.

2.2.7 Expanding the GST/HST Exemption for Hospital Parking

2.2.7.1 Adding the Definition of “Specified Parking Area”

Clause 59 adds a new definition for the term “specified parking area” to section 1 of Part VI of Schedule V of the ETA, which deals with the exemption from GST/HST for certain parking provided by public sector institutions.

With this new definition, “specified parking area” is now defined as all parking spaces that could be chosen under an agreement governing the offer of parking spaces if all of those parking spaces were vacant and not reserved for any specific users.

This amendment is deemed to have come into force on 21 March 2013.

2.2.7.2 Clarifying the GST/HST Exemption on Offers of Commercial Paid Parking

Clause 57 amends section 5 of Part V.1 of Schedule V to the ETA to exclude paid parking from the GST/HST exemption, when supplied under lease, licence or similar arrangement in the course of a business carried on by a charity.

This amendment clarifies that the exemption does not apply to offers of commercial paid parking by a charity even when the charity provides a significant amount of parking at no charge.

This amendment applies to services provided after 21 March 2013.

2.2.7.3 Expanding the List of Exclusions from the GST/HST Exemption

Clause 56 amends Part V.1 of Schedule V of the ETA, which lists the goods and services offered by a charity that is not a public institution and exempted from the application of the GST/HST, to exclude parking services from the GST/HST exemption in certain circumstances.

This amendment generally applies to services provided after 21 March 2013. However, an offer of a parking space made between 21 March 2013 and 24 January 2014 is only excluded from exemption in certain specified circumstances.

2.2.7.4 Adding Other Conditions for the GST/HST Exemption

Clause 58 adds new section 7 and clause 60 adds new section 25.1 of Part V.1 of Schedule V to the ETA in order to exempt from the application of the GST/HST the offer by a charity – other than by sale – of a parking space for a hospital when the three following conditions are met:

- when either all of the parking spaces are reserved for the use of individuals who are accessing a public hospital, or when it is reasonable to expect that these parking spaces will be used primarily by individuals such as patients, staff and visitors who are accessing a public hospital;
- the spaces available are not reserved for use other than by individuals accessing a public hospital otherwise than in a professional capacity, or reserved for certain categories of persons, or available for more than 24 hours for certain categories of persons; and
- if no election made by the supplier of the parking space under section 211 of the ETA is in effect.

The amendment made through clause 58 to add new section 7 applies to services provided after 21 March 2013. However, a special transitional relieving measure applies if an amount was collected by a charity as tax and applicable to an offer of a parking space made between 21 March 2013 and 24 January 2014 and if the offer is exempt by reason of new section 7 of Part V.1 of Schedule V. Under the relieving

measure, the amount is deemed not to have been collected as or on account of tax for purposes of determining the net tax of the charity.

The amendment made through clause 60 to add new section 25.1 applies to services provided after 24 January 2014.

2.2.8 International Electronic Funds Transfer Reports for Purposes of the Goods and Services Tax

Clause 49 adds section 273.3 to the ETA to ensure that the information collected by the Minister of National Revenue in an information return filed in relation to international electronic funds transfers under Part XV.1 of the ITA can be used by the minister for the purposes of administering the GST/HST.

2.2.9 The Offshore Tax Informant Program – Confidential Information and Other Amendments

Clause 50(2) amends section 295(5) of the ETA to give the CRA the authority to provide certain confidential information to a person who has entered into a contract to provide information to the CRA under the Offshore Tax Informant Program. Only information that informs the person of any amount he or she may be entitled to under the contract and of the status of his or her claim under the contract may be communicated.

Clause 51 adds section 300.1 to the ETA to ensure that tax assessed, but not yet collected, as a consequence of the Offshore Tax Informant Program is not treated as an amount payable for the purpose of a sales tax harmonization agreement entered into by the federal government under section 8.3 of the *Federal–Provincial Fiscal Arrangements Act*.

2.2.10 Disclosure of Taxpayer Information to a Police Organization

Clause 50(3) amends section 295(5) of the ETA to permit the disclosure of taxpayer information by a CRA official to a law enforcement officer of an appropriate domestic or foreign police organization. The information will be disclosed when the official has reasonable grounds to believe that it will afford evidence of a listed offence. Listed offences include:

- bribery and the corruption of government officials as described in the *Corruption of Foreign Public Officials Act* and in the *Criminal Code*; and
- crimes mentioned in section 742.1 of the *Criminal Code* with conditional sentences that were amended by the *Safe Streets and Communities Act*.

At present, section 295(4) of the ETA permits a CRA official to provide taxpayer information to anyone for the purposes of criminal proceedings commenced under an Act of Parliament. With this change, an official will be able to provide information to law enforcement authorities on his or her own initiative, irrespective of whether criminal proceedings under an Act of Parliament have commenced.

2.2.11 Restriction on Recovery Respecting Input Tax Credits

The ETA provides for the determination of the amount of an input tax credit for, or a rebate payable to, a taxpayer.

Clause 43 adds section 180.01 to the ETA, which provides that, if a non-resident person is not registered for the GST/HST and that person delivers tangible personal property to a person in Canada, no portion of the GST/HST paid on that property shall be rebated, refunded or remitted to the non-resident person, or shall otherwise be recovered by the non-resident person, under this or any other Act of Parliament.

This amendment is deemed to have come into force on 17 January 2014.

The ETA currently provides that an amount qualifying in a particular period as an input tax credit may not be claimed by a person in that person's net tax calculation if, before the end of the period, the amount was refunded or remitted to the person under this or any other Act of Parliament.

To further clarify Parliament's intent, clauses 44 and 45 amend sections 225 and 225.1 of the ETA to clarify that a person or a charity cannot reduce its net tax by any amount included in an adjustment, refund or credit for which a credit note has been received by the person or charity, or a debit note has been issued by the person or charity or by any amount that has otherwise been rebated, refunded or remitted to the person or charity, or has otherwise been recovered by the person or charity, under this or any other Act of Parliament.

These amendments are deemed to have come into force on 23 April 1996 for persons and after 1996 for charities.

2.3 Part 3: Implementation of Excise Measures Proposed in the 11 February 2014 Budget

2.3.1 Amending the *Excise Act, 2001* to Adjust the Domestic Rate of Excise Duty on Tobacco Products

Clause 64 of Bill C-31 sets out the manner in which the rates of duty on tobacco products will be adjusted according to the Consumer Price Index (CPI). It defines an "inflationary adjusted year" to be 2019 and every fifth year after that year and provides that rates of duty on tobacco products will be adjusted on the first day of December of each inflationary adjusted year. The rates of duty will be adjusted according to a formula based on the CPI for Canada. The adjusted rate of duty applicable on a tobacco product will be equal to the greater of the result obtained by the formula and the rate of duty applicable to the product on 30 November of the particular inflationary adjusted year.

Clause 70 imposes a further tax on inventories of taxed cigarettes held at the beginning of 12 February 2014 at a rate equivalent to the increase in the domestic excise duty rate on cigarettes. A tax will also be levied on inventories of taxed cigarettes held on the first day of December of an inflation-adjusted year at a rate equivalent to that year's increase in the duty on cigarettes.

This inventory tax ensures that the excise duty increases are applied in a consistent manner to all taxed cigarettes at different trade levels. An exemption to the cigarette inventory tax is granted in the case of a small inventory, defined as 30,000 or fewer cigarettes, held by a retail establishment.

Clause 81 amends sections 1 to 3 of Schedule 3 to the *Excise Act, 2001* to eliminate the preferential duty treatment of tobacco products available through duty-free markets. Specifically, the rates contained in sections 1 to 3 of Schedule 3 are amended to be a function of the rates on the same tobacco products in Schedule 1 to the Act.

Sections 1 to 4 of Schedule 1 to the *Excise Act, 2001* set out the rates for cigarettes, tobacco sticks, manufactured tobacco other than cigarettes and tobacco sticks, and cigars. Clause 79 amends these sections to increase the rates on these tobacco products to:

- $0.52575 for each five cigarettes or fraction of five cigarettes (i.e., $21.03 per 200 cigarettes);
- $0.10515 per tobacco stick (i.e., $21.03 per 200 tobacco sticks);
- $6.57188 per 50 grams or fraction of 50 grams of manufactured tobacco (i.e., $26.29 per 200 grams); and
- $22.88559 per 1,000 cigars.

Clause 79 also amends these sections to account for the fact that the rates of duty will be adjusted each inflation-adjusted year to account for inflation, starting in 2019.

The additional duty on cigars is the greater of the specific rate set out in section (*a*) of Schedule 2 and the ad valorem (in proportion to the value) rate set out in section (*b*) of Schedule 2 to the *Excise Act, 2001*. Clause 80 increases the specific rate to $0.08226 per cigar and increases the ad valorem rate to 82% of the sale price in the case of Canadian-manufactured cigars, and to 82% of the duty-paid value in the case of imported cigars. Clause 80 also amends these paragraphs to account for the fact that the rates of duty will be adjusted each inflation-adjusted year to account for inflation, starting in 2019.

Changes discussed in this part are deemed to have come into force on 12 February 2014.

2.3.2 Administrative Monetary Penalty

Clause 85 adds section 95.2 to the ETA to create an administrative monetary penalty to be imposed on those who make false statements or omissions in an excise tax return under the ETA's provisions that are unrelated to the GST/HST. The penalty is equal to the greater of:

- $250 and
- 25% of the total amount by which, as a result of the false statement or omission, any tax payable was reduced, and any refunds, rebates or any other amounts payable to the person were increased.

With the change, the ETA's penalties for offences in relation to the making of false statements or omissions are harmonized.

Clause 86 creates section 97.1 to add the offences found in the GST/HST portion of the ETA to the ETA's non-GST/HST portion. With the change, the provisions in the ETA for offences are harmonized, and prosecution by indictment and imprisonment can occur.

2.3.3 Disclosure of Taxpayer Information to the Financial Transactions and Reports Analysis Centre of Canada

Like clauses 28(1) and 50(1), clause 75(1) adds a provision to allow the CRA to provide taxpayer information to an official of FINTRAC (section 211(6)(*e*)(viii) of the *Excise Act, 2001*). With this information, FINTRAC can evaluate the usefulness of information provided to the CRA.

Section 211 prohibits the use or communication of taxpayer information except as otherwise permitted in that section or in certain other provisions of the *Excise Act*, *2001*.

2.3.4 Disclosure of Taxpayer Information to a Police Organization

Clause 75(3) amends section 211 of the *Excise Act, 2001* to permit the disclosure of taxpayer information by a CRA official to a law enforcement officer of an appropriate domestic or foreign police organization. The information will be disclosed when the official has reasonable grounds to believe that it will afford evidence of a listed offence. Listed offences include:

- bribery and the corruption of government officials as described in the *Corruption of Foreign Public Officials Act* and in the *Criminal Code*; and
- crimes mentioned in section 742.1 of the *Criminal Code* with conditional sentences that were amended by the *Safe Streets and Communities Act*.

At present, section 211(4) of the *Excise Act, 2001* permits a CRA official to provide taxpayer information to anyone for the purposes of criminal proceedings commenced under an Act of Parliament. With this change, an official will be able to provide information to law enforcement authorities on his or her own initiative, irrespective of whether criminal proceedings under an Act of Parliament have commenced.

2.3.5 The Offshore Tax Informant Program: Confidential Information

Clause 75(2) amends section 211(6) of the *Excise Act, 2001* to give the CRA the authority to provide certain confidential information to a person who has entered into a contract to provide information to the CRA under the Offshore Tax Informant Program. Only information that informs the person of any amount that he or she may be entitled to under the contract and of the status of his or her claim under the contract can be communicated.

