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LEGISLATIVE SUMMARY

Bill C-4:

A second Act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures

Publication No. 41-2-C4-E
29 October 2013
Revised 5 January 2016

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

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

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

Legislative Summary of Bill C-4
(Legislative Summary)

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Ce document est également publié en français.

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LEGISLATIVE SUMMARY OF BILL C-4: A SECOND ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 21, 2013 AND OTHER MEASURES*

1 BACKGROUND

Bill C-4, A second act to implement certain provisions of the budget tabled in Parliament on March 21, 2013 and other measures (short title: Economic Action Plan 2013 Act, No. 2) was introduced and read the first time in the House of Commons on 22 October 2013.

As its short and long titles suggest, the purpose of Bill C-4 is to implement the general budgetary policy of the Government presented to the House of Commons on 21 March 2013. Bill C-4 is the second implementation bill in relation to the March 2013 budget. The first, Bill C-60, the Economic Action Plan 2013 Act, No. 1, received Royal Assent on 26 June 2013. The implementation of the government's budgetary policy through two distinct legislative proposals, one presented shortly after the budget speech in the spring, and the other presented later in the fall, is in line with established legislative practice.

Part 1 of Bill C-4 implements certain income tax measures proposed in the 21 March 2013 budget and other selected tax measures (Clauses 2 to 120). Part 2 implements certain goods and services tax and harmonized sales tax (GST/HST) measures proposed in the budget (Clauses 121 to 124). Part 3 enacts, amends or repeals several Acts of Parliament as diverse as the *Public Service Employment Act*, the *Mackenzie Gas Project Impacts Act*, and the *Supreme Court Act* in order to implement various selected measures (Clauses 125 to 472).

The summary that follows offers a brief description of the main proposals contained in Bill C-4. While the document does not discuss every clause individually, the substance of each part of the bill is addressed. The information is organized according to the parts presented in Bill C-4, for ease of reference.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1 – IMPLEMENTATION OF CERTAIN INCOME TAX MEASURES PROPOSED IN THE 2013 BUDGET

2.1.1 LIFETIME CAPITAL GAINS EXEMPTION

Clause 46 amends section 110.6(2)(*a*) of the *Income Tax Act* (ITA)[1] to increase, from $375,000 to $400,000, the total lifetime amount that a taxpayer can deduct from taxable capital gains on the qualified disposition of farm property, fishing property or small business corporation shares.[2] The change will take effect in the 2014 taxation year. Clause 49 amends section 117.1(1) to add the amount of $400,000 mentioned

in section 110.6(2)(*a*) to the list of amounts that are indexed to inflation. This indexation will take effect in 2015.

As well, clause 46 replaces sections 110.6(31) and 110.6(32) with new section 110.6(31). Generally, for shares or property that he or she has sold, if an individual receives payment over a number of years rather than in full at the time of disposition, a portion of the deductible capital gain can be reported in the taxation year in which payment is received. Given that, with the change, the Lifetime Capital Gains Exemption (LCGE) will increase with inflation starting in 2015, new section 110.6(31) ensures that no LCGE deduction may be claimed for capital gains reported from previous taxation years, except for the LCGE available in the year of disposition.

2.1.2 Registered Pension Plans

Clause 25 adds section 56(1)(*a*)(i)(G) to the ITA. The aim of this provision is to simplify the process by which pension plan administrators can refund a contribution made to a registered pension plan (RPP) as a result of a "reasonable error." In particular, for contributions made on or after the later of 1 January 2014 and the day on which the new section receives Royal Assent, an amount paid out of an RPP as a refund of contributions will not be included in a taxpayer's income where:

- the refund of contributions is made in order to:
  - correct a reasonable error; or
  - avoid the revocation of an RPP's registration as a result of contributions that exceed allowable limits; and
- the amount is not deducted as an RPP contribution for the taxation year in which the refund is made or for any preceding taxation year.

For example, in relation to a "reasonable error," an employer who has made a mistake in calculating contributions made by it or by a plan member for a particular year could be required to refund contributions even if the RPP contribution limits for that year have not been exceeded. Prior to the addition of section 56(1)(*a*)(i)(G), such a refund was excluded from a taxpayer's income at the discretion of the Canada Revenue Agency (CRA); with this change, pension plan administrators can make such a refund without obtaining approval from the CRA if the refund is made no later than 31 December of the year following the year in which the contribution was made.

2.1.3 Assessment and Reassessment

Clause 67 of Bill C-4 adds section 152(4)(*b.1*) to the ITA to extend by three years the period during which the minister can, in certain circumstances, reassess outside of the normal reassessment period a participant in a tax shelter or a reportable transaction respecting a tax shelter.

Clause 67 also adds section 152(4)(*b.2*) to the ITA to extend by three years the period during which the minister can reassess a taxpayer outside of the normal reassessment period if the taxpayer has failed to report income from a specified foreign property on the taxpayer's annual income tax return and:

- the taxpayer or a partnership of which the taxpayer is a member has not filed Form T1135, entitled "Foreign Income Verification Statement," on time; or
- a specified foreign property has not been identified, or has been improperly identified, on Form T1135.

2.1.4 Labour-Sponsored Venture Capital Corporation Tax Credit

Clause 59 amends section 127.4(6) of the ITA to phase out the federal labour-sponsored venture capital corporation tax credit, which has been offered to investors in small to medium-sized Canadian companies. The tax credit rate will be reduced from 15% of the cost to purchase shares in a federally or provincially registered corporation to 10% for the 2015 taxation year, 5% for the 2016 taxation year and 0% for subsequent taxation years. As well, clause 59 repeals section 127.4(2), which enables an individual to claim the tax credit; the repeal will take effect in the 2017 taxation year. The clause also amends section 127.4(5) to lower the limit of the tax credit to $500 for the 2015 taxation year and $250 for the 2016 taxation year.

Clause 73 amends section 204.81(1) to prevent the registration of a labour-sponsored venture capital corporation if the application was not received by the Minister of National Revenue before 21 March 2013. Clause 113 amends section 6701.1 of the *Income Tax Regulations* (ITR)[3] to prevent registration of a labour-sponsored venture capital corporation if the application was not registered under a provincial statute prior to that date.

Finally, clauses 80 and 81 amend sections 211.7(1) and 211.81 respectively to ensure that the penalty for the early disposition of labour-sponsored venture capital corporation shares takes into account the phase-out of the tax credit.

2.1.5 Derivative Forward Agreements

Clause 89 amends section 248(1) of the ITA to add a definition of the term "derivative forward agreement."[4] Such an agreement is a contract between parties for a term that exceeds 180 days where the future purchase or sale price of a capital property is attributable to an underlying interest – other than the performance of the property or the change in the fair market value of the property over the term of the contract.[5] The underlying interest could include a value of an asset, the price of a commodity, an interest rate, a variable, a stock market index, an event, a probability or a thing.

Clauses 4 and 11 amend sections 12 and 20 of the ITA respectively to ensure that income or a loss created through a derivative forward agreement is treated as "ordinary" income or loss and not as a "capital" gain or loss, and to provide transitional rules for derivative forward agreements entered into before 21 March 2013 or after 20 March 2013.

Clause 22 makes consequential amendments to section 53 of the ITA to ensure that the inclusion of income or a loss as a consequence of the derivative forward agreement is accurately reflected in the price of the capital property to prevent the double taxation of income and the "artificial" creation of losses upon subsequent sale.

2.1.6 Synthetic Disposition Arrangements

Clause 89 also amends section 248(1) of the ITA to add a definition for the term "synthetic disposition arrangement." This is any agreement, series of agreements or other arrangement in respect of a property owned by a taxpayer that allows him or her to eliminate all or substantially all of both risk of loss and opportunity for gain or profit from the property for a definite or indefinite period of time.[6]

Together, the amendments in clauses 38, 48, 56 and 89 address situations in which taxpayers use a synthetic disposition arrangement to reduce or defer the tax associated with certain transactions. For example:

- clause 38 creates new section 80.6 to prohibit taxpayers from using such an arrangement to defer the taxation of a disposition of property;
- clause 48 amends section 112 to prevent taxpayers from using a synthetic disposition arrangement to circumvent the eligibility rules for the exemption from a loss reduction, known as the "stop-loss" rules, during inter-corporate dispositions of shares; and
- clause 56 amends section 126 to prohibit taxpayers from using such an arrangement to circumvent the holding requirements imposed on shares and debt obligations for eligibility for a foreign tax credit.