2.3.6 International Electronic Funds Transfer Reports for the *Excise Act, 2001*, the *Excise Tax Act* and the *Air Travellers Security Charge Act*

Clauses 74, 87 and 90 add section 207.1 to the *Excise Act*, *2001*, section 98.2 to the ETA and section 37.1 to the *Air Travellers Security Charge Act*, respectively. These changes ensure that the information collected by the Minister of National Revenue on an information return filed in relation to international electronic funds transfers under Part XV.1 of the ITA can be used by the minister for the purposes of administering those Acts.

2.4 Part 4: *Customs Tariff* Amendments

2.4.1 Tariffs in Relation to Certain Mobile Offshore Units

Clauses 93, 96 and 97 amend the List of Tariff Provisions set out in the schedule to the *Customs Tariff* to reduce tariffs in relation to certain mobile offshore units. The most-favoured-nation tariff is reduced from 20% to 0% on drilling platforms and drill-ships used in drilling activity for exploration, delineation or development of offshore projects. Drilling platforms and drill-ships imported under the category “other” will still be subject to a most-favoured-nation tariff of 20%, while certain preferential tariff rates will be progressively reduced to 0% by 2017 or 2019, depending on the preferential trade partner.

These changes are effective 5 May 2014.

2.4.2 Tariff Exemption on Goods Intended for the Use of the Governor General of Canada

Clause 94 repeals tariff item 9809.00.00 of the List of Tariff Provisions of the schedule to the *Customs Tariff* to remove the tariff exemption applied on goods intended for the Governor General of Canada’s use.

Clause 95 amends tariff item 9833.00.00 to apply the same tariff rules to the Governor General that are applied to other public office holders. This tariff item provides that only representational gifts to be presented by a foreign official to a Canadian public office holder in Canada, or received by a Canadian public office holder in the course of an official visit abroad, are free of duty.

2.4.3 Tariff Applied on Certain Imported Products that Include Cheese

Clause 92 add a supplementary note to Chapter 16 of the schedule to the *Customs Tariff* to clarify the tariff classification of food preparations with components that include cheese; formerly, certain food preparations that included cheese were imported under Chapter 16's tariff items. In that chapter, the term "food preparations" is defined as products that "contain more than 20% by weight of sausage, meat, meat offal, blood, fish or crustaceans, molluscs or other aquatic invertebrates, or any combination thereof."

With this change, and despite being components of a single package, when cheese is included in the components of food preparations of a type used commercially in the preparation of fresh food products for direct sale to a consumer, those components are to be classified separately and in accordance with their respective chapters in the schedule of the *Customs Tariff*.

This amendment is deemed effective 29 November 2013, as it formalizes modifications to the schedule of the *Customs Tariff* made by the Canada Border Services Agency on that date.

2.5 Part 5: Canada–United States Enhanced Tax Information Exchange Agreement Implementation Act and Amendments to the *Income Tax Act*

Clause 99 enacts the Canada–United States Enhanced Tax Information Exchange Agreement Implementation Act (the Implementation Act). The purpose of the Implementation Act is to implement the intergovernmental agreement (IGA) concluded by the governments of Canada and the United States on 5 February 2014. The IGA, which is found in Schedule 3 of Bill C-31, allows Canadian financial institutions to report U.S. taxpayers' financial information to the CRA for transmittal to the U.S. Internal Revenue Service (IRS) in order to meet the requirements of the United States' *Foreign Account Tax Compliance Act* (FATCA).

The Implementation Act states that the IGA has been approved, and addresses potential inconsistencies among the IGA, the Implementation Act, the ITA and other domestic legislation. Moreover, the Implementation Act stipulates that the Minister of Finance must provide a notice of this action in the *Canada Gazette* within 60 days of the date on which the IGA enters into force, is amended or is terminated.

Clause 100 amends section 162(6) of the ITA to include a U.S. federal taxpayer identifying number as information that must be provided by a taxpayer when requested to do so by any person – including a corporation or an individual – who is required to make an information return under the ITA in relation to that taxpayer.

Clause 101 adds Part XVIII, Enhanced International Information Reporting, to the ITA. Part XVIII outlines the reporting requirements for Canadian financial institutions in relation to FATCA and the IGA.

Relevant definitions are provided in section 263(1) of Part XVIII. A "listed financial institution" includes federally and provincially/territorially regulated financial

institutions, securities dealers, clearing houses, any government department or agent that accepts deposit liabilities, and certain investment vehicles, such as mutual funds.

Sections 263(2) to 263(5) of Part XVIII indicate that certain terms that are defined in the IGA are to be interpreted in the manner set out in that part. The terms “Canadian financial institution,” “reporting Canadian financial institution,” “non-reporting Canadian financial institution” and “financial institution” have the meanings set out in the IGA, but are to be interpreted to include a modification of the definition for “listed financial institution” to specify the types of institutions to be subject to Part XVIII. The term “financial account” is to be interpreted to include accounts maintained by a person or entity authorized by provincial/territorial legislation to deal in securities, engage in portfolio management or provide investment advising services. Reference to a “Canadian TIN” or “taxpayer identification number” is to be interpreted to include reference to a social insurance number. As well, the definitions provided in the IGA are to be used unless the term is defined in Part XVIII.

Section 263(6) of Part XVIII states that no person will be held liable for failing to comply with the obligations that result from an amendment to the IGA unless the document that created the amendment had been published in the *Canada Gazette* or reasonable steps had been taken to notify the persons likely to be affected by the amendment.

If a financial account meets certain criteria that are set out in the IGA, section 264 of Part XVIII allows a Canadian financial institution to designate the account to be a non-reportable U.S. account for a calendar year; however, the account must be part of an identifiable group of accounts that are being designated by the financial institution for the year.

Section 265 of Part XVIII lists the due diligence procedures that Canadian financial institutions must conduct to identify U.S. taxpayers’ accounts. The procedures include searches of electronic databases and paper records, and vary with the type and value of the account. For the purposes of the procedures, a “non-financial foreign entity,” which is subject to FATCA if it receives U.S. income or holds U.S. investments, is to be interpreted to include reference to the definition for “listed financial institution.” As well, in certain circumstances, the IGA’s provision that describes the electronic search of low-value accounts is to be interpreted to include other procedures, such as a review of the U.S. indicia linked to the account.

Section 266 of Part XVIII provides that, beginning on 29 June 2014, financial institutions must electronically file an information return in relation to each U.S. taxpayers’ account with the CRA; the filing must occur by 2 May of each year. For the 2015 and 2016 calendar years, information returns must also be filed by 2 May 2016 or 2 May 2017, respectively, for payments made by a Canadian financial institution to a financial institution that is not registered with the IRS and that holds a U.S. taxpayer’s account that is maintained by the Canadian financial institution. Under section 267, Canadian financial institutions must maintain records in relation to their compliance with Part XVIII for at least six years, and digital records must be retained in a readable format.

An anti-avoidance provision is included in section 268 of Part XVIII to ensure that those persons – whether corporations or individuals – who enter into an arrangement or a practice to avoid an obligation under Part XVIII will be subject to that obligation.

Lastly, under section 269, the obligations under Part XVIII apply to Canadian financial institutions that are "deemed-compliant" under the IGA. Deemed-compliant financial institutions are institutions that the IRS considers to be at low risk of being used to evade U.S. tax; they include financial institutions with a local client base or with only low-value accounts, as well as certain investment funds and vehicles.

Clauses 100 and 101 come into force on the date that the IGA enters into force.

2.6 Part 6: Implementation of Various Measures

2.6.1 Division 1: Payments – Veterans Affairs

The amendments made by Division 1 of Part 6 of the bill arise from the class action judgment handed down on 1 May 2012 by the Federal Court in *Manuge*[14] on behalf of 4,500 disabled veterans. According to the judgment, the disability pension payable under the *Pension Act* should be considered non-pecuniary compensation, not income. The disability pension cannot therefore be taken into account to reduce the amount of other benefits that are calculated based on income.

Most of the legislative and regulatory changes required by the judgment have already been implemented, but without retroactive effect. This section of the bill makes these amendments retroactive to the date when the government decided not to appeal the Federal Court judgment, namely 29 May 2012.

Since 30 September 2012, disability pension benefits have been eliminated from the calculation of the earnings loss benefit and the income support benefit payable under the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* [New Veterans Charter]). Under clauses 102 and 103 of the bill, this change is made retroactive to 29 May 2012.

Clauses 104 and 105 make the change to prevent inclusion of the disability pension in the calculation of benefits payable under the *War Veterans Allowance Act* and the *Civilian War-related Benefits Act*, which have been in place since 30 September 2013, retroactive to 29 May 2012.

Clause 106 provides that payments made under these amendments are statutory expenditures and therefore do not require parliamentary authorities. Clause 107 sets out the definitions applicable to clauses 102 to 105.

2.6.2 Division 2: Banking and Custodial Services in Relation to the Bank of Canada and the Canada Deposit and Insurance Corporation

Clauses 108 and 109 amend section 18 of the *Bank of Canada Act* and add section 42 to the *Canada Deposit Insurance Corporation Act* to authorize the Bank of

Canada (the Bank) to provide banking and custodial services to the Canada Deposit Insurance Corporation (CDIC).

The new power created by section 18(*m.1*) is similar to other services that the Bank makes available. According to its *2013 Annual Report*, the Bank of Canada provides funds management services for the federal government and for other central banks and international organizations, including securities settlement and custodial services.[15] The financial assets held under custody agreements do not appear on the Bank's balance sheet; however, fees earned for custodial services are included in the Bank's income.[16]

CDIC is a Crown corporation that insures the eligible deposits made at banks and other financial institutions which are CDIC members. CDIC maintains a deposit insurance fund, into which CDIC member institutions pay annual premiums. According to its *Summary of the Corporate Plan 2013/2014 to 2017/2018*, "CDIC's assets are dominated by high quality, liquid investments on which interest income is earned."[17] In providing banking and custodial services, the Bank may pay CDIC interest on the financial assets held by the Bank on behalf of CDIC.

2.6.3 DIVISION 3: THE *HAZARDOUS PRODUCTS ACT*

The *Hazardous Products Act* (HPA) prohibits the advertising, sale and importation of hazardous products in Canada. Health Canada is responsible for enforcement, together with other organizations, such as the Canada Border Services Agency. The HPA applies to commercial and personal importation, as well as to importation of used goods.

Clause 111 repeals the definitions of "controlled product" and "hazardous product" in the HPA and replaces them with the single definition of "hazardous product." It also creates several new definitions in section 2 of the Act and redefines the sale of hazardous products. Under the current Act, the sale includes the offer for sale, the exposure for sale and distribution. The bill broadens this definition to include offer for sale or distribution, possession for sale or distribution, and transfer of possession. It also specifies that in Quebec, sale includes the transfer of possession of a movable, in cases of a deposit, a lease, a pledge, a loan for use or a contract of carriage.

Clause 113 repeals sections 12(*a*) to 12(*c*) of the HPA, which exclude from Part II of the HPA (Controlled Products) the sale or importation of any explosive under the *Explosives Act*; cosmetics, devices, drugs or foods regulated under the *Food and Drugs Act*, and pest control products under the *Pest Control Products Act*. Bill C-31 also repeals sections 12(*f*) and 12(*g*) of the HPA, which exclude from Part II of the Act the sale or importation of consumer products as defined in section 2 of the *Canada Consumer Product Safety Act*, and wood or products made of wood.

Clause 114 amends section 13 of the HPA to prohibit a supplier from selling a hazardous product that is intended for use, handling or storage in a workplace unless certain requirements are met. The bill also amends section 14 of the Act with respect to the prohibition of importation.

Clause 116 repeals section 16 of the HPA, which forces a supplier to disclose the generic chemical identity of a controlled product or ingredient on the material safety data sheet or label, even if it is exempted under the *Hazardous Materials Information Review Act*.

Clause 118 repeals section 17 of the HPA, which permits the Governor in Council to establish an Ingredient Disclosure List, which is a list of products, materials and substances that may be ingredients of controlled products and that must be disclosed.

Clauses 122 and 123 involve the designation and powers of inspectors. The bill stipulates that an inspector may enter any place or conveyance to verify compliance with the Act (new section 22). The inspector may enter a dwelling-house with the consent of the occupant or by obtaining a warrant if there is no consent (new section 22.1). The bill also sets out certain measures that must be taken when the inspector carries out seizures (new section 24 and subsequent sections).

Clause 125 makes changes to the penalties provided under section 28 of the HPA for contraventions of the Act, a provision of the regulations or an order from the minister. Every person who commits an offence is liable to the following penalties:

- On conviction on indictment:
  - a maximum fine of $5,000,000; or
  - imprisonment for a maximum term of two years; or
  - both.

  Under the current Act, the maximum fine is $1,000,000. The maximum term of imprisonment is two years, as it is in Bill C-31.
- On summary conviction:
  - First offence:
    - a maximum fine of $250,000; or
    - a prison term of six months; or
    - both.
  - Subsequent offence:
    - maximum fine of $500,000; or
    - imprisonment for a maximum term of 18 months; or
    - both.

  The current Act provides for, on summary conviction, a fine not exceeding $100,000 or imprisonment for a term not exceeding six months, or both. There is no specific provision for subsequence offences.

Clause 127 provides that information that a person is required to provide under an order from the minister may not be used to incriminate that person in any proceedings against the person for an offence under the HPA (new section 30.1).

2.6.3.1 AMENDMENTS TO THE *CANADA LABOUR CODE*

Clauses 139 to 142 amend several expressions used in the *Canada Labour Code*. For instance, the expression “controlled product” is replaced by “hazardous product” to ensure consistency with the amendments to the HPA. Clauses 141 and 142 of the bill amend sections 125.2(1) and 144(4) of the Code regarding the disclosure of confidential information, in order to make them consistent with the information disclosure requirements under the HPA.

2.6.4 DIVISION 4: AMENDMENT TO THE *IMPORTATION OF INTOXICATING LIQUORS ACT*

Clause 163 amends section 3(2)(*h*) of the *Importation of Intoxicating Liquors Act* to exempt beer and spirits from the general prohibition against importing intoxicating liquors into a province, when the beer or spirits are for personal consumption and are imported in quantities that are permitted by the laws of the province. Under that Act, the definition of “province” includes a province – other than Yukon and the Northwest Territories – where there is legislation in place that gives the government or a government agency control over the sale of intoxicating liquor.

In 2012, wine was exempted from the same general prohibition through the enactment of *An Act to amend the Importation of Intoxicating Liquors Act (interprovincial importation of wine for personal use)*. The House of Commons Standing Committee on Agriculture and Agri-Food recommended an exemption for the importation of beer and spirits in its June 2013 report entitled *Toward a Common Goal: Canada’s Food Supply Chain – Part 1*.[18]

2.6.5 DIVISION 5: INCREASING THE NUMBER OF FEDERALLY APPOINTED JUDGES

Division 5 of Part 6 of Bill C-31 amends the *Judges Act* to increase the number of judges of the Superior Court of Quebec and the Court of Queen’s Bench of Alberta.

The federal government appoints and remunerates the Superior Court judges in the provinces and territories. Sections 12 to 22 of the *Judges Act* set out the number of Superior Court judges in each jurisdiction whose salaries will be paid by the federal government. Section 13 of the Act allots Quebec 140 Superior Court judges. Clause 164 will increase this number to 144. Section 20 of the Act allots Alberta 55 Superior Court judges (called Justices of the Court of Queen’s Bench). Clause 165 increases this number to 57.

Budget 2014 estimates the cost of creating six additional federally appointed judicial positions at $4.4 million over two years. These new positions are said to be a response to increases in the number of complicated, high-profile criminal and civil cases, which have caused significant delays in conducting hearings at the Superior Court level in Quebec and Alberta.

2.6.6 DIVISION 6: AMENDMENT TO THE *MEMBERS OF PARLIAMENT RETIRING ALLOWANCES ACT*

Clauses 166 and 167 implement a measure proposed in the 2014 federal budget to "introduce legislation to prohibit Members of the Senate and the House of Commons from accruing pensionable service as a result of having been suspended from Parliament through a majority vote by their peers."[19]

The *Members of Parliament Retiring Allowances Act* (MPRAA)[20] provides retiring allowances on a contributory basis to persons who have served as members of Parliament (defined as including both senators and members of the House of Commons).

Clause 166 adds new sections 2.9, 2.91 and 2.92 to the MPRAA under the heading "Suspended Member." These sections specify that if a member is suspended from the Senate or the House of Commons by a majority vote of the applicable House, the period during which the member is suspended will not be included as part of that member's pensionable service (section 2.9). Suspended members will also not pay any contributions towards retiring allowances (Part I), retirement compensation arrangements (Part II), or supplementary benefits (Part V) under the MPRAA, nor will they make any election in terms of types of retirement arrangements found in Part I or Part II of the MPRAA during the period of their suspension (sections 2.91 and 2.92).

Clause 167 specifies that if a member is suspended from the Senate or the House of Commons when this Division comes into force, it is as though, for the purposes of new sections 2.9 to 2.92, the suspension period begins on the day that the Division comes into force.

Note that the proposed provisions do not impact the health, dental, disability and life insurance benefits that suspended members and their families would continue to receive during the period of their suspension.

2.6.7 DIVISION 7: AMENDMENTS TO THE *NATIONAL DEFENCE ACT*

Division 7 of Part 6 of Bill C-31 amends sections 17 and 21 of the *National Defence Act*. It enshrines in law the historic names of the armed services (army, navy and air force) of the Canadian Armed Forces. It also allows changes to rank designations to be made through regulations. Division 7 of Part 6 stems from a federal government proposal in *Economic Action Plan 2014* to "recognize the historic titles and rank designations of the Canadian Armed Forces in the *National Defence Act*."[21]

Since the unification of the Canadian Armed Forces in February 1968 through the *Canadian Forces Reorganization Act* and subsequent amendments to the *National Defence Act*, Canada's three armed services – the Canadian Army, the Royal Canadian Navy and the Royal Canadian Air Force – ceased to exist as separate legal entities. They became commands within an integrated Canadian Armed Forces structure. The Canadian Army was re-designated as Mobile Command, the Royal Canadian Navy as Maritime Command and the Royal Canadian Air Force as Air Command.

The federal government restored the historic nomenclature of these commands in August 2011, when they were renamed Canadian Army, Royal Canadian Navy and Royal Canadian Air Force. However, these three armed services remain integrated within the Canadian Armed Forces and do not operate as separate legal entities. The bill recognizes that renaming in the *National Defence Act* and does not change the legal status of the armed services.

Clause 168 amends section 17 of the *National Defence Act* to recognize the historic pre-1968 titles of the Canadian armed services (i.e., Canadian Army, Royal Canadian Navy, and Royal Canadian Air Force) by adding "commands, including the Royal Canadian Navy, the Canadian Army and the Royal Canadian Air Force" and "formations" to the organizational elements of the armed services.

Clauses 169 and 170 amend section 21 of the *National Defence Act*. Under section 21(1), rank designations of all officers and non-commissioned members of the Canadian Armed Forces are set out in a schedule to the *National Defence Act*. Previously, the schedule consisted of four columns. Column I provided the basic Canadian Armed Forces rank designations, which were modelled on army rank designations. Columns II, III and IV provided navy, army and air force rank equivalents to the rank designations appearing in Column I.

This schedule is replaced with a new schedule that only provides the basic rank designations for all officers and non-commissioned members of the Canadian Armed Forces. Previously, section 21(2) provided that all Canadian Armed Forces members were to use the rank designations identified in Column I, unless regulations allowed them to use the other rank designations (Column II, III or IV). To date, only naval personnel have used rank designations different from the ones set out in Column I; specifically, they have used Column II designations. Under revised section 21(2), navy, army and air force rank designation equivalencies may be prescribed in separate regulations issued by the Governor in Council. All members of the Canadian Armed Forces will "use, or be referred to by, a designation of rank prescribed in [those] regulations."

Clause 171(1) states that changes introduced under clause 168 will come into force 60 days after Bill C-31 receives Royal Assent. Clause 171(2) states that changes made in clauses 169 and 170 will come into force on a "day or days to be fixed by the order of the Governor in Council."

2.6.8 Division 8: Amendments to the *Customs Act*

The *Customs Act* provides the statutory framework relating to the administration or enforcement of imported and exported goods both to and from Canada. Contraventions of the *Customs Act* are enforced by way of civil and penal mechanisms; such penalties may include monetary penalties, seizures, ascertained forfeitures and criminal charges. Seizures or ascertained forfeitures may be used as an alternative when the goods in question cannot be found or it would be impractical to seize them (such as in the case of a conveyance).

The *Customs Act* provides a mechanism by which the Minister of Public Safety and Emergency Preparedness or an officer designated by the President of the Canada Border Services Agency may apply corrective measures when he or she believes that an error was made with respect to a seizure, ascertained forfeiture or penalty assessment. Clause 172 amends section 127.1(1) to extend the deadline by which the minister or designated officer may take corrective measures following a seizure, penalty assessment or ascertained forfeiture from 30 days to 90 days.

Clause 173 amends section 129 of the *Customs Act* in order to streamline the request for review of seizure process by allowing requests to be made directly to the minister in writing or by any other means satisfactory to the minister, and removes wording which stipulated that notice be given to the officer who seized the goods or conveyance in question, or to an officer at the customs office closest to the place where the seizure was executed.

Section 138 of the *Customs Act* allows a third party to claim an interest in the goods as an owner, mortgagee, hypothecary creditor, lien-holder or holder of any like interest. Application may be made to the minister for a decision on the validity of this interest in the goods or conveyance in question. Clause 174 amends section 138 in order to streamline the overall process by allowing the notice to be given to the minister in writing or by any other means satisfactory to the minister, and removes wording which stipulated that notice be given to the officer who seized or detained the goods or conveyance in question or to an officer at the customs office closest to the place where the seizure or detention was executed.

2.6.9 Division 9: Amendments to the *Atlantic Canada Opportunities Agency Act*

Clauses 175, 176 and 178 amend the *Atlantic Canada Opportunities Agency Act* by dissolving the Atlantic Canada Opportunities Board of the Atlantic Canada Opportunities Agency (ACOA). This board was established to provide policy and strategic support and advice to the agency, but has no authority over the administration of the Agency and its mission. Its members are appointed by the Governor in Council on the advice of the minister responsible for ACOA to serve no more than six years. Currently, the Board has two members.[22]

Clause 177 also amends the Act by removing the requirement that the ACOA president submit a comprehensive report (separate from an annual report) every five years to the responsible minister and to both Houses of Parliament, detailing all activities of the Agency and their possible effects on regional disparity.

2.6.10 Division 10: Dissolution of the Enterprise Cape Breton Corporation

The Enterprise Cape Breton Corporation (ECBC) is a Crown corporation established in 1987 to promote and assist in the financing and development of Cape Breton Island and the Mulgrave area. The ECBC is “a distinct legal entity reporting to Parliament through the Minister of the Atlantic Canada Opportunities Agency.”[23]

Clause 179 provides definitions applying to clauses 180 to 186.

Clause 180 dissolves the ECBC on the date that Division 10 of the bill comes into force. Clause 181 provides for the transfer of the ECBC's assets and obligations and those of its subsidiaries to ACOA or Her Majesty in right of Canada as represented by the Minister of Public Works and Government Services.

Clauses 182(1) and 182(2) stipulate that the employees of ECBC and its subsidiaries are deemed to be appointed under the *Public Service Employment Act*.
Clause 182(3) sets out the new terms of employment for these individuals.

Clause 184 stipulates that sections 91(1) and 91(3) of the *Financial Administration Act*, which govern transactions requiring Governor in Council authorization, do not apply to the disposal of the assets of ECBC's subsidiaries.

Clause 185 stipulates that, once the ECBC has been dissolved, the Minister of Public Works and Government Services can take any action necessary for or incidental to the closing out of ECBC's affairs and those of its subsidiaries.