2.1.7 Loss Restriction Events

Clauses 90, 91 and 92 of Bill C-4 amend the ITA to extend to trusts the loss-streaming and related rules that apply on the acquisition of control of a corporation.

This legislative amendment comes as tax authorities have observed that arm's-length loss trading transactions have been developed to enable some taxpayers to access the unused losses of other taxpayers. Under a typical "loss trading" transaction, a taxpayer acquires an ownership interest in an arm's-length entity (trust or corporation) that has unused losses and transfers income-producing assets to the entity or merges the entity with a profitable entity with the intention of obtaining an income tax benefit.

2.1.8 Non-resident Trusts

In response to the *Canada v. Sommerer*[7] decision, clause 35 amends section 75(2) of the ITA so that the section applies only to trusts resident in Canada.[8] Clauses 42 and 44 amend sections 94 and 107(4.1)(*b*) respectively so that any transfer or loan of property to a trust, including a sale for fair market value, made by a Canadian-resident taxpayer will result in the Canadian-resident taxpayer being considered a contributor to the trust. The trust will be deemed to be resident in Canada, and will be subject to Canadian taxation.

2.1.9 Accelerated Capital Cost Allowance for Clean Energy Generation Equipment

Clause 119 amends Schedule II to the ITR to expand Class 43.2 with respect to cleaning and upgrading equipment that can be used to transform biogas, landfill gas or digester gas into biomethane. Class 43.2 provides an accelerated capital cost allowance (ACCA) rate of 50% per year on a declining balance basis to certain clean energy generation and energy conservation equipment.

Clause 103 amends section 1104(13) of the ITR to add pulp and paper by-product, beverage industry waste (including wastewater) and separated organics from municipal waste to the types of organic waste that can be used in Class 43.2 biogas production equipment.

The changes are effective 21 March 2013.

2.1.10 Penalty for Incomplete Information on Claim Forms of the Scientific Research and Experimental Development Program

Clause 70 creates new sections 162(5.1) to 162(5.3) in the ITA to provide for a penalty of $1,000 for the provision of false or incomplete information regarding the disclosure of the identity of the person or partnership who prepared a claim in relation to the Scientific Research and Experimental Development (SR&ED) investment tax credit.[9] The clause introduces the term “claim preparer,” which is defined as

> a person or partnership who agrees to accept consideration to prepare, or assist in the preparation of, the [SR&ED] form but does not include an employee who prepares, or assists in the preparation of, the form in the course of performing their duties of employment.

2.1.11 Tax Incentives for Certain Mining Expenditures

Clauses 100, 101 and 118 amend section 1100(1), section 1101 and Schedule II respectively of the ITR to create Class 41.2, which provides for the phasing out of the ACCA rate of 100% for certain mining capital assets acquired for a new mine or an eligible expansion. Under Class 41.2, the ACCA rate of 100% will be reduced to 90% in 2017, 80% in 2018, 60% in 2019 and 30% in 2020; the regular rate of 25% on a declining balance basis will apply after 2020.

Clause 103 amends section 1104(2) of the ITR to exclude from new Class 41.2 capital expenditures incurred after 21 March 2013 and before 2018 with respect to a new mine or an eligible expansion under the following conditions:

- the expenditures are incurred as a result of a written agreement that is entered into before 21 March 2013; or
- the construction or the engineering and design work for the construction was started before 21 March 2013.

These expenses are not subject to the phasing out of the ACCA and will continue to be deductible at the 100% ACCA rate.

References to new Class 41.2 are added to section 1102(8) of the ITR by clause 102, to sections 1104(5), 1104(5.1), 1104(7) and 1104(8.1) by clause 103, to section 4600 by clause 106, and to Schedule II by clauses 116 and 117. In addition, clause 102 adds transitional provisions in new section 1102(14.12) and makes a consequential amendment to section 1102(14).

Clauses 31 and 32 amend sections 66.1(6) and 66.2(5) respectively of the ITA to phase out the preferential deduction rate for certain pre-production mine development expenses qualifying as Canadian exploration expenses (CEE).[10] The amendments transition such expenses from the CEE category to the Canadian development expense (CDE) category over the 2013–2018 period. Expenses that are considered to fall within the CDE category can be deducted at a rate of 30% annually.

A portion of eligible pre-production expenses incurred before 2018 will continue to qualify as CEE based on the following rates: 100% in 2013 and 2014, 80% in 2015, 60% in 2016 and 30% in 2017. Starting in 2018, eligible pre-production expenses will qualify as CDE only. Grandfathering provisions are added to section 66.1(6) of the ITA to ensure that eligible pre-production expenses incurred before 2017 continue to be treated as CEE under the following conditions:

- if they are incurred as a result of a written agreement entered into before 21 March 2013; or
- if either the construction or the engineering and design work for the construction was started before 21 March 2013.

2.1.12 The Additional Deduction for Credit Unions

The first budget implementation bill in relation to the 2013 federal budget phased out – over five years beginning in 2013 – the additional deduction for credit unions provided under section 137(3) of the ITA, and a consequential amendment was made to the definition of the term “full rate taxable income” in section 123.4(1)(*a*)(iv).[11]

Clause 54 of Bill C-4 amends section 123.4(1)(*a*)(iv) to ensure that the taxable income of a credit union not benefitting from the additional deduction is not precluded, because of that section, from benefitting from the general rate reduction provided in section 123.4(2) of the ITA. (Section 123.4(2) reduces the tax payable by a corporation by 13% of the corporation’s income that is not exempt from tax and not subject to other tax rate reductions.)

2.1.13 Leveraged Life Insurance Arrangements

Clause 89 amends section 248(1) of the ITA to create new definitions for the terms “10/8 policy” and “LIA policy.” A “10/8 policy” is a life insurance policy purchased by a corporation for an employee that is used by the corporation as collateral for a loan where the return on the investment account for the policy is based on the rate of interest or the amount borrowed. An “LIA policy,” or leveraged insured annuity

arrangement policy, is a life insurance policy and annuity purchased by a corporation for an employee that is used by the corporation as collateral by assigning an interest in the policy and in the annuity contract to the lender.

Clause 11 amends section 20 to change the tax treatment of insurance premiums made by a corporation for a 10/8 or LIA policy, while clause 34 amends section 70 to change the valuation of LIA policies at the time of death for tax purposes. Clause 41 amends the definition of the term “capital dividend account” in section 89 to reduce the amount otherwise included in the account for a 10/8 or LIA policy, while clause 65 amends section 148 to adjust the amount to be included in a policyholder’s income for the full or partial surrender of an interest in a 10/8 policy. Finally, clause 96 makes consequential amendments to section 201 of the ITR to limit the filing requirements of LIA insurers, and clause 97 makes consequential amendments to section 306 to ensure that income earned in an LIA policy is taxed on an accrual basis.

Together, these clauses amend the ITA and the ITR to deny the tax benefits associated with 10/8 and LIA policies. For example, prior to these changes, corporations purchasing such policies could deduct the interest payable on borrowing and on the insurance premium, and they could increase the capital dividend account by the amount of the death benefits.

2.1.14 Restricted Farm Losses

Clause 14 amends section 31 of the ITA[12] as a consequence of the Supreme Court of Canada’s decision in *Canada v. Craig*.[13] With the change, a taxpayer is limited to the “unrestricted” loss deduction in respect of farm losses if he or she does not have farming, or farming and some other source of income of a lower amount, as his or her livelihood. As well, the “unrestricted” portion of losses from farming for a taxpayer is increased to $2,500 plus half of the next $30,000 of losses.

2.1.15 Corporate Anti-loss Trading

Clause 94 adds section 256.1 to the ITA to prevent corporations from selling tax attributes to, or purchasing such attributes from, other corporations in order to reduce their tax burden.[14] Specifically, clause 94 creates a definition of the term “attribute trading restriction” that applies to transactions between corporations where one corporation holds shares valued at more than 75% of the fair market value of all of the shares of the other corporation.

It also creates rules that deem the corporations, where the attribute trading restriction applies, to be unaffiliated for purposes of loss consolidations within an affiliated or related group. These rules also apply to a series of transactions and to situations where a corporation with undeducted tax attributes acquires control of a profitable corporation and has relied on the Supreme Court of Canada’s decision in *Duha Printers (Western) Ltd. v. Canada*.[15]

Clauses 39 and 93 make consequential amendments to sections 87 and 256 respectively.