Clause 186 states that any action, suit or other legal proceeding to which the ECBC or its subsidiaries is party that is pending in any court on the day on which Division 10 comes into force may be continued by or against Her Majesty in right of Canada in the same manner and to the same extent as it could have been continued by or against the ECBC or its subsidiary.

Clause 187 amends section 13(*h.1*) of the *Atlantic Canada Opportunities Agency Act* to give ACOA all the authorities necessary to manage and control the assets and obligations transferred to it, and dispose of them.

Lastly, clauses 188 to 192 make amendments related to the *Financial Administration Act*, the *Payments in Lieu of Taxes Act* and the *Public Sector Compensation Act*.

2.6.11 Division 11: Amendments to the *Museum Act*

This division transfers the responsibility for the administration of the Online Works of Reference program and the Virtual Museum of Canada program from the Minister of Canadian Heritage to the Canadian Museum of History.

The Online Works of Reference program provides online content on Canadian culture and history, including *The Canadian Encyclopedia/Encyclopedia of Music in Canada* and *The Dictionary of Canadian Biography*.[24] The program falls under the Department of Canadian Heritage's Canada History Fund.[25]

The Virtual Museum of Canada program provides online access to virtual exhibitions from Canadian museums.[26] It falls under the Canadian Heritage Information Network, a special operating agency of the Department of Canadian Heritage.[27]

Clause 193 amends section 9 of the *Museums Act*, which sets out the capacity and powers of the Canadian Museum of History. It does so by adding new section 9(3),

which allows the museum to administer programs that provide online content and support the development of online content, including through financial assistance.

Clauses 194 to 204 are transitional provisions that transfer the administration of the Online Works of Reference program and the Virtual Museum of Canada program from the Minister of Canadian Heritage to the Canadian Museum of History. These clauses transfer to the museum any of the programs' money that has not been spent, as well as obligations, contracts, authorizations and assets related to the programs.

Clause 205 provides that this division will come into force on a day or days fixed by order of the Governor in Council.

2.6.12 Division 12: Amendments to the *Nordion and Theratronics Divestiture Authorization Act*

Nordion is a Canadian health science company that operates globally and provides products used for the prevention, diagnosis and treatment of disease.[28] Nordion is a publicly traded company on the Toronto Stock Exchange and the New York Stock Exchange. Under section 6(1) of *Nordion and Theratronics Divestiture Authorization Act*, non-Canadian residents are currently prevented from directly or indirectly controlling more than 25% of the voting shares of Nordion.

Division 12 of Part 6 of Bill C-31 amends the *Nordion and Theratronics Divestiture Authorization Act* to remove certain restrictions on the acquisition of voting shares of Nordion by non-Canadian residents. Specifically, clause 207(1) of Bill C-31 removes the section 6(1) restriction against acquisition of control of Nordion by a non-resident where the investment is considered to be of net benefit to Canada under the *Investment Canada Act*. According to clause 207(1), provisions of the *Investment Canada Act* regarding national security would still apply in the case of an investment by a non-Canadian in Nordion.

On the day that Bill C-31 received first reading, Sterigenics, a global sterilization services firm, and a portfolio company of GTCR LLC, a U.S.-based private equity firm, announced plans to acquire full control of Nordion.

2.6.13 Division 13: Amendments to the *Bank Act*: Regulations in Relation to Derivatives and Benchmarks

Division 13 of Part 6 of Bill C-31 adds sections 415.2 and 415.3 to the *Bank Act* to provide the Governor in Council with regulation-making powers with regards to a bank's activities in relation to derivatives and benchmarks.

"Derivatives" are defined in clause 210 of Bill C-31 as:

> an option, swap, futures contract, forward contract or other financial or commodity contract or instrument whose market price, value, delivery obligations, payment obligations or settlement obligations are derived from, referenced to or based on an underlying interest, including a price, rate, index, value, variable, event, probability or thing.

According to clause 210 of Bill C-31, benchmarks are:

- determined from time to time by reference to an assessment of one or more underlying interests;
- made available to the public, either free of charge or on payment; and
- used for reference for a variety of purposes, including the determination of the value of a financial instrument or the measurement of its performance.

2.6.14 Division 14: Demutualization of a Mutual Insurance Company

Clause 211 amends section 237 of the *Insurance Companies Act* to give the Governor in Council the authority to make regulations respecting:

- the process for developing a proposal to convert a mutual insurance company into a company with common shares;
- the circumstances for court intervention in that development process;
- the Superintendent of Financial Institution's authorization of notices to be sent in the context of that development process; and
- additional limitations on ownership of the common shares of a converted mutual insurance company.

2.6.15 Division 15: Regulatory Cooperation

2.6.15.1 Amendments to the *Motor Vehicle Safety Act*

The *Motor Vehicle Safety Act*[29] (MVSA) establishes safety requirements for the manufacture and importation of motor vehicles and motor vehicle equipment in Canada. The amendments in Division 15 of the bill support the objectives of the Regulatory Cooperation Council[30] to align Canadian and U.S. regulations.[31]

Division 15 amends regulation-making provisions in the MVSA to allow documents created by foreign governments and other standard-making organizations to be incorporated by reference in the regulations made under the MVSA (clauses 223 and 224). It also amends the vehicle importation provisions to allow for the importation of vehicles and equipment from the U.S. that are designed according to safety standards that meet Canadian requirements, and for the imposition of different standards for certain vehicles imported from the United States or Mexico (clause 217).

In addition, the bill aligns the compliance and enforcement provisions of the MVSA with the U.S. regime; for example, it recognizes the difference between a "defect" and a "non-compliance" (clauses 220 to 222), providing the Minister of Transport with the authority to order a company to issue a recall (clauses 221 and 222), increasing the maximum penalty for offences (clause 227), and exempting Transport Canada inspectors from being required to testify in civil suits (clause 225).

The bill also adds provisions to the MVSA allowing Transport Canada to obtain vehicle safety information from vehicle manufacturers and importers and to make this information public (clauses 214, 218, 221, 222, 223 and 229). Lastly, other provisions clarify the terminology used in the Act.

2.6.15.2 AMENDMENTS TO THE *RAILWAY SAFETY ACT* AND *TRANSPORTATION OF DANGEROUS GOODS ACT, 1992*

Clause 231 removes section 50 of the *Railway Safety Act*, which requires pre-publication of certain proposed regulations in Part I of the *Canada Gazette*. Currently, section 50 requires at least 90 days' notice before the proposed effective date for regulations concerning:

- the engineering standards for railway construction (section 7(1));
- road crossings (section 7.1);
- exemptions for railway work (section 16(5.1));
- safety, security and crossing tracks (section 18);
- non-railway operations affecting railway safety (section 24);
- safety records (section 37); and
- safety management systems (section 47.1).

Clause 232 removes sections 30(1) and 30(2) of the *Transportation of Dangerous Goods Act, 1992*. These sections require certain regulations and orders made pursuant to the Act to be published once in the *Canada Gazette* and to provide "reasonable opportunity" for interested persons to make representations to the Minister of Transport. The two sections apply to the general regulations made for carrying out the purpose and provisions of the Act (section 27(1)), security regulations (section 27.1) and orders made to fix the fees to be paid to the minister for services (e.g., security clearances, certificates, approvals or registrations) and facilities provided in the administration of the Act (section 29).

According to the Government of Canada, eliminating the statutory requirement to pre-publish proposed regulations and orders under these Acts will allow for more rapid regulation-making in order to respond to emergencies or to align Canadian regulations with those of the United States.[32] The Government of Canada asserts that the *Cabinet Directive on Regulatory Management* (CDRM) of 2012 makes redundant the provisions in the *Railway Safety Act* and the *Transportation of Dangerous Goods Act, 1992* that require pre-publication of regulations.[33] The CDRM is the new Treasury Board policy that replaced the former government policy on regulation, the *Cabinet Directive on Streamlining Regulation* of 2007, which was preceded by the *Government of Canada Regulatory Policy* of 1999.[34] The CDRM calls for pre-publication of regulations (section 17), but permits the Cabinet to exempt regulatory proposals from publication in Part I of the *Canada Gazette* when it is not required by the statute (section 20), which would be consistent with the amendments proposed in these clauses.

2.6.15.3 AMENDMENTS TO THE *SAFE FOOD FOR CANADIANS ACT*

Clauses 234 to 236 amend the *Safe Food for Canadians Act*.[35] Clause 234 authorizes the government to regulate or prohibit the purchasing or receiving of any fresh fruit or vegetable that is imported or that is sent or conveyed from one province to another. It also confers the power to require membership in an entity or organization specified in the regulations.

Clauses 235 and 236 abolish the Board of Arbitration created by the *Canada Agricultural Products Act* and continued by section 60(1) of the *Safe Food for Canadians Act*. The role of the arbitration board has been to hear complaints involving failure to comply with any provision of the *Safe Food for Canadians Act* and its regulations or failure to fulfill any contractual obligation specified in certain regulations made under the Act. It should be noted that in April 2012 a complaints and appeals office (CAO) was established at the Canadian Food Inspection Agency (CFIA). The CAO looks into complaints about regulations and about service delivery. According to the CAO's annual report for 2012–2013, the CFIA plans to develop regulations under the *Safe Food for Canadians Act* in order to give regulatory authority for the redress function provided in the Act.[36]

Clause 237 coordinates the bill's coming into force with the relevant sections of the *Safe Food for Canadians Act* and the *Federal Courts Act*.

2.6.16 DIVISION 16: AMENDMENTS TO THE *TELECOMMUNICATIONS ACT*

Clauses 239 to 241 authorize the Canadian Radio-television and Telecommunications Commission (CRTC) to limit the roaming charges that one telecommunications carrier can charge to another (for voice, data and text messages) for the ultimate purpose of limiting the amounts that are consequently charged to consumers. "Roaming" occurs when a subscriber is able to access telecommunication services outside his or her carrier's network coverage area through another carrier. This temporary measure will be in place until the CRTC concludes its consultation on roaming rates, and makes a decision on the matter.

Clause 241 authorizes the Governor in Council to bring into force on different days – likely, one after the other – clauses 239(1) and 239(2) regarding the power of the CRTC to determine whether a carrier has contravened provisions aimed at ensuring that "just" rates are charged. Clause 239(1) will come into force on Royal Assent, and clause 239(2) will come into force on a day fixed by the Governor in Council.

Clause 240 replaces the following text (from section 27(1) of the Act) "Every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable," with a formula for limiting the charges one Canadian carrier can charge another for roaming services. For all three services (voice, data, and text messages), the formula is as follows:

$$\frac{\text{Total Revenue Earned from Subscribers for a Particular Service}}{\text{Total Number of Units of Said Service Provided}}$$

Clause 240 also forbids a carrier from charging another carrier any additional fee related to roaming services. Lastly, this clause authorizes the CRTC to establish a roaming charge rate regardless of the formula provided, as required, to avoid any inconsistencies.

2.6.17 Division 17: Unpaid Leave Under the *Canada Labour Code* and Sick Benefits Under the *Employment Insurance Act*

Amendments to the *Canada Labour Code* (CLC) and the *Employment Insurance Act* (EIA) in Division 17 of the bill follow the enactment of the *Helping Families in Need Act*, which received Royal Assent on 14 December 2012.

Sections 206.3, 206.4 and 206.5 of the CLC allow an employee to take unpaid compassionate care leave or leave related to his or her child's critical illness or the child's death or disappearance as a probable result of a crime. Clause 243 of Bill C-31 adds new sections 207.01 and 207.02, which allow the employee to interrupt an unpaid leave of absence taken under one of these sections because of sickness or a work-related illness or injury. The employee may then resume the previously interrupted leave. The bill also requires the employer to reinstate the employee at the end of the sick leave or leave related to work-related illness or injury.

Clauses 244 and 245 of the bill require the employee to provide the employer with written notice before, or as early as possible after, interrupting leave under sections 206.3 to 206.5 of the CLC. Similarly, the employee must notify the employer in writing of a wish to interrupt parental leave in order to take leave under one of these sections. For unpaid leave related to the critical illness of his or her child (section 206.4 of the CLC) or the child's death or disappearance as a probable result of a crime (section 206.5 of the CLC), the employer must be given at least four weeks' notice if the length of the leave is more than four weeks, unless there is a valid reason why that cannot be done. The employer may also require documentation in support of the requested leave. Clause 246 of the bill allows the Governor in Council to prescribe the maximum number of periods of leave of absence that an employee may take under any of these sections.

Furthermore, clause 247 of the bill amends section 18(2) of the EIA to provide greater access to sick benefits for parents also receiving parental or compassionate care benefits or benefits to care for a critically ill child. These benefits are also available to self-employed persons under clauses 248 and 249 of the bill (sections 152.03(1.1) and 152.09(2) of the EIA).

2.6.18 Division 18: Amendments to the *Canadian Food Inspection Agency Act*

As a regulating authority, the Canadian Food Inspection Agency (CFIA) can set and charge user fees for certain services. The *User Fees Act* lists requirements that must be met when fees to cover the cost of services offered by the federal government are set or changed. For example, section 4 of the *User Fees Act* establishes consultation requirements under section 4(1) and the tabling of the proposal in each House of Parliament under section 4(2).

Clause 252 of the bill amends the *Canadian Food Inspection Agency Act* to exempt fees for services, products, and rights and privileges provided by the CFIA from the application of the *User Fees Act*. However, fees set by the CFIA are still subject to section 26 of the *Canadian Food Inspection Agency Act*, which establishes requirements for consultation, publication in the *Canada Gazette* and parliamentary oversight.

Clause 253 of the bill establishes the coming into force date for the provisions of Division 18: it is when section 103 of the *Safe Food for Canadians Act* comes into force.[37]

2.6.19 Division 19: Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

Division 19 of Part 6 amends the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. Some of the changes reflect recommendations made by the Standing Senate Committee on Banking, Trade and Commerce in its March 2013 report on Canada's anti–money laundering and anti-terrorist financing regime.

Division 19 changes the role of FINTRAC. For example, with clause 255, FINTRAC's responsibilities – as they are outlined in section 3(*a*)(iii) – are broadened to include ensuring compliance with Parts 1 and 1.1 of the Act. As well, clause 276 amends section 40 (which provides the object of Part 3 of the Act) to add – in addition to matters relating to money laundering – enhancing public awareness and understanding for matters relating to the financing of terrorist activities.

Clause 256 extends the application of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to online casinos and money services businesses that deal in virtual currencies, and to money services businesses that do not have a place of business in Canada but that provide services to persons or entities in Canada.

Clause 258 imposes additional client identification requirements on reporting entities in relation to politically exposed individuals, heads of international organizations and their associates. It also prevents domestic reporting entities from opening or maintaining an account, or having a correspondent banking relationship with a money services business that does not have a place of business in Canada, unless that money services business is registered with FINTRAC.

Clause 259 modifies the prohibition in section 9.4(2) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* on individuals and entities in relationships with shell banks, changing the wording of the prohibited conduct from "entering into" a banking relationship with a shell bank to "having" a banking relationship with a shell bank.

Division 19 also increases record-keeping and registration requirements for reporting entities. Clause 260 requires reporting entities with foreign subsidiaries or branches to develop policies that enable their compliance with certain record-keeping, identity verification and compliance requirements in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. The requirements come into force one year after the day on which Bill C-31 receives Royal Assent.

According to section 11.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, unless otherwise stated in the Act's regulations, persons or entities referred to in the following three groups must be registered with FINTRAC: section 5(*h*) or 5(*h.1*); section 5(*l*) if they sell money orders to the public; or section 5 if they are prescribed. In general, the people and entities referred to in these three groups are money services businesses.

Section 11.11(1)(*c*)(i) lists people or entities that are not eligible to register with FINTRAC because they have been convicted of a specified offence. Clause 262 expands the section to include similar offences under the laws of a foreign country.

Clauses 267 to 270 amend certain provisions of Part 1.1, which is not currently in force. Part 1.1 allows the Minister of Finance to require any person or entity to take measures in relation to an international financial transaction in order to safeguard Canada's financial system. Clause 267 adds a definition for the term "foreign entity" to clarify that the term refers to an entity incorporated or formed under the laws of another country that does not carry on business in Canada but that participates in activities similar to those of reporting entities. Clause 297 amends the 2010 *Jobs and Economic Growth Act* so that Part 1.1 is deemed to come into force immediately before the day on which Bill C-31 receives Royal Assent.

Clause 268 expands the conditions under which the minister may require persons or entities referred to in section 5 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to take certain actions in order to safeguard Canada's financial system; the ministerial direction occurs through a written directive. In particular, the conditions include measures with respect to any activity that is related to a financial transaction or a class of financial transactions. As well, this clause ensures that – notwithstanding a written directive – legal counsel or legal firms are not required to report to FINTRAC when providing legal services.

Regarding the obligations imposed on banks and insurance companies with operations outside of Canada, clause 269 requires foreign branches and foreign subsidiaries of Canadian banks and insurance companies that carry out activities similar to those of certain reporting entities and that are either wholly owned or have consolidated financial statements with the Canadian bank or insurance company to be subject to the terms of any written directive by the Minister. If the requirement to follow a written directive conflicts with the laws of the country in which the branch or subsidiary is located, then the branch or subsidiary is to record and report to both FINTRAC and its financial regulator in Canada the reasons why it cannot comply with the written directive.

Clause 270 clarifies that, to the extent that compliance is permitted by – and does not conflict with – the laws of the country in which it is located, a foreign branch must comply with regulations made under Part 1.1.

Clauses 273 and 274 amend the review and appeal provisions relating to cross-border currency reporting. Clause 273 increases the number of days following a seizure within which an officer, as defined in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, or the minister may cancel the seizure or reduce the prescribed penalty. Clause 274 adds sections 25.1 and 25.2, which outline appeal procedures to be applied in cases where 90 days have passed since the seizure.

Division 19 also modifies the information that FINTRAC can receive, collect or disclose. For example, it amends the rules for the disclosure of information by FINTRAC to the CRA and law enforcement agencies. Clauses 277 and 278 require FINTRAC's Director to submit an annual report to the Minister of Finance that includes a description of FINTRAC's activities and relevant statistics, and describe the circumstances and forms of disclosure of information to the minister or officers of the Department of Finance.

Clause 280 increases the information that FINTRAC is authorized to collect, and outlines the procedures for the destruction of certain information. The destruction of information was mentioned in both the 2009 and 2013 audits of FINTRAC by the Privacy Commissioner.

Clause 289 allows FINTRAC to disclose information to the CRA in relation to compliance with Part XV.1 of the *Income Tax Act*; this Part, which is added by clause 29, requires reporting entities to file an information return with the Minister of National Revenue when electronic funds transfers of at least $10,000 are sent, or received from, outside Canada. The clause comes into force on 1 January 2015.

Clause 290 amends section 66 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to allow FINTRAC to enter into contracts, memoranda of understanding and other agreements with a foreign government for the purpose of exercising its powers or performing its duties.

2.6.20 Division 20: Amendments to the *Immigration and Refugee Protection Act* and the *Economic Action Plan 2013 Act, No. 2*

Division 20 enhances the monitoring and enforcement regime for the temporary foreign worker program by empowering the Governor in Council to create a system of administrative monetary penalties for employers who do not meet the conditions of the program (clauses 302, 304 and 305). These regulations may confer powers and duties on the Minister of Employment and Social Development Canada (clause 299).

Clause 303 terminates applications for permanent residence under the entrepreneur and immigrant investor classes that had been submitted but not finalized as of 11 February 2014. Fees and investments (where applicable) are to be returned to these applicants without interest. Affected applicants may not appeal to the Immigration Appeal Division, as termination of applications does not constitute a decision.

Division 20 refines the new Expression of Interest (EOI) process for making economic class applications, which was introduced with the *Economic Action Plan 2013 Act, No. 2*, but is not yet in force (clauses 300, 301 and 306). The EOI will replace the existing application process for most federal economic class applications. It is a two-step process whereby only those whose initial submission meets certain criteria will be invited to submit a full application for permanent residence. The new system is expected to be implemented in 2015.

Clause 301 provides that regulations may require EOI and other visa applicants to submit their applications electronically or by other means.

2.6.21 Division 21: Remedies for Discrimination-Based Grievances and Transitional Provisions

Currently, section 226(1)(*h*) of the *Public Service Labour Relations Act* (PSLRA)[38] provides that a grievance adjudicator may award relief in accordance with the *Canadian Human Rights Act*[39] for pain and suffering, or award special compensation where the discriminatory behaviour in question was wilful or reckless.

Clause 308 amends section 226(1)(*h*) to expand the available remedies to a range similar to that available under the *Canadian Human Rights Act*. Clause 308 also specifies the discriminatory practices for which these remedies may be awarded under the PSLRA.

Clause 309 clarifies several transitional rules set out in section 338 of the *Economic Action Plan 2013 Act, No. 2*.

Clause 310 provides that clause 308 comes into force when section 326(1) of the *Economic Action Plan 2013 Act, No. 2* comes into force. Clause 309 is given retroactive effect by being deemed to have come into force on 12 December 2013.

2.6.22 Division 22: *Softwood Lumber Products Export Charge Act, 2006*

Under the *Softwood Lumber Products Export Charge Act, 2006*, an export charge is levied on certain softwood lumber products shipped to the United States. Revenue (net of administrative and litigation costs and refunds) generated from the charge imposed on those exports is distributed among the provinces from which the softwood lumber products originate. Division 22 of Part 6 of Bill C-31 amends section 99 of the *Softwood Lumber Products Export Charge Act, 2006* to clarify how payments to provinces are to be determined.

Clause 311(1) specifies that revenue to be distributed to a province must be calculated each fiscal quarter in a fiscal year, and *fiscal year* is defined as the period beginning on 1 April in one year and ending on 31 March in the next year. The clause also specifies that the amount of revenue to be attributed to a province for a fiscal quarter is the revenue derived from the charge imposed under section 10 or section 15 of the Act.

Clause 311(1) proposes the establishment of a formula in order to attribute administrative and litigation costs to a province. In any particular fiscal quarter, the formula allocates total administrative and litigation costs among provinces on the basis of their share of softwood lumber exports. Clause 311(1) also provides flexibility to the minister in determining whether the formula should be applied to litigation costs. Finally, Clause 311(2) would provide the Governor in Council with the power to make regulations for the purpose of carrying out section 99 of the Act.

2.6.23 DIVISION 23: THE *BUDGET IMPLEMENTATION ACT, 2009*

In 2009, the *Canadian Securities Regulation Regime Transition Office Act* established a transition office charged with assisting in the establishment of a Canadian securities regulation regime and a Canadian regulatory authority.

In 2010, the federal government asked the Supreme Court of Canada to determine whether the "proposed Canadian Securities Act"[40] fell within the legislative authority of the Parliament of Canada. In December 2011, in the *Reference re Securities Act*,[41] the Court found that the proposed Canadian Securities Act which had been presented by the government was unconstitutional.[42] It ruled that the proposed statute did not fall within the general branch of the power to regulate trade and commerce conferred upon the Parliament of Canada under section 91(2) of the Constitution, but rather under the provincial constitutional power over property and civil rights (section 92(13)). However, it added that the federal government still had a role to play with regard to genuinely national issues, such as managing systemic risks and maintaining the fairness and efficiency of capital markets across the country.