2.1.16 Reassessment Period

Clause 67 amends section 152 of the ITA to extend the normal reassessment period as follows:

- from three years from the date of mailing of the original notice of assessment to three years from the date that an information return required by section 237.1(7) or section 237.3(2) is filed by the taxpayer; and
- to six years from the date of the original assessment or notification if the taxpayer has failed to report income from a specified foreign property[16] on his or her annual income tax return and either:
  - Form T1135, "Foreign Income Verification Statement," was not filed on time; or
  - a specified foreign property was not identified or was improperly identified on Form T1135.

The extended reassessment period for a taxpayer who files an information return required by section 237.1(7) or section 237.2(2) applies only to the deduction or claim for the tax shelter or benefit of the reportable transaction that is required to be reported on such returns.

2.1.17 Thin Capitalization

Clauses 4 and 8 amend sections 12 and 18 of the ITA respectively to extend the thin capitalization rules[17] to two groups:

- partnerships that operate in Canada and have, as members, Canadian-resident trusts or non-resident corporations or trusts; and
- non-resident corporations and trusts directly operating in Canada.

In addition, clause 8 amends section 18(5) to add a definition of the term "equity amount"; the definition provides that the amount of equity in a Canadian-resident trust is determined by reference to the capital contributions from specified non-residents, returns of capital to specified non-residents and retained earnings. The calculation of the "equity amount" excludes distributions of a trust to a non-resident beneficiary that are treated as income for purposes of non-resident withholding tax.

2.1.18 Electronic Suppression of Sales Penalties and Offences

Clauses 71 and 86 of **Bill C-4 add sections 163.3 and 239.1 to the ITA**, respectively, to impose administrative monetary penalties and establish new criminal offences respecting electronic suppression of sales software or devices that are, or are intended to be, capable of use for records that are required under the ITA. These new penalties and offences would supplement those otherwise provided by the ITA, as well as those provided by the *Excise Tax Act*.[18]

2.1.19 Specified Investment Flow-Through Entities, Real Estate Investment Trusts and Non-resident Trusts

Clauses 5 and 10 amend the ITA to restrict the use of "stapled securities" by specified investment flow-through entities (SIFTs), also known as income trusts and partnerships, and real estate investment trusts (REITs).[19] Clause 5 adds section 12.6 to provide a series of anti-avoidance rules that apply during a temporary "unstapling" of a stapled security, while clause 10 adds section 18.3 to provide a definition of the term "stapled security" and to identify situations in which a deduction is denied in relation to such a security.

Clauses 51, 68, 69 and 72 amend sections 122.1(1), 156, 157 and 197(6) respectively to clarify the situations in which a trust or partnership is considered to be a SIFT trust or partnership, and to require SIFT trusts and partnerships to be subject to the same rules as public corporations in relation to the payment – through instalments – of estimated tax liabilities.

Finally, clause 83 responds to the Tax Court of Canada decision in *Richard Lewin Re: The J.J. Herbert Family Trust #1 v. the Queen*,[20] which indicated that, in situations where a Canadian-resident trust becomes non-resident, withholding tax would not apply to payments to non-resident beneficiaries. This clause amends section 214(3)(*f*) of the ITA to ensure that withholding tax is applicable on payments made by a Canadian resident trust that becomes non-resident. The withholding tax is applied by deeming the payments to have been made when the trust was resident in Canada.

2.1.20 Measures Announced on 21 December 2012

Clause 60 amends section 127.52 of the ITA to restrict an individual's limited partnership loss for the purpose of calculating the alternative minimum tax[21] only if his or her interest in the partnership is an interest for which an identification number must be, or has been, obtained under section 237.1 of the ITA.[22]

Clauses 74 to 79 amend sections 207.01, 207.04, 207.05, 207.06, 207.061 and 207.07 to restrict the application of the tax specified in Part XI.01 of the ITA.[23] In particular, the tax specified in that part will not be applied on Tax-Free Savings Account, Registered Retirement Savings Plan or Registered Retirement Income Fund investments that are "excluded property."[24]

Finally, clause 24 amends section 55 to provide tax relief to taxpayers receiving dividends[25] from a "related" corporation[26] during certain corporate reorganizations that have been outlined in various comfort letters issued by the Department of Finance since October 2004. These reorganizations include an internal reorganization between a parent and a subsidiary, and the splitting of a corporation.

2.1.21 Disclosure of Tax Information for Temporary Foreign Workers

Clause 87(1) provides clarification that taxpayer information may be disclosed to an official of Employment and Social Development Canada for the purpose of the administration or enforcement of an employment program for temporary foreign workers.

Clause 87(1) also allows the federal government to provide the telephone number of a taxpayer to a federal or provincial government department or agency solely for research and analysis.

2.2 Part 2 – Implementation of Certain Goods and Services Tax and Harmonized Sales Tax Measures Proposed in the 2013 Budget

2.2.1 Penalties for Electronic Suppression of Sales

Clauses 121 and 123 of Bill C-4 add sections 285.01 and 327.1, respectively, to the *Excise Tax Act* to impose administrative monetary penalties and criminal sentences for electronic suppression of sales software or devices that may be used or are intended to be used for records that must be kept under the *Excise Tax Act*. These new penalties and sentences are added to the penalties that may be imposed under the ITA.

2.2.2 The Supply of Property or Service for No Consideration

Clause 124 of Bill C-4 amends section 10 of Part VI of Schedule V to the *Excise Tax Act* in order to exclude from exemption the supply of a parking space if it is made for consideration, by way of lease, licence or similar arrangement and in the course of a business carried on by a public sector body.

The amendment clarifies that section 10 of Part VI of Schedule V does not apply to supplies of commercial paid parking by a public sector body even if the body provides a significant amount of parking at no charge.

2.3 Part 3 – Implementation of Various Other Measures

2.3.1 Division 1: Measures Related to the *Employment Insurance Act*, *Employment Insurance (Fishing) Regulations* and Other Related Acts

Clauses 125 to 134 and 136 to 156 of Bill C-4 amend the *Employment Insurance Act*[27] and other Acts to make the following changes to employment insurance (EI) program financing:

- The employee premium rate (for residents outside Quebec[28]) will be frozen at its 2014 level of 1.88% of insurable earnings for 2015 and 2016.
- Despite the freeze, if necessary, in 2015 and 2016, the premium rate may be decreased by more than the legal variation limit of 0.05%.

- Starting in 2017, the Canada EI Commission will set the premium rate each year to generate sufficient revenue to equal the deficits accumulated since the creation of the EI Operating Account in January 2009, also taking into account the revenues and expenditures forecasted for the Account for the next seven years, and the limit of 0.05% in the variation of the premium rate.
- Some deadlines – for example, the deadlines for the communication of information to the Chief Actuary, to set the yearly maximum insurable earnings and to publish an annual report – will be changed slightly.

Clause 135 of Bill C-4 both extends and expands a temporary measure aimed at small employers. Employers who paid up to $15,000 in EI premiums in their 2013 taxation year will be eligible for a refund of increases in their contributions. This measure has been extended beyond its earlier limit of 2012 and the previous annual premium amount of $10,000. The maximum rebate is $1,000 per employer (this remains unchanged).

Clause 157 of Bill C-4 makes technical adjustments to the *Employment Insurance (Fishing) Regulations*[29] (EIFR). They ensure that, if a person had both fishing and non-fishing earnings and claims regular benefits, the fishing earnings continue to be included in the calculation of benefits as determined in the EIFR. This would be in line with the recent changes made to the calculation of EI regular benefits (for those without fishing earnings).

2.3.2 Division 2: Amendments to the *Office of the Superintendent of Financial Institutions Act*, the *Financial Consumer Agency of Canada Act*, the *Trust and Loan Companies Act*, the *Bank Act* and the *Insurance Companies Act*

Clause 159 repeals section 20 of the *Office of the Superintendent of Financial Institutions Act*.[30] Under this section, the Superintendent of Financial Institutions, the Commissioner of the Financial Consumer Agency of Canada, the Governor of the Bank of Canada, the Chairperson of the Canada Deposit Insurance Corporation and the Deputy Minister of Finance are prohibited from borrowing money from a federally regulated financial institution or from a corporation that has insurance under the *Canada Deposit Insurance Corporation Act* without giving notice to the Minister of Finance. Clause 166 repeals section 15 of the *Financial Consumer Agency of Canada Act*,[31] which restricted the Commissioner and Deputy Commissioner of the Financial Consumer Agency of Canada in a similar way.