In the 2013 Budget, the federal government announced that it would be extending the mandate of the Canadian Securities Transition Office to ensure that its resources remain available as work continues to strengthen the regulation of Canada's capital markets, either in collaboration with the provinces, if an agreement can be reached in a timely fashion, or through federal legislation consistent with the decision of the Supreme Court of Canada.[43]

Clause 313 amends section 295(1) of the *Budget Implementation Act, 2009* such that the total amount of payments to provinces and territories for matters relating to the establishment of a Canadian securities regulation regime, which is presently set at $150 million, may be specified if necessary by an appropriation Act requiring parliamentary approval.

2.6.24 DIVISION 24: AMENDMENTS TO THE *PROTECTION OF RESIDENTIAL MORTGAGE OR HYPOTHECARY INSURANCE ACT* AND THE *NATIONAL HOUSING ACT*

Clause 314 amends section 19 of the *Protection of Residential Mortgage or Hypothecary Insurance Act* (PRMHIA), which provides the legislative framework that governs the winding-up of private mortgage insurance companies and associated financial obligations.

The clause adds a requirement that, in order to be eligible for mortgage or hypothecary loan insurance protection, a mortgage or loan must meet the regulatory criteria referred to in section 42(1) of the PRMHIA that relate to a guarantee of payment referred to in section 14(1) of the *National Housing Act* (NHA).

According to section 42(1), the Minister of Finance may establish regulatory criteria in relation to the eligibility of mortgage or hypothecary loans for insurance protection. According to section 14(1), the Canada Mortgage and Housing Corporation (CMHC) may guarantee payment of principal and/or interest in respect of mortgage-backed securities.

Clause 315 adds section 42(1.1) to the PRMHIA to provide that the regulatory criteria referred to in section 42(1) of that Act relating to a guarantee of payment referred to in section 14(1) of the NHA may apply to an existing insured mortgage or hypothecary loan that has not yet been securitized.

These amendments give the Minister of Finance the authority to implement a change to the housing finance framework that was proposed in the 2013 federal budget. The 2014 Budget announced the intention to implement this proposal, which is designed to "prohibit the use of any government-backed insured mortgage as collateral in securitization vehicles that are not sponsored by Canada Mortgage and Housing Corporation."[44]

Clause 316 adds section 8.1(1.1) to the NHA. The Act consolidates all federal housing legislation and gives the federal government, through the CMHC, a role in housing programs.

The clause provides that the regulatory criteria referred to in section 8.1(1) that relate to a guarantee of payment referred to in section 14(1) of the NHA may apply to an existing insured mortgage loan that has not yet been securitized. The regulatory criteria referred to in section 8.1(1) relate to the regulations that may be made by the Minister of Finance respecting the insurance of certain classes of mortgage loans.

Like clauses 314 and 315, clause 316 gives the Minister of Finance the authority to implement a change to the housing finance framework that was proposed in the 2013 federal budget. The change is designed to tie portfolio insurance for low-ratio mortgages – those with loan-to-value ratios lower than 80% – to the use of securitization vehicles sponsored by the CMHC.

2.6.25 Division 25: Amendments Relating to International Treaties on Trademarks

2.6.25.1 Background

Division 25 of Part 6 of Bill C-31 amends the *Trade-marks Act*[45] to add several provisions relating to three international treaties that the Canadian government seeks to ratify: the Madrid Protocol, the Singapore Treaty and the Nice Agreement.[46]

At the same time as these amendments are being proposed, Parliament is also considering Bill C-8, An Act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts (short title: the Combating Counterfeit Products Act).[47] Because of their co-occurrence, there is some potential overlap between bills C-8 and C-31 regarding their coming into force. This issue is addressed in Part 2.6.25.3, "Coordinating Amendments," in this Legislative Summary.

2.6.25.2 AMENDMENTS TO THE *TRADE-MARKS ACT*

2.6.25.2.1 TERMINOLOGY

Clauses 317 and 318 put an end to the unique feature of Canadian trademark law consisting of the use of a hyphen between the words "trade" and "mark(s)."[48] Clause 317 removes the hyphen in the long title of the English version of the *Trade-marks Act*, and clause 318 removes it from the short title provided for in section 1 of the Act. In turn, clause 361 applies this change throughout the English version of the Act.

Clause 366 (which deals with terminology) applies the same change to the English version of any Act of Parliament, any bill introduced in the 2nd Session of the 41st Parliament that receives Royal Assent and any regulation (as defined in the *Statutory Instruments Act*) where the term occurs. Clause 362 applies a similar change to the term "trade-name," which loses its hyphen to become "trade name."

Clause 319 amends the list of definitions appearing in section 2 of the *Trade-marks Act* by repealing, among other things, the definitions of the following terms:

- "distinguishing guise";
- "proposed trade-mark";
- "representative for service"; and
- "wares."

The clause replaces the definitions of "certification mark" and "trade-mark."

Consequently, clause 347 repeals section 42 of the *Trade-marks Act* concerning representatives for service and clause 360 replaces the word "wares" with "goods" wherever it appears in the Act.

Clause 365 replaces "wares" with "goods" throughout the *Olympic and Paralympic Marks Act*.

Clause 319(5) adds "Nice Classification" and "sign" to the list of definitions in section 2 of the Act. The Nice Classification is an international system administered by the World Intellectual Property Organization[49] and is used to categorize goods and services for the purpose of trademark registration. The Nice Classification is governed by the Nice Agreement, one of three international treaties on trademarks that the bill would integrate into Canadian domestic law. The Madrid Protocol and the Singapore Treaty – the two other international treaties to which the Canadian government seeks to adhere – require the use of the Nice Classification.[50]

The new definition of "sign":

> includes a word, a personal name, a design, a letter, a numeral, a colour, a figurative element, a three-dimensional shape, a hologram, a moving image, a mode of packaging goods, a sound, a scent, a taste, a texture and the positioning of a sign.

Bill C-8 contains exactly the same definition of “sign” (clause 7(5)). These amendments to the definitions found in section 2 of the *Trade-marks Act* result in several consequential amendments to other provisions in order to maintain consistency.

The new definition of “trademark” makes reference to the new definition of “sign” by providing that “trademark” means:

> (*a*) a sign or combination of signs that is used or proposed to be used by a person for the purpose of distinguishing or so as to distinguish their goods or services from those of others; or
>
> (*b*) a certification mark.

Section 6 of the *Trade-marks Act* provides for situations in which a trademark or trade name is confusing. Clause 321 makes amendments to this key provision by replacing, among other things, the word “wares” with the word “goods” and by adding the question of whether or not the goods or services appear in the same class of the Nice Classification.

2.6.25.2.2 REGISTRATION OF TRADEMARKS

Clause 326 amends section 12 of the *Trade-marks Act* concerning registrable trademarks. Current section 12(2) of the Act is replaced by new section 12(2), which states:

> A trademark is not registrable if, in relation to the goods or services in association with which it is used or proposed to be used, its features are dictated primarily by a utilitarian function.

Bill C-8 makes the same substitution (clause 15(4)).

Like clause 16 of Bill C-8, clause 327 of Bill C-31 repeals section 13 of the *Trade-marks Act*, which deals with a distinguishing guise. Both bills eliminate the concept from the Act.

Clause 328 replaces sections 14 and 15 of the Act, which provide for the registration of marks registered abroad (prior to Canada’s adherence to the international treaties and the related new registration system), with new section 15, which simply states, “Despite section 12, confusing trademarks are registrable if the applicant is the owner of all of the confusing trademarks.” Current section 15(1) of the Act contains a similar provision but designates the trademarks belonging to the same owner as “associated trade-marks.”

Like clause 20 of Bill C-8, clause 331 of Bill C-31 adds a new section 18.1 to the Act, which states:

> The registration of a trademark may be expunged by the Federal Court on the application of any person interested if the Court decides that the registration is likely to unreasonably limit the development of any art or industry.

Currently, the power granted to the Federal Court, found in section 13(3) of the *Trade-marks Act*, concerns the registration of a distinguishing guise. Section 13 of the Act is repealed by clause 327, and the definition of "distinguishing guise" is repealed by clause 319.

New section 20(1.1), added by clause 332, sets out a new exception to infringement of the right to the exclusive use of a registered trademark: "The registration of a trademark does not prevent a person from using any utilitarian feature embodied in the trademark." Bill C-8 makes the same exception by adding new section 20(1.2) to the Act.

Clause 337 adds new subsection (*e.1*) to section 26(2) of the Act, providing that the register of trademarks is to show the names of the goods or services for which a trademark is registered, grouped according to the classes of the Nice Classification.

Clause 339 replaces sections 30 to 33 of the Act concerning applications to register a trademark. Among other things, new section 30(3) adds the obligation to group goods or services referred to in an application to register a trademark according to the classes of the Nice Classification. New section 30(4) gives the Registrar of Trademarks the authority to decide on any question regarding the class within which goods or services are to be grouped. The Registrar's determination is not subject to appeal.

New section 32(1) provides the circumstances in which, at the request of the Registrar, an applicant must furnish to the Registrar any evidence that the Registrar requires establishing that the trademark is distinctive at the filing date of the application for its registration. Those circumstances are:

- the applicant claims that the trademark is registrable under new section 12(3) of the *Trademarks Act*;
- the Registrar's preliminary view is that the trademark is not inherently distinctive;
- the trademark consists exclusively of a single colour or of a combination of colours without delineated contours; or
- the trademark consists exclusively or primarily of one or more of the following:
    - the three-dimensional shape of any of the goods specified in the application, or of an integral part or the packaging of any of those goods,
    - a mode of packaging goods,
    - a sound,[51]
    - a scent,
    - a taste,
    - a texture,
    - any other prescribed sign.

New section 33 provides, among other things, that the filing date of an application for the registration of a trademark in Canada is the date on which the Registrar has received all of the following:

- an explicit or implicit indication that the registration of the trademark is sought;
- information allowing the identity of the applicant to be established;
- information allowing the Registrar to contact the applicant;
- a representation or description of the trademark;
- a list of the goods or services for which registration of the trademark is sought; and
- any prescribed fees.

These amendments to sections 32 and 33 of the Act are also contained in clauses 31 and 32 of Bill C-8.

Clause 342 amends section 37 of the Act by adding, among other things, a new section 37(1)(*d*) providing that the Registrar shall refuse an application for the registration of a trademark if he or she is satisfied that the trademark is not distinctive.

Clause 343 amends section 38 of the Act regarding statements of opposition to applications for trademark registration. Among other things, new sections 38(2)(*e*) and 38(2)(*f*) are added in order to specify that an opposition can be filed where, as of the filing date of the application in Canada, the applicant was not using and did not propose to use – or was not entitled to use – the trademark in Canada in association with the goods or services specified in the application.

Clause 344 replaces current section 39 of the Act with new section 39, which adds the concept of divisional application. A divisional application is a separate application from the corresponding original application and may itself be subdivided. Among other things, the first subsection of new section 39 allows an applicant who has made an original application for registration of a trademark, after filing that application, to limit it to one or more of the goods or services that were within its scope and file a divisional application for the registration of the same trademark in association with any other goods or services that were within the scope of the original application. Clause 36 of Bill C-8 contains the same provision but inserts it in new section 39.1 of the *Trade-marks Act*, leaving section 39 unchanged.

Section 41 of the *Trade-marks Act* provides for amendments to the register of trademarks. Clause 346 makes amendments to this section, including one allowing the Registrar to amend the register in order to merge registrations of the trademark that stem, under section 39, from the same original application (new section 41(1)(*f*)).

Pursuant to section 46 of the Act, registration of a trademark is currently valid for 15 years. Clause 350 reduces this period to 10 years.

2.6.25.2.3 Regulation-Making Authority

Clause 357 expands the authority given to the Governor in Council under section 65 to make regulations for carrying into effect the purposes and provisions of the Act by adding, among other things, the authority to make regulations respecting the merger

of registrations under new section 41(1)(*f*) and the grouping of goods or services according to the classes of the Nice Classification and the numbering of those classes (new sections 65(*d*) and 65(*m*)). The Governor in Council is also given overall authority to make regulations for carrying into effect the purposes and provisions of the Act "prescribing anything that by this Act is to be prescribed" (new section 65(*n*)).

Clause 358 adds new section 65.1 to the Act, providing that the Governor in Council may make regulations for carrying into effect the Madrid Protocol and the Singapore Treaty. Section 65.1(*a*) provides that the Governor in Council may make regulations for carrying into effect the Madrid Protocol despite any other provisions of the Act.

2.6.25.3 Coordinating Amendments

Clause 367 contains 103 subclauses making various coordinating amendments. Clause 367(1) provides that clauses 367(2) to 367(103) apply if Bill C-8 receives Royal Assent. These provisions set out various scenarios based on whether the provisions of Bill C-31 or those of Bill C-8 come into force first, or whether they come into force on the same day. Depending on the circumstances, the provisions of one bill or the other will be repealed, will come into force or will coexist.

For example, clause 367(8) of Bill C-31 provides that if clause 319(4) comes into force before clause 7(3) of Bill C-8, then clause 7(3) will be replaced by the following:

> (3) The definition "distinctive" in section 2 of the Act is replaced by the following:
>
> "distinctive," in relation to a trademark, describes a trademark that actually distinguishes the goods or services in association with which it is used by its owner from the goods or services of others or that is adapted so to distinguish them.

This is the same definition as the one set out in clause 7(3) of Bill C-8.[52] However, clause 7(3) also replaces the definitions for "certification mark," "trade-mark" and "proposed trade-mark," which would be abandoned if clause 319(4) of Bill C-31 came into force. Clause 319 repeals, among other provisions, the definition of "proposed trade-mark" and replaces the definitions of "certification mark" and "trade-mark." It also takes the concept of "proposed use" found in the definition of "proposed trade-mark," which Bill C-8 amends to apply to a "sign or combination of signs," and adds it to the definitions of "certification mark" and "trademark" (as amended by clause 7(3) of Bill C-8).

2.6.25.4 Coming into Force

Clause 368 provides that Division 25 will come into force on a day to be fixed by order of the Governor in Council, except for clause 367, which contains the coordinating amendments.

2.6.26 Division 26: Reduction of Governor in Council Appointments

The definition of "Registrar" in section 2 of the *Trade-marks Act* refers to the Registrar of Trade-marks appointed under section 63. Section 63 provides that the Registrar of Trade-marks is appointed by the Governor in Council and sets out the details of the position. The Registrar of Trademarks is responsible for the administration of the *Trademarks Act*.

Clause 369 amends the definition of "Registrar" in section 2 of the *Trade-marks Act* to refer to the person who is described in new section 63(1). Clause 370 replaces section 63(1) of the TMA to provide that the Registrar of Trademarks shall be the Commissioner of Patents, who is appointed under section 4(1) of the *Patent Act*[53] and who is responsible for the administration of the *Patent Act*.

The measure in clauses 369 and 370 makes the same person responsible for carrying out the duties of the Registrar of Trademarks and the Commissioner of Patents and administering both the *Trademarks Act* and the *Patent Act*.

2.6.27 Division 27: Payment of Old Age Security Income-Tested Benefits Withheld from Sponsored Immigrants

The Old Age Security (OAS) Pension is a monthly payment available to most Canadians aged 65 or older once an application is completed and the eligibility requirements are met. A full OAS pension is payable to individuals who have lived in Canada for over 40 years. Individuals who have lived in Canada for less than 40 years are eligible for a partial pension. There are requirements with respect to legal status (Canadian citizen or legal resident) and years of residence (or in some cases presence) in Canada. To be eligible for a pension, the applicant must have lived in Canada for at least 10 years after the age of 18. Sponsored immigrants are not currently eligible for OAS, except in certain cases, such as having been a Canadian resident for at least 10 years after the age of 18.

The Guaranteed Income Supplement is a non-taxable amount added to the OAS pension for low-income seniors, meaning that the amount of the Supplement is based on the pensioner's income. The Allowance is paid to the pensioner's spouse or common-law partner between 60 and 64 years of age. Survivor benefits are paid to the spouse or common-law partner of a pensioner who has died.

Clauses 371 to 373 of Bill C-31 amend sections 11(7)(*e*), 19(6)(*d*) and 21(9)(*c*) of the *Old Age Security Act* so that a sponsored immigrant, or her or his spouse or survivor no longer receives OAS benefits (the Guaranteed Income Supplement, the allowance to the spouse or common-law partner or survivor benefits) for the duration of the sponsorship, regardless of the number of years living in Canada.

2.6.28 DIVISION 28: ENACTMENT OF THE NEW BRIDGE FOR THE ST. LAWRENCE ACT

Division 28 enacts the New Bridge for the St. Lawrence Act (NBSLA), which provides for the construction and operation of a new bridge to replace the Champlain Bridge and the Nuns' Island Bridge in Montréal.

Under the NBSLA, the Minister of Public Works and Government Services is responsible for entering into agreements with proponents for the design, construction and operation of the bridge, including agreements pertaining to the collection of tolls, fees or other charges. The NBSLA also grants the minister the power to take the necessary measures to carry out these agreements and protect the interests of the federal government under them (sections 7 and 8 of the NBSLA).

A second minister, to be designated by the Governor in Council, will be responsible for overseeing all matters related to the bridge and its works as well as the administration of the NBSLA (section 4 of the NBSLA). This responsibility includes but is not limited to:

- the ability to enter into agreements with various levels of governments and persons and to implement agreements between the Minister of Public Works and Government Services and other parties;
- the power to make regulations designating the penalties for contraventions of the NBSLA; and
- the power to make regulations to establish tolls, fees or other charges to be levied on owners of vehicles using the bridge.

The ability to impose user fees is consistent with the powers granted under section 5 of *The Jacques-Cartier and Champlain Bridges Inc. Regulations*.[54]

Section 11 of the NBSLA enables the Governor in Council to issue orders exempting proponents from any authorization required under any federal legislation for the construction of the bridge and its related works. The *Statutory Instruments Act* will not apply to any such order issued by the Governor in Council under the NBSLA.

Finally, the NBSLA (section 6) also exempts the new bridge for the St. Lawrence from the *Bridges Act* and from the *User Fees Act* with respect to any tolls, fees or other charges imposed on users of the bridge.

2.6.29 DIVISION 29: CREATION OF THE ADMINISTRATIVE TRIBUNALS SUPPORT SERVICE OF CANADA

Division 29 of Part 6 enacts the *Administrative Tribunals Support Service of Canada Act* (ATSSCA) (clause 376) and contains transitional provisions related to the creation of the Administrative Tribunals Support Service of Canada (ATSSC) and the legislation establishing or relating to the administrative tribunals targeted by the Division (clauses 377 to 481). Clause 482 contains the coming into force information for this Division.

As explained in the summary portion of Bill C-31, the ATSSC is to become "the sole provider of resources and staff" for the 11 administrative tribunals listed in the Division, and will also provide "facilities and support services to those tribunals, including registry, administrative, research and analysis services."

2.6.29.1 Enactment of the Administrative Tribunals Support Service of Canada Act

Clause 376 of Bill C-31 enacts the ATSSCA, which contains 18 sections. In section 2, an "administrative tribunal" is defined as a body listed in the schedule to the ATSSCA, which is found in Schedule 6 of Bill C-31. The list comprises the following 10 tribunals:

- Canadian Industrial Relations Board;
- Canadian Cultural Property Export Review Board;
- Canadian Human Rights Tribunal;
- Canadian International Trade Tribunal;
- Competition Tribunal;
- Public Servants Disclosure Protection Tribunal;
- Review Tribunal;
- Specific Claims Tribunal;
- Social Security Tribunal; and
- Transportation Appeal Tribunal of Canada.

Note that not all federal administrative tribunals are affected by Bill C-31, and not all will become subject to the ATSSCA.[55]

The administrative entity created by the ATSSCA, the ATSSC, will be a part of the federal public administration, located in the National Capital Region. It will be run by a Chief Administrator, a Governor in Council position subject to renewable five-year terms (sections 3 to 5). The Chief Administrator is the CEO of the ATSSC and has control and management of it and all matters connected with it (section 9).

The Chief Administrator is also responsible for the provision of support services and facilities needed by each of the administrative tribunals subject to the ATSSCA (section 10). The Chief Administrator can delegate his or her powers (section 13), but the powers, duties and functions of the position do not extend to any of those conferred by law on any administrative tribunal or any of its members (section 12). As well, the chairperson of an administrative tribunal subject to the ATSSCA continues to have supervision over and direction of the work of the tribunal (section 14). This provision seems intended to maintain the independence of the work of the affected tribunals, while allowing for administrative issues to be dealt with by the ATSSC. Indeed, sections 16 to 18 provide that any service of documents or amounts payable to an affected administrative tribunal is deemed to go to the ATSSC.

2.6.29.2 TRANSITIONAL PROVISIONS

Clause 377 contains a definition of "administrative tribunal" that applies to the transitional provisions of the bill. The definition differs from that in the schedule – it contains one more body: the Public Service Labour Relations and Employment Board. This could be because at the time of first reading of Bill C-31, section 365 of the *Economic Action Plan 2013 Act, No. 2*,[56] creating the *Public Service Labour Relations and Employment Board Act*, had yet to come into force.

Clauses 382 to 388 make consequential amendments to the *Access to Information Act* (ATIA), removing the tribunals that are currently subject to the ATIA from the relevant lists and adding the ATSSC as a body subject to the ATIA. Of note, in her 2012–2013 annual report to Parliament, the Information Commissioner of Canada raised concerns about the impact that abolishing or amalgamating institutions might have on the integrity of the access to information system.[57]

Clauses 421 to 427 contain similar amendments to the *Privacy Act* as those made to the ATIA, removing the tribunals that are currently subject to the Act from the relevant lists and adding the ATSSC as a body subject to the *Privacy Act*.

Clauses 394 to 413 amend Schedules I.1 (containing the divisions or branches of the federal public administration, along with the reference to the appropriate ministers), IV (containing the names of portions of the core public administration), and VI (containing names of departments and references to the departments' accounting officers) of the *Financial Administration Act*, removing some of the existing tribunals and adding the ATSSC.

Other statutes being amended as a consequence of the creation of the ATSSC are these:

- *Competition Act* (clause 389);
- *Cultural Property Export and Import Act* (clauses 390 to 392);
- *Excise Tax Act* (clause 393);
- *Canadian Human Rights Act* (clauses 414 and 415);
- *Canada Labour Code* (clauses 416 to 420);
- *Special Import Measures Act* (clauses 428 to 444);
- *Customs Act* (clauses 445 and 446);
- *Competition Tribunal Act* (clauses 447 and 448);
- *Canada Agricultural Products Act* (clauses 449 to 451);
- *Canadian International Trade Tribunal* (clauses 452 to 457);
- *Income Tax Act* (clause 458);
- *Public Sector Compensation Act* (clause 459);
- *Status of the Artist Act* (clauses 460 to 462);
- *Employment Equity Act* (clause 463);
- *Transportation Appeal Tribunal of Canada Act* (clauses 464 and 465);

- *Department of Employment and Social Development Act* (clauses 466 and 467);
- *Public Servants Disclosure Protection Act* (clause 468);
- *Specific Claims Tribunal Act* (clauses 469 and 470); and
- *Economic Action Plan 2013 Act, No. 2*, which at its section 365 (not yet in force) created the *Public Service Labour Relations and Employment Board Act* (which is amended in Bill C-31 by clauses 471 to 479).

Clauses 480 and 481 contain coordinating amendments with the *Safe Food for Canadians Act* and the *Economic Action Plan 2013 Act, No. 2* in relation to the coming into force of the ATSSCA.

2.6.29.3 Coming into Force

Clause 482 specifies that Division 29, save clauses 471 to 481, comes into force on a day to be fixed by order of the Governor in Council.