Clause 160 repeals section 164(*g*) of the *Trust and Loan Companies Act*;[32] clauses 161 to 163 repeal sections 160(*g*), 160.1 and 750(*g*) of the *Bank Act*;[33] and clauses 164 and 165 repeal sections 168(1)(*g*), 168(3) and 797(*g*) of the *Insurance Companies Act*.[34] With some exceptions,[35] these sections prohibited federal and provincial Crown agents, as well as federal and provincial government employees, from being directors of federally regulated financial institutions, including banks, trust and loan companies and insurance companies and their related holding companies.

2.3.3 Division 3: Indirect Foreign Investment by Financial Institutions

Clauses 167 to 173 amend section 451 of the *Trust and Loan Companies Act*, sections 466 and 928 of the *Bank Act*, sections 493, 552 and 969 of the *Insurance Companies Act*, and section 388 of the *Cooperative Credit Associations Act*.[36] These provisions deal with permitted investments by Canadian financial institutions. With the changes, Canadian financial institutions will not be permitted to indirectly acquire control of, or indirectly acquire or increase a substantial investment in, a regulated foreign entity operating primarily outside of Canada that is engaged in banking, insurance, a cooperative credit society, providing fiduciary services or dealing in securities.

Canadian financial institutions that currently have substantial investments in this type of foreign entity may continue to hold those investments.

2.3.4 Division 4: Amendments to the *Criminal Code* and the *Department of Foreign Affairs, Trade and Development Act* in Relation to Passports

Division 4 of Part 3 makes two amendments in relation to passports. These amendments appear to be largely for the purpose of ensuring that the appropriate minister is referred to, since passports are now administered by the Minister of Citizenship and Immigration rather than the Minister of Foreign Affairs.[37]

Clause 174 of Bill C-4 amends section 57(5) of the *Criminal Code*,[38] which defines the word "passport" for the purposes of various offences relating to passports. Currently under that section,

> "passport" means a document issued by or under the authority of the Minister of Foreign Affairs for the purpose of identifying the holder thereof.

Bill C-4 amends this section so that it instead says that "'passport' has the same meaning as in section 2 of the *Canadian Passport Order*":

> "passport" means an official Canadian document that shows the identity and nationality of a person for the purpose of facilitating travel by that person outside Canada.[39]

Clause 175 amends section 11(1) of the *Department of Foreign Affairs, Trade and Development Act*.[40] Currently under that section, the Governor in Council may, on the recommendation of the Minister of Foreign Affairs and the Treasury Board, make regulations prescribing documents issued by the minister for travel purposes for which fees are payable, as well as the amount of the fees and the time and manner of their payment. Clause 175 specifies this means "documents issued by the Minister of Citizenship and Immigration," most likely since "Minister" would otherwise mean "Minister of Foreign Affairs" as a result of section 2 of that Act.[41] In practice, it appears that this provision relates only to fees that recover the Department of Foreign Affairs' costs in providing consular services;[42] fees for travel documents more generally[43] are established under the *Financial Administration Act*.[44]

2.3.5 DIVISION 5: *CANADA LABOUR CODE*

The *Canada Labour Code* (the Code) applies to federally regulated businesses, such as airlines, airports, ports, interprovincial transportation, telecoms and certain federal Crown corporations, such as the Canadian Broadcasting Corporation.[45]

2.3.5.1 NEW DEFINITION OF "DANGER" AND REPLACEMENT OF HEALTH AND SAFETY OFFICER

Clause 176 repeals the definitions "health and safety officer" and "regional health and safety officer," and according to clauses 177 to 179, the powers of these officers are now to be exercised by the Minister of Labour. For instance, under sections 122(1) and 125(1)(*x*) of the Code as amended by the bill, the Minister of Labour or the appeals officer may now give oral or written direction concerning health and safety.

The bill also changes the definition of "danger" so that section 122(1) of the Code now states that danger is something "that could reasonably be expected to be an imminent or serious threat to the life or health of a person."

2.3.5.2 INTERNAL COMPLAINT RESOLUTION PROCESS

Through amendments in clause 180, the Minister of Labour is involved in the internal complaint resolution process. New sections 127.1(8) to 127.1(11) of the Code stipulate that the minister will receive complaints from an employer or employee regarding a contravention of the sections with respect to health and safety and that the minister may decide to investigate the complaint and to make recommendations or issue directions in order to rectify any contravention of the Code with respect to health and safety.

New sections 128(12) to 128(14) of the Code also regulate the employer's decision regarding an employee's refusal to work under dangerous conditions. The employer may:

- agree that a danger exists;
- agree that a danger exists but consider it a normal condition of employment;
- determine that the refusal to work would put the life, health or safety of another person in danger; or
- determine that a danger does not exist.

An employee who disagrees with the employer's decision may continue to refuse to work. Under new section 129(1) of the Code, the Minister of Labour may then decide whether to investigate the matter again. New section 129(7) provides that an employee who still disagrees with the decision by the Minister of Labour may appeal the decision to an appeals officer.

2.3.5.3 Exercise of the Minister of Labour's Powers

The bill also provides, through the addition of new section 140 of the Code, for the exercise of the Minister of Labour's powers in relation to health and safety. New section 140(1) states that the Minister of Labour may delegate to any qualified person or class of persons any of the powers that the minister may exercise himself or herself. Under new sections 140(2) and 140(3), the minister may delegate his or her powers by entering into an agreement with a province or any provincial body. The delegates of the Minister of Labour are not personally liable for any acts or omissions committed in good faith. New section 140(6) states that this immunity does not extend to Her Majesty in right of Canada, which remains liable for any acts or omissions.

2.3.6 Division 6: Changes to the Canadian Ministry

Division 6 of the bill amends the *Department of Human Resources and Skills Development Act*[46] to change the name of the department to the Department of Employment and Social Development and to reflect that name change in the title of that Act and of its responsible minister. In addition, the division amends Part 6 of the Act to extend the Minister's powers with respect to certain Acts, programs and activities and to allow the Minister of Labour to administer or enforce electronically the *Canada Labour Code*. The division also adds the title of the Minister of Infrastructure, Communities and Intergovernmental Affairs to the *Salaries Act*.[47] Lastly, it makes consequential amendments to several other Acts to reflect these changes, mostly those regarding the change in the names of the minister and the department.

2.3.7 Division 7: Dominion Coal Blocks

Division 7 gives the federal government the power to dispose of, or otherwise deal in any way with, the Dominion Coal Blocks, two parcels of land totalling 20,000 hectares in the Crow's Nest Pass region between Alberta and British Columbia.

Under the *Constitution Act, 1867*, the provinces own natural resources within their territory. However, in 1905, the Government of Canada acquired the Dominion Coal Blocks from the Province of British Columbia in exchange for support provided by the federal government for the construction of a railway through the Crow's Nest Pass.

In August 2013, the Government of Canada signalled its intention to review federal real property holdings, including the Dominion Coal Blocks, with a view to determining if continued public ownership of these assets remained relevant.[48] Division 7 of Part 3 is the further expression of this objective.

The Dominion Coal Blocks are defined in clause 239 as consisting of two lots: Parcel 73, which is approximately 2,000 hectares, and Parcel 82, which is in excess of 18,000 hectares. A specified part of Parcel 82 is excluded from potential disposition.

Clause 241 gives the federal government broad powers to deal with any part of, or interest in, the Dominion Coal Blocks as it considers appropriate.

Clause 244 provides that any obligations and liabilities the federal government has under the *Crow's Nest Pass Act* and all rights acquired by any other party in relation to the conveyance of the Dominion Coal Blocks to the Government of Canada are terminated with the coming into force of that clause. No compensation may be claimed for rights extinguished by the coming into force of this legislation.

Any money from the sale of the Dominion Coal Blocks is public money for the purposes of the *Financial Administration Act*.

The *Federal Real Property and Federal Immovables Act* does not apply to the disposition of the Dominion Coal Blocks (clause 248).

2.3.8 Division 8: Reorganization of Four Crown Corporations that Own or Operate International Bridges

Division 8 authorizes the amalgamation of four federal Crown corporations: The Federal Bridge Corporation Limited, the St. Mary's River Bridge Company, the Seaway International Bridge Corporation, Ltd., and the Blue Water Bridge Authority. These corporations operate international bridge crossings between Canada and the United States. The St. Mary's River Bridge Company and the Seaway International Bridge Corporation, Ltd., are both fully owned subsidiaries of the Federal Bridge Corporation Limited, whereas the Blue Water Bridge Authority is an autonomous parent Crown corporation.

The corporation resulting from the amalgamation of these four Crown corporations would operate under the direction of the chief executive officer and the members of the board of directors of the Federal Bridge Corporation Limited. The amalgamated corporation would have the power to collect tolls and other fees for the crossings it operates, and issue debt to finance its operations up to a total amount of $130 million.

Division 8 also makes consequential amendments to other Acts and repeals five Acts that would no longer serve a purpose if the operations of the St. Mary's River Bridge Company, the Seaway International Bridge Corporation, Ltd., and the Blue Water Bridge Authority were amalgamated with those of the Federal Bridge Corporation Limited.

2.3.9 Division 9: Amendments to the *Financial Administration Act*

According to the *Financial Administration Act*, all borrowing from capital markets by a corporation that is an agent of the Crown must be approved by Parliament. Clause 270 of Bill C-4 amends section 100 of the *Financial Administration Act* to allow agent corporations either to pledge any securities or cash that they hold or to give deposits as a security for the payment or performance of obligations arising out of derivative contracts they enter into – or guarantee – for the "management of financial risks."

Section 83(1) of the *Financial Administration Act* defines the term "agent corporation" to mean "a Crown corporation that is expressly declared by or pursuant to any other Act of Parliament to be an agent of the Crown." Not all Crown corporations are agent corporations.

2.3.10 DIVISION 10: AMENDMENTS TO THE *NATIONAL RESEARCH COUNCIL ACT*

The National Research Council of Canada (NRC),[49] a federal organization for which the Minister of Industry has responsibility, was created by the *National Research Council Act*[50] to conduct scientific research on behalf of the federal government and private industry. The name "National Research Council" refers to both the various organizations under the governance of the NRC and the NRC's governing council (the Council). At present, the Council is composed of a president and 18 members appointed by the Governor in Council for three-year terms. Clause 271 defines the term "Chairperson" to mean the chairperson of the Council, a position created by the bill.

Clause 272 replaces section 3(1) of the *National Research Council Act* to re-establish the Council and its name, but change its composition. In particular, the newly created role of chairperson is added to the Council, the number of members is reduced from 18 to 12, and the president continues to be a Council member. Clause 273 amends section 9 to allow the Minister of Industry – with the approval of the Governor in Council – to appoint a person to act as president or chairperson of the Council for a period of 90 days or longer; in cases where the appointment is for longer than 90 days, the approval of the Governor in Council is required.

Section 11(2), which stipulates that the salary of the acting president be set by Governor in Council, is repealed by clause 274. Finally, clause 275 replaces section 13, and provides the Council's chairperson with the authority to determine the location of and to preside over Council meetings. The Act currently permits the Council to determine the location of meetings.

2.3.11 DIVISION 11: *VETERANS REVIEW AND APPEAL BOARD ACT*

Clause 276 of the bill decreases the maximum number of permanent members on the Veterans Review and Appeal Board from 29 to 25. Section 18 of the *Veterans Review and Appeal Board Act*[51] states,

> The Board has full and exclusive jurisdiction to hear, determine and deal with all applications for review that may be made to the Board under the *Pension Act* or the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, and all matters related to those applications.

When an initial application for review is made, a review panel is formed, usually consisting of two permanent members. Veterans who are dissatisfied with this panel's decision may appeal the decision. The appeal panel consists of a minimum of three members, none of whom may have sat on the initial review panel. The Veterans Review and Appeal Board's *2012–13 Report on Plans and Priorities* states that the workload is managed by "up to 29 permanent Board Members and 85 operational staff."[52] The report also states that the workload is managed "with an average of 25 permanent Board Members and 85 operational staff."[53] In 2011–2012, the Board's objective was to issue review panel or appeal panel decisions within six weeks of the hearing.[54] In 2013–2014, the target was 80% of decisions "issued within the published service standard."[55]

2.3.12 DIVISION 12: AMENDMENTS TO THE *CANADA PENSION PLAN INVESTMENT BOARD ACT*

Clause 277 amends section 10(4) of the *Canada Pension Plan Investment Board Act*[56] to add an obligation for the Minister of Finance when making a recommendation to the Governor in Council regarding the appointment of directors and the appointment of a person to replace a director who leaves the position during its term. In particular, the minister must "endeavour" to ensure that a maximum of three of the 12 directors of the Canada Pension Plan Investment Board reside outside Canada. It also repeals section 10(9)(*h*) to remove the requirement that directors reside in Canada.

Clause 278 provides for the coming into force of the provision.

2.3.13 DIVISION 13: *PROCEEDS OF CRIME (MONEY LAUNDERING) AND TERRORIST FINANCING ACT*

Clause 279 amends section 11 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* [57] to ensure that legal counsel is not required to disclose communications that are protected by solicitor–client privilege; with the change, the current stipulation in Part 1 that legal counsel is not required to disclose such communications is expanded to the entire Act.

Clause 279 also amends section 65(3) so that any information discovered by the Financial Transactions and Reports Analysis Centre of Canada during attempts to ensure compliance by reporting entities, and subsequently disclosed to law enforcement agencies and regulatory authorities, can only be used by those agencies and authorities in relation to a contravention of or lack of compliance with Part 1 of the Act, and Part 1.1 when it comes into force.[58]

2.3.14 DIVISION 14: THE MACKENZIE GAS PROJECT IMPACTS FUND

Division 14 repeals the *Mackenzie Gas Project Impacts Act*[59] and establishes the Mackenzie Gas Project Impacts Fund Act.

The Mackenzie Gas Project is a proposal by a consortium to develop three natural gas fields in and near the Mackenzie Delta in the Northwest Territories, and to build pipelines, facilities and other infrastructure necessary to transport natural gas and natural gas liquids south to markets. The project has been approved by the National Energy Board, which issued a Certificate of Public Convenience and Necessity approved by the Governor in Council in March 2011. According to conditions of the certificate, the consortium must file updated cost estimates for the project and report – by 31 December 2013 – on their decision to construct. As well, construction must begin on the project by 31 December 2015 or the certificate will expire.

The *Mackenzie Gas Project Impacts Act* was part of the *Budget Implementation Act, 2006* and came into force 10 November 2006. It provided for the $500-million Mackenzie Gas Project Impacts Fund, which is to compensate for the possible effects of the Mackenzie Gas Project should it proceed. The *Budget Implementation Act, 2006* also established the Corporation for the Mitigation of Mackenzie Gas

Project Impacts, with a mandate to distribute the funds to regional organizations for eligible projects consistent with criteria set out in the legislation. As the release of funds is contingent on the Mackenzie Gas Project proceeding and the project has not commenced, no funds have been paid out to date.

The purpose of the Mackenzie Gas Project Impacts Fund Act that is enacted by Division 14 is to establish the Mackenzie Gas Project Impacts Fund, which is to provide contributions to regional organizations for projects that mitigate existing or anticipated socio-economic impacts on communities in the Northwest Territories arising from the Mackenzie gas project, and that meet any additional criteria established under the legislation.

The fund consists of $500 million credited to it from the Consolidated Revenue Fund.

Regional organizations to which funds may be distributed are defined as those set out in the schedule to the Act, which as yet contains no names. The Governor in Council may add or delete the name of any regional organization set out in the schedule.

In many respects, the new Act is identical to the repealed legislation. However, under the Mackenzie Gas Project Impacts Fund Act, funds are to be distributed by a designated minister of the Queen's Privy Council rather than a corporation created for that purpose. Also new under the Mackenzie Gas Project Impacts Fund Act is the stipulation that interest on the balance of the fund must be credited to the fund.

Clause 9 of the Mackenzie Gas Project Impacts Fund Act states that before providing a contribution to a regional organization, the minister must enter into an agreement with that organization that sets out the manner in which contributions are to be made, terms and conditions for those contributions, and provisions for the evaluation of the regional organization's performance in achieving the objectives of the project.

These provisions are identical to the previous legislation but for the substitution of the minister as responsible for entering into agreements rather than a corporation established for that purpose.

As in the repealed legislation, the payment of funds from the Consolidated Revenue Fund to the Mackenzie Gas Project Impacts Fund are conditional upon the Mackenzie Gas Project not being terminated and the designated minister being of the opinion that progress is being made on the project.

Division 14 makes several consequential amendments to other legislation as a result of the repeal of the *Mackenzie Gas Project Impacts Act*. Schedules to the *Access to Information Act* and *Privacy Act* are amended to remove the Corporation for the Mitigation of Mackenzie Gas Project Impacts from the list of "other government institutions" to which provisions of those Acts apply. Similarly, the Corporation for the Mitigation of Mackenzie Gas Project Impacts is removed from Schedule III of the *Financial Administration Act*.

Clause 286 repeals section 209 of the *Budget Implementation Act, 2006*, which provided for the funds for the Mackenzie Gas Project Impacts Fund to be paid to the Corporation for the Mitigation of Mackenzie Gas Project Impacts from the Consolidated Revenue Fund.

2.3.15 DIVISION 15: *CONFLICT OF INTEREST ACT*

Division 15 of Part 3 of Bill C-4, consisting of clauses 288 and 289, amends the *Conflict of Interest Act*.[60] Clause 288 of the bill amends the definitions for "public office holder" and "reporting public office holder" found in the current section 2 by reference to new sections 62.1 and 62.2, added by clause 289 to the end of Part 4 of the Act, in the "Administrative Monetary Penalties" section.

The bill's most notable addition to the Act is found in new section 62.2. The current definitions give the appropriate minister the ability to designate a full-time ministerial appointee as a "public office holder" and to designate a full-time ministerial appointee who is a public office holder as a "reporting public office holder." The new section authorizes the Governor in Council to designate, by order, any person as a "public office holder" and any public office holder as a "reporting public office holder." In both cases, this designation can apply to a person or class of persons.

The new power that section 62.2 gives to the Governor in Council is somewhat similar to the power assigned in section 12(*c.1*) of the *Lobbying Act*.[61] This provision enables the Governor in Council to make regulations designating, individually or by class, a "public office holder" as a "designated public officer holder" if, in the opinion of the Governor in Council, doing so is necessary for the purposes of the *Lobbying Act*. New section 62.2 of the *Conflict of Interest Act* does not contain a necessity test similar to the one in the *Lobbying Act*.

2.3.16 DIVISION 16: AMENDMENTS TO THE *IMMIGRATION AND REFUGEE PROTECTION ACT*

Clause 290 of Bill C-4 amends the *Immigration and Refugee Protection Act* (IRPA)[62] to create an additional and entirely new way for foreign nationals to become permanent residents of Canada through the economic class stream. Following a two-step process, a foreign national will first electronically submit an "Expression of Interest" to Citizenship and Immigration Canada (CIC); the Expression of Interest will be assessed automatically.[63] The candidate will then be placed in a pool where he or she will be ranked against other foreign nationals. In the second step, once CIC is made aware that an employer has offered employment to the candidate, who is already in the pool, and secured an approved labour market opinion,[64] an "Invitation to Apply" will be issued to the candidate, who will then submit a complete immigration application to CIC. The department will review the application and, if all the criteria are met, issue the candidate a permanent resident visa.

New section 10.3 of IRPA contains a detailed list of elements that the minister may set out in instructions to guide the implementation of this process, including the following:

- the classes of economic immigrants who may apply under this process;
- the electronic system that will be used;

- where other means of submitting the Expression of Interest may be possible;
- the means by which foreign nationals are to be advised that they have been retained in the pool;
- the basis for ranking the foreign nationals;
- the rank the foreign nationals need in order to be issued an Invitation to Apply;
- criteria to be eligible to receive an Invitation to Apply;
- how those retained in the pool will receive an Invitation to Apply;
- what personal information will be shared and with whom;
- the limit on the number of invitations to be issued within a specific period; and
- the period within which the complete immigration package must be submitted once an invitation has been issued.

Certain instructions will have to be published in the *Canada Gazette*, and all instructions will be available on the CIC website.

Clause 291 precludes requests for exemption from any of these new criteria or obligations on the basis of humanitarian and compassionate considerations.

Clause 292 provides that the provisions of the *Immigration and Refugee Protection Act* dealing with paid representatives also apply to services provided in connection with the submission of an expression of interest.

2.3.17 DIVISION 17: *PUBLIC SERVICE LABOUR RELATIONS ACT* AND *PUBLIC SERVICE EMPLOYMENT ACT*

Division 17 amends the *Public Service Labour Relations Act* (PSLRA)[65] to change two important aspects of labour relations in the public service:

- the process for resolving collective bargaining disputes; and
- the process for determining what constitutes essential services in the event of a strike.

It also makes a number of changes to the *Canadian Human Rights Act*[66] to enable discrimination-based grievances to be determined exclusively by adjudication under the PSLRA. Finally, Division 17 makes changes to the complaints process under the *Public Service Employment Act* (PSEA)[67] related to layoffs and the internal appointments process.

It should be noted that Part 3, Division 18, of the bill replaces the Public Service Labour Relations Board (PSLRB) and the Public Service Staffing Tribunal with a Public Service Labour Relations and Employment Board (PSLREB) to exercise the functions of those two bodies. The first dealt with collective bargaining disputes under the PSLRA, while the second dealt with complaints about the staffing and classification process under the PSEA.

2.3.17.1 Process for Resolving Collective Bargaining Disputes

2.3.17.1.1 Choice of Process: Arbitration or Conciliation

Currently, a bargaining agent (union) may choose the process for resolving collective bargaining disputes: arbitration or conciliation. Arbitration results in a decision (or award) that is binding on the parties. The choice of arbitration also means that a strike is not permitted. Conciliation results in a report by a public interest commission established under the PSLRA, which assists the parties in entering into a collective agreement. The Commission may recommend various means to resolve a dispute, including an award, but its report is not binding on the parties unless they agree to be bound prior to the start of the conciliation process.[68] Following a conciliation report, the parties may continue bargaining and a strike remains a possibility, subject to an essential services agreement.

New section 103 of the PSLRA, contained in clause 302 of the bill, makes conciliation the process of dispute resolution where the parties have not been able to negotiate a collective agreement. As set out in new section 104(1), however, the employer (the Treasury Board) and the bargaining agent for the bargaining unit may instead agree to arbitration as the method of dispute resolution. Under new section 104(2) of the PSLRA, arbitration is the means of resolving collective bargaining disputes where a bargaining unit has 80% or more of its positions designated as essential service positions.

New section 104(1) of the PSLRA states that if the employer is a separate agency, where the Treasury Board is not the employer, as is the case for agencies such as the Canada Revenue Agency and the Canadian Food Inspection Agency, the agency must obtain the approval of the president of the Treasury Board before choosing arbitration as the means of resolving a collective bargaining dispute.

2.3.17.1.2 Factors to Be Considered by Arbitration Boards in Making Awards

New section 148(1) of the PSLRA, contained in clause 307 of Bill C-4, re-orders and gives “preponderance” to certain factors that an arbitration board must consider in making an arbitration award in respect of a collective agreement. In addition, new section 148(1) makes reference to “prudent use of public funds” and whether compensation levels are sufficient to allow the employer to meet its operational needs.

Specifically, the bill provides that an arbitration board must be guided by the necessity of attracting and retaining competent public servants and Canada’s fiscal circumstances in relation to its stated budget objectives. An arbitration board is permitted to consider other factors, if relevant. Some examples are comparability of terms of employment in different segments of the public sector and the private sector; reasonableness of terms and conditions of employment in relation to the qualifications and the work performed; and the state of the Canadian economy.

Under new section 158.1 of the PSLRA, the chairperson of the PSLREB has the power to direct an arbitration board to review an arbitral award, on his or her own initiative or at the request of either party to the award, if in the chairperson's opinion the award does not represent a reasonable application of the factors listed in section 148. The arbitration board may confirm or amend the award.

2.3.17.1.3 Factors to Be Considered in the Conciliation Process

Clauses 316 and 317 state that a public interest commission conducting a conciliation process must consider the same factors as an arbitration board. The ordering of these factors is modified consistent with the ordering of factors under the arbitration process.

Clause 318 amends section 179 of the PSLRA to stipulate that the chairperson of the PSLREB may require the public interest commission to reconsider or clarify any aspect of its report if he or she is of the opinion that the relevant factors were not properly applied. This matches a similar provision related to arbitration awards.

2.3.17.1.4 Determination of Essential Services

Currently, the process for determining what positions in a bargaining unit are considered essential services – services that must be maintained because of their importance to the public – requires that the employer and a bargaining agent negotiate an agreement prior to a strike. Failing an agreement, the PSLRB must determine which positions are to be designated as essential. The bill changes this process significantly.

- Essential Services Agreements No Longer Required

  Under the bill, essential services are no longer determined by agreement. Instead, clause 305 introduces new section 119(1) of the PSLRA, which states that the employer has the exclusive right to determine whether any "service, facility or activity of the Government of Canada is essential" because it is necessary for public safety or security.

  Under new section 120 of the PSLRA, the employer is also granted the exclusive right to designate positions in a bargaining unit that are necessary to provide essential services. Notice of such designation must be provided to the bargaining agent for a bargaining unit in writing, identifying the specific positions designated to provide essential services.

- Duty to Consult Replaces Duty to Negotiate

  In place of a duty to negotiate an essential services agreement, under new section 122 of the PSLRA, Bill C-4 imposes a duty to consult the bargaining agent of a bargaining unit in which the employer has designated positions as essential. The consultation period ends 60 days after notice was given by the employer. Within 30 days following the 60 days, the employer must notify the bargaining agent of the positions it has designated as essential.

- Duty to Observe Terms and Conditions of Employment

  The bill does not affect the existing duty for the employer, the bargaining unit and the employee to continue to observe, during the period of negotiation of a new collective agreement, the terms and conditions of employment that otherwise exist. Notwithstanding any other provision in the PSLRA, new section 125(2) of the PSLRA gives the employer the right to require that an employee in a position designated as essential perform all the duties associated with the position and be available during off-duty hours to report to work to perform those duties if needed.

- No Role for Board to Resolve Disputes Concerning Essential Services

  Another change to the PSLRA is the elimination of the role of a labour relations board in resolving disputes over which positions are necessary to provide essential services to the public. There is no dispute resolution process prescribed in the bill where differences arise as to what positions are to be designated as essential.

2.3.17.2 Changes Involving Discrimination-Based Grievances

Various amendments in the bill will affect the grievance process under the PSLRA for discrimination-based grievances. Following are some of the amendments:

- The Canadian Human Rights Commission's right to participate in adjudications of discrimination-based grievances under the PSLRA is eliminated (clause 332).
- Grievances for discriminatory practices will be dealt with exclusively by grievance adjudication (clauses 325 to 328).
- The Canadian Human Rights Commission's jurisdiction to consider discrimination-based complaints from public servants is removed (clause 340).
- The range of remedies that a grievance adjudicator may grant in the event of a human rights violation is expanded, bringing them in line with those a human rights tribunal may award.

2.3.17.3 Changes Affecting Recourse for Staffing Complaints Under the *Public Service Employment Act*

2.3.17.3.1 Complaints Process for Layoffs

According to clauses 348 and 349 of Bill C-4, employees selected for lay-off may only make a complaint to the PSLREB if they are part of a group of employees who occupy positions at the same group and level and perform similar duties who are not selected for lay-off.

The bill gives the PSLREB authority to make findings of discriminatory practices in respect of layoffs in accordance with the *Canadian Human Rights Act* under new sections 65(5) and 76.1 of the PSEA.

2.3.17.3.2 Complaints to the Public Service Labour Relations and Employment Board Regarding Internal Appointments

Sections 77 and 79 of the *Public Service Employment Act* (PSEA) deal with appointments made or proposed by the Public Service Commission in an internal appointment process. Currently, section 77 provides that unsuccessful candidates and persons in a designated selection area may make a complaint to the Public Service Staffing Tribunal on the grounds of abuse of authority by the Commission in the selection process or failure to assess a candidate in the official language of his or her choice may be made. Clause 351 amends these sections of the Act so that a complaint may be made if the complainants have been determined by the Commission to meet the essential qualifications for the work to be performed. However, no complaints may be made for certain types of appointments, such as reappointment on revocation by a deputy head or the Commission, priorities in respect of surplus employees and reappointment following an order of the PSLREB.

Under new section 78 of the PSEA, a person who does not meet the essential qualifications for the work to be performed may make a complaint concerning that determination. No complaint may be made for the classes of appointments noted above.

Clauses 352 to 355 of the bill grant the PSLREB powers to order various kinds of corrective action, and the authority to make findings of discrimination under the *Canadian Human Rights Act*.

2.3.18 Division 18: The New Public Service Labour Relations and Employment Board

Bill C-4 effectively combines the functions of the PSLRB and the Public Service Staffing Tribunal and assigns them to the new PSLREB. It does so by enacting a new statute, the Public Service Labour Relations and Employment Board Act (PSLREBA) and amending several statutes, the principal ones being the PSLRA, the PSEA, the *Parliamentary Employment and Staff Relations Act* (PESRA)[69] and the *Public Sector Equitable Compensation Act* (PSECA).[70]

The current PSLRB is constituted under, and its mandate and powers are prescribed by, the PSLRA. It serves as the dispute resolution body for collective bargaining matters in the public service, as well as for parliamentary employees under the PESRA. It is also mandated to refer grievances arising under a collective agreement for adjudication and to determine matters arising under the health and safety provisions in Part 3 of the PSLRA. The Tribunal hears and determines complaints from public servants in matters concerning staffing and classification of positions in the public service, including separate agencies.

The PSLREBA establishes the new PSLREB, and together with amendments to the PSLRA the PSEA and to a lesser extent, the PESRA and the PSECA, prescribes the new Board's mandate and powers, its composition and its functions. Many of the aspects relating to the PSLREB are now found in the new statute. Others remain in the PSLRA, the PSEA, the PESRA or the PSECA.

2.3.18.1 Matters Now Covered in the Public Service Labour Relations and Employment Board Act

2.3.18.1.1 Appointment of Members of the PSLREB, Tenure and Remuneration

Clause 365 enacts the PSLREBA. In most important respects, the appointment of members of the new PSLREB, the tenure of the members of the Board and provisions for remuneration – all of which are set out in sections 5 to 20 of the PSLREBA – remain the same as they were under the PSLRA. One notable exception concerns the criterion of knowledge and experience in labour relations matters: it is no longer found in the legislation. This may reflect the fact that the new PSLREB's mandate extends beyond labour relations and includes staffing and classification in the public service, functions now performed by the Tribunal under the PSEA. Members will continue to be appointed by the Governor in Council; full-time members will hold office for renewable terms of five years and part-time members for three years, and they are to be removed only for cause.

The provisions of the PSLRA concerning the appointment of Board members from among candidates whose names have been submitted by employer and bargaining agent representatives continues under the PSLREBA.

2.3.18.1.2 Powers, Duties and Functions of the PSLREB

The procedural powers of the PSLREB under the PSLREBA in relation to proceedings before the Board (found in sections 19 to 24) include the power to summon witnesses, administer oaths, develop pre-hearing procedures, accept any evidence and compel production of documents.

2.3.18.1.3 Powers of the Chairperson

In sections 25 to 30, the PSLREBA prescribes the general powers of the chairperson of the PSLREB, as chief executive officer, to direct and supervise the work of the PSLREB, assign members to panels, manage the new Board's human resources and exercise the powers of the Treasury Board as an employer in determining terms and conditions of employment.

2.3.18.1.4 General Regulation-Making Powers

The regulation-making powers of the Board are now found in both section 36 of the PSLREBA and in the amended PSLRA. The regulation-making power in the PSLREBA largely deals with hearing procedures. The PSLREBA also grants a residual power to make regulations where necessary in the exercise of the new Board's functions and powers.

2.3.18.1.5 The Composition of Panels for Determining Matters Coming Before the PSLREB

One significant change affecting adjudication panels, whose composition and administration are set out in sections 37 to 40 of the PSLREBA, is the establishment of one-member panels as the norm and three-member panels as the exception. Under the current PSLRA, one-member panels are the exception, to be constituted by the chairperson of the PSLRB where "appropriate in the circumstances."

2.3.18.2 Matters Remaining in the Public Service Labour Relations Act

2.3.18.2.1 Adjudication and Mediation Services

Clause 367 sets out the adjudication and mediations services of the PSLREB. The provisions mandating the Board to provide adjudication and mediation services remain unchanged. However, the provision mandating the Board to provide research and analysis in respect of compensation has been repealed as has the provision establishing an advisory board to provide the chairperson of the Board with advice on research and analysis about compensation.

2.3.18.2.2 Powers of the PSLREB

Amended section 16 of the PSLRA provides that a number of powers to be exercised by the PSLREB, mainly in relation to the certification process, will remain in the PSLRA, including the power:

- to enter workplaces to view machinery, materials or work and to require any person in the workplace to answer questions relating to a matter before the new Board;
- to examine evidence connected with membership in an employee organization seeking certification, including articles of association or a constitution; and
- to enter an employer's premises to conduct representation votes.

2.3.18.2.3 Regulation-Making Power

The regulation-making power under the amended PSLRA, set out in clause 368 of Bill C-4, is largely related to the process to certify bargaining agents and determine bargaining units.

2.3.18.3 Amendments Affecting the PSEA, the PESRA and the PSECA

The PSEA will no longer refer to the Tribunal, its powers, mandate and functions, since these are now assumed by the new Board. In addition, the provisions concerning the complaints process under the PSEA are repealed, since the new Board will assume all responsibility for adjudication of these complaints.

The PSLREB will have regulation-making powers under section 109 of the PSEA for matters relating to the scope of the PSEA – that is, staffing and classification in the public service.

The amendments to PESRA are minor in nature, since the current Board is already responsible for adjudication of collective bargaining disputes for parliamentary employees.

The PSECA governs pay equity in the federal public sector. It is currently not in force. Changes to PSECA are minor in nature, since the PSLREB is already mandated to determine pay equity disputes. PSECA supplements the powers of the PSLREB granted under the PSLREBA with powers specific to the pay equity dispute resolution process.

2.3.19 Division 19: Amendments to the *Supreme Court Act* in Relation to Certain Eligibility Criteria for Appointees

Division 19 of Part 3 adds two new sections to the *Supreme Court Act*,[71] in order to clarify certain eligibility criteria for Supreme Court justices.[72] The need for clarity appears to have arisen in the context of the nomination of Justice Marc Nadon to the Court, to replace Justice Morris Fish, a retiring Quebec judge.[73]

According to his biography, Justice Nadon practised law in Montréal from 1974 to 1993, and was a judge of the Federal Court from 1993 to 2001 and a judge of the Federal Court of Appeal from 2001 until his appointment to the Supreme Court.[74] In announcing Justice Nadon's nomination, the Prime Minister also released a legal opinion from retired Supreme Court Justice Ian Binnie stating that a sitting Federal Court judge is qualified for appointment to the Supreme Court as a Quebec member, assuming that the judge has been a member of the Quebec bar for 10 years prior to appointment to the Federal Court.[75] This question of qualification arose because sections 5 and 6 of the Act can be interpreted in different ways.

Currently, under section 5 of the Act, any person may be appointed a Supreme Court judge who is or has been a judge of a superior court of a province or a barrister or advocate with at least 10 years' standing at the bar of a province.[76] Section 6 of the Act, which is specific to the province of Quebec, states as follows: "At least three of the judges shall be appointed from among the judges of the Court of Appeal or of the Superior Court of the Province of Quebec or from among the advocates of that Province."

As a result, some have questioned whether Justice Nadon was qualified for appointment to the Supreme Court of Canada, since he was not a judge of the Court of Appeal or of the Superior Court of Quebec, nor was he "among the advocates" of that province at the time of his appointment. The appointment is currently being challenged on that basis, alongside other arguments, including that the appointment of Federal Court judges as "Quebec" judges would change the "composition" of the Supreme Court and would require a constitutional amendment.[77]

Bill C-4 was introduced by the Government subsequent to these events, with the following two "declaratory provisions"[78] added following sections 5 and 6, respectively, of the *Supreme Court Act*, for the stated purpose of "clarifying – without making changes to the existing law – that individuals with at least 10 years [at the] Quebec bar at any time during their career, are eligible to sit on the Supreme Court of Canada as a Quebec member": [79]

> 5.1 For greater certainty, for the purpose of section 5, a person may be appointed a judge if, at any time, they were a barrister or advocate of at least 10 years standing at the bar of a province.
>
> 6.1 For greater certainty, for the purpose of section 6, a judge is from among the advocates of the Province of Quebec if, at any time, they were an advocate of at least 10 years standing at the bar of that Province.

In addition, the government has referred the following two questions[80] to the Supreme Court for hearing and consideration under section 53 of the *Supreme Court Act*:

> 1. Can a person who was, at any time, an advocate of at least 10 years standing at the Barreau du Québec be appointed to the Supreme Court of Canada as a member of the Supreme Court from Quebec pursuant to sections 5 and 6 of the *Supreme Court Act?*
>
> 2. Can Parliament enact legislation that requires that a person be or has previously been a barrister or advocate of at least 10 years standing at the bar of a province as a condition of appointment as a judge of the Supreme Court of Canada or enact the annexed declaratory provisions as set out in clauses 471 and 472 of the Bill entitled *Economic Action Plan 2013 Act, No. 2?*

NOTES

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• Sylvain Fleury	Sections 2.1.3, 2.1.7, 2.1.18, 2.2.1 and 2.2.2
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1. *Income Tax Act* [ITA], R.S.C., 1985, c. 1 (5th Supp.).

2. One half of the Lifetime Capital Gains Exemption [LCGE] can be deducted from taxable capital gains. With this change, the LCGE amount increases from $750,000 to $800,000.

3. *Income Tax Regulations*, C.R.C., c. 945.

4. Derivative forward agreements are used by taxpayers to convert the tax treatment of income earned through a contract involving an underlying interest from “ordinary” income, all of which is taxable, to “capital gains” income, of which half of the gain is taxable.

5. For information on derivatives, see Office of the Superintendent of Financial Institutions Canada, “Guideline: Derivatives Best Practices,” May 1995.

6. The arrangement can be characterized as a rental or transfer of the gain/profit or loss from a property.

7. *Canada v. Sommerer*, 2012 F.C.A. 207.

8. Section 75(2) of the ITA states that in the case where the ownership of the trust property can revert to the person from whom it was received, income and losses generated from trust property in a non-resident trust can be attributed to the resident Canadian taxpayer from whom the property was received. The Federal Court of Appeal in *Canada v. Sommerer* concluded that section 75(2) does not apply when a person sells a property to a trust for fair market value.

9. Canada Revenue Agency, *Scientific Research and Experimental Development Tax Incentive Program*.

10. To qualify as Canadian exploration expenses, pre-production mine development expenditures, such as those for clearing, removing overburden and stripping, and sinking a mine shaft, must be incurred for the purpose of bringing a new mine into production.

11. Credit unions have access to the small business deduction under section 125(1) of the ITA on the same basis as Canadian-controlled private corporations. In addition to the deduction provided under section 125(1), section 137(3) provides credit unions with an additional deduction. Section 137(3) generally permits the lowest corporate rate to be applied on income equal to 5% of the aggregate of all deposits and the amount of any membership shares in the credit union.

12. Since 1951, the ITA’s general policy is that a taxpayer may offset losses from one business or source of income against profits from another source of income, without any limitation, unless there are specific exceptions. For example, section 31 limits the ability of taxpayers to deduct farming activities losses from other forms of income unless the taxpayer’s chief source of income for the year is farming or a combination of farming and some other source of income. Specifically, taxpayers with a primary source of income other than farming are able to deduct $2,500 plus half of the next $12,500 of farm losses, known as an “unrestricted” farm loss, from other sources of income; losses above this amount are known as a “restricted” farm loss and can be applied to farm income only.

13. *Canada v. Craig*, [2012] 2 S.C.R. 489.

14. Tax attributes include, among other items, losses, investment tax credits, and scientific research and experimental development deductions.

15. *Duha Printers (Western) Ltd. v. Canada*, [1998] 1 S.C.R. 795.

16. Canada Revenue Agency, *Foreign Income Verification Statement*.

17. Thin capitalization rules prevent a corporation resident in Canada from deducting interest on debts owing to certain specified non-residents to the extent that the debts owing to such non-residents exceed a 1.5-to-1 debt-to-equity ratio. The rules protect the Canadian tax base by preventing Canadian corporate profits from being distributed to certain non-resident shareholders free of Canadian income tax by way of interest payments on excessive debt.

18. *Excise Tax