2.6.30 Division 30: Enactment of the Apprentice Loans Act

Clause 483 creates an apprentice loans system by enacting a new law, the Apprentice Loans Act (ALA). Under the ALA, the Minister of Employment and Social Development or any person authorized to act on the minister's behalf may enter into an agreement with any eligible apprentice for the purpose of making an apprentice loan.

Apprentice loans are interest-free for the borrower during the period set out in the regulations, and the borrower is not required to repay the principal or interest on the loan until the end of the payment deferral period, also prescribed by regulation. The aggregate amount of outstanding loans is subject to a limit set out in the regulations.

Subject to other provisions of the ALA, no action or proceedings may be taken to recover money owing under the ALA after the end of the six-year limitation period, which begins when the money becomes due and payable. Moreover, a borrower's obligations terminate if the borrower dies or if the minister is satisfied that the borrower is unable to repay the loan because of a severe permanent disability.

The ALA authorizes the minister to pay a province an amount determined in accordance with the regulations if:

- the apprentices of that province are unable to obtain a loan under the ALA;
- the province already has a financial assistance program for apprentices; and
- the minister considers that the purpose of a provincial program is substantially similar to the purpose of the ALA.

According to Budget 2014, apprentices registered in their first Red Seal[58] trade apprenticeship will be able to receive loans of up to $4,000 per period of technical training. Budget 2014 also indicates that interest charges and repayment of these loans will not begin until after apprentices have completed or terminated their program.

NOTES

* This Legislative Summary was prepared by the following authors:

- Zachary Alaoui — Section 2.6.28
- Martin Auger — Section 2.6.7
- Daniel Benatuil — Sections 2.1.1 and 2.6.24
- Raphaëlle Deraspe — Sections 2.1.2, 2.2.1–2.2.4 and 2.2.7
- June Dewetering — Section 2.1.12
- Michael Dewing — Section 2.6.11
- Tanya Dupuis — Section 2.6.8
- Sandra Elgersma — Section 2.6.20
- Sylvain Fleury — Sections 2.1.3, 2.1.6, 2.1.9, 2.1.10, 2.2.5 and 2.2.11
- Frédéric Forge — Sections 2.6.15.3 and 2.6.18
- Mathieu Frigon — Sections 2.3.1, 2.6.12, 2.6.13 and 2.6.22
- Sandra Gruescu — Sections 2.6.3, 2.6.17 and 2.6.27
- Michaël Lambert-Racine — Section 2.6.30
- Alexandre Lavoie — Section 2.6.15.1
- Dara Lithwick — Sections 2.6.6 and 2.6.29
- Robin MacKay — Section 2.6.5
- Mark Mahabir — Sections 2.1.4, 2.1.5, 2.1.7, 2.1.8, 2.1.15, 2.1.16, 2.2.9, 2.2.10, 2.3.2, 2.3.4, 2.3.5 and 2.6.14
- Lindsay McGlashan — Section 2.6.2
- Alison Padova — Section 2.6.15.2
- Jean-Rodrigue Paré — Section 2.6.1
- Édison Roy-César — Sections 2.6.10 and 2.6.23
- Brett Stuckey — Sections 2.1.11, 2.1.14, 2.2.6, 2.2.8, 2.3.3, 2.3.6 and 2.6.19
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- Pascal Tremblay — Sections 2.4.1–2.4.3
- Shauna Troniak — Section 2.6.21
- Dominique Valiquet — Section 1
- Adriane Yong — Sections 2.1.13, 2.1.17, 2.5 and 2.6.4

1. The cost of acquiring, caring for and maintaining a dog for a person who is blind or profoundly deaf, suffers from severe autism or epilepsy, or severe and prolonged impairment restricting the use of the person's arms and legs currently qualifies for the medical expense tax credit.

2. Through a flow-through share, an investor enters into an agreement with a corporation to purchase shares; the corporation then uses the proceeds from the share offering to incur eligible exploration expenses. These expenses are then "renounced" or transferred to the investor. "Renouncing" in this context means that the corporation transfers to the investor the right to apply eligible exploration expenses against income, which reduces his or her tax payable in a given year.

3. Department of Finance Canada, *Explanatory Notes Relating to the Income Tax Act, Excise Tax Act, Excise Act, 2001 and Related Legislation*.

4. Natural Resources Canada, *Mineral Exploration Tax Credit (METC)*.

5. For a review of the rules applicable to the transfer, see Canada Revenue Agency, "Transfers from a Defined Benefit Provision to a Money Purchase Provision, an RRSP, or a RRIF and Transfers between Defined Benefit Provisions," *Registered Plans Directorate Newsletter*, No. 04-1, 30 April 2004.

6. *Aikman v. The Queen*, Tax Court of Canada, Docket 98-2-EXP-G, 11 February 2000.

7. *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34.

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

9. *Safe Streets and Communities Act*, S.C. 2012, c.1.

10. Section 14 of Part II of Schedule V of the *Excise Tax Act* currently exempts the supplies for training services designed to assist individuals with a disorder or disability in managing, alleviating or eliminating the effects of the disorder or disability from the application of the GST/HST.

11. The conditions are the following:

> (i) A person acting in the capacity of a practitioner, medical practitioner, social worker or registered nurse, and in the course of a professional–client relationship between the person and the particular individual, has certified in writing that the training is an appropriate means to assist the particular individual in coping with the effects of the disorder or disability or to alleviate or eliminate those effects;
>
> (ii) A prescribed person, or a member of a prescribed class of persons, has, subject to prescribed circumstances or conditions, certified in writing that the training is an appropriate means to assist the particular individual in coping with the effects of the disorder or disability or to alleviate or eliminate those effects; or
>
> (iii) The supplier
>
> (A) is a government,
>
> (B) is paid an amount to make the supply by a government or organization administering a government program targeted at assisting individuals with a disorder or disability, or
>
> (C) receives evidence satisfactory to the Minister that, for the purpose of the acquisition of the service, an amount has been paid or is payable to a person by a government or organization administering a government program targeted at assisting individuals with a disorder or disability. (*Excise Tax Act*, R.S.C., 1985, c. E-15, Part II, Schedule V, ss. 14(*b*)(i)–14(*b*)(iii).)

12. Division V of the *Excise Tax Act* deals with the collection and payment of the tax provided for in Division II of the Act.

13. Part IX of the *Excise Tax Act* deals with the Goods and Services Tax.

14. *Manuge v. Canada*, 2012 FC 499.

15. Bank of Canada, *2013 Annual Report*, 2013.

16. Ibid.

17. Canada Deposit Insurance Corporation [CDIC], *Summary of the Corporate Plan 2013/2014 to 2017/2018*, 2013.

18. House of Commons, Standing Committee on Agriculture and Agri-Food, *Toward a Common Goal: Canada's Food Supply Chain – Part 1*, Report 10, 1st Session, 41st Parliament, June 2013.

19. Department of Finance Canada, *Economic Action Plan 2014 – The Road to Balance: Creating Jobs and Opportunities*, 11 February 2014, p. 254.

20. *Members of Parliament Retiring Allowances Act*, R.S.C., 1985, c. M-5.

21. Department of Finance Canada (2014), p. 224.

22. Atlantic Canada Opportunities Agency, *Atlantic Canada Opportunities Board*.

23. Enterprise Cape Breton Corporation, *About ECBC*.
24. Government of Canada, "Virtual Museum of Canada and Online Works of Reference," *Economic Action Plan 2014*.
25. Department of Canadian Heritage, *2014–15 Report on Plans and Priorities*, p. 13.
26. Government of Canada, "Virtual Museum of Canada and Online Works of Reference," *Economic Action Plan 2014*.
27. Department of Canadian Heritage, *2014–15 Report on Plans and Priorities*, 2014, p. 45.
28. Nordion, *Our Company*.
29. *Motor Vehicle Safety Act*, S.C. 1993, c. 16.
30. Transport Canada, "Motor Vehicle Safety Act: Amendments to the Act," *Backgrounder*, March 2014.
31. See Government of Canada, "Regulatory Cooperation Council," *Canada's Economic Action Plan*.
32. Transport Canada, "Railway Safety Act and Transportation of Dangerous Goods Act, 1992," *Backgrounder*, March 2014.
33. Ibid.
34. Treasury Board of Canada Secretariat, *Cabinet Directive on Regulatory Management*.
35. The sections of the *Safe Food for Canadians Act* that are amended or repealed by the bill are not yet in force.
36. Canadian Food Inspection Agency, *Complaints and Appeals Office – Annual Report 2012–2013*.
37. Section 103 of the *Safe Food for Canadians Act* comes into force on a day to be fixed by order of the Governor in Council.
38. *Public Service Labour Relations Act*, S.C. 2003, c. 22, s. 2.
39. *Canadian Human Rights Act*, R.S.C., 1985, c. H-6.
40. Department of Finance Canada, *Proposed Canadian Securities Act*.
41. *Reference re Securities Act*, [2011] 3 S.C.R. 837.
42. For more information, see Maxime-Olivier Thibodeau, *Proposed Federal Securities Regulator – 1. Economic Aspects*, Publication no. 2012-28-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 30 April 2012; Maxime-Olivier Thibodeau, *Proposed Federal Securities Regulator – 2. Constitutional Aspects*, Publication no. 2012-29-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 17 May 2012; and Maxime-Olivier Thibodeau, "Creating a Federal Securities Regulator – Has the Debate Been Settled?," *HillNote*, Publication no. 2012-35-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 20 June 2012.
43. Department of Finance Canada, *Economic Action Plan 2013*, p. 143.
44. Government of Canada, "Housing Finance Framework," *Economic Action Plan 2013.*
45. *Trade-marks Act*, R.S.C., 1985, c. T-13.

46. The Madrid Protocol is an international registration system for protecting trademarks in multiple jurisdictions by means of making one application to the World Intellectual Property Organization (WIPO). The purpose of the Singapore Treaty is to simplify national trademark registration systems and reduce the cost of compliance for trademark owners. It is not intended to harmonize substantive trademark law. The Nice Agreement established the Nice Classification, which is an international system administered by WIPO to classify goods and services as part of the trademark registration process.

47. Bill C-8: An Act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts, 2nd Session, 41st Parliament (as amended by the Standing Committee on Industry, Science and Technology and tabled in the House of Commons on 5 December 2013). On 31 January 2014, the House of Commons concurred in the report of the Committee, which studied the bill and amended it. Debate at third reading began that day. For more information on Bill C-8, see Maxime-Olivier Thibodeau, *Legislative Summary of Bill C-8: An Act to amend the Copyright Act and the Trade-marks Act and to make consequential amendments to other Acts*, Publication no. 41-2-C8-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 11 February 2014.

48. Mark Pidkowich, *Official marks – a uniquely Canadian concept*, Smart & Biggar Fetherstonhaugh, 27 July 2011.

49. The World Intellectual Property Organization is a special agency of the United Nations responsible for promoting the development of an international system for the protection of intellectual property. See WIPO, "What is WIPO?," *Inside WIPO*.

50. *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, "Explanatory Memorandum: Subject Matter," p. 1.

51. Of note, as of 28 March 2012, the Canadian Intellectual Property Office accepts the registration of a trademark consisting of a sound. See Canadian Intellectual Property Office, *Trade-mark consisting of a sound*, 28 March 2012.

52. During its consideration of Bill C-8, the committee amended the new definition of "distinctive" proposed in clause 7(3). See Thibodeau (2014), pp. 10–11.

53. *Patent Act*, R.S.C., 1985, c. P-4.

54. *The Jacques-Cartier and Champlain Bridges Inc. Regulations*, SOR/98-568.

55. For a list of federal administrative tribunals (members of the list of the Heads of Federal Administrative Tribunals Forum), see Government of Canada, "Member Organizations," *Heads of Federal Administrative Tribunals Forum*.

56. *Economic Action Plan 2013 Act, No. 2*, S.C. 2013, c. 40.

57. Information Commissioner of Canada, *Annual Report 2012–2013*, 2013, p. 25.

58. Service Canada, *Information About the Red Seal Program*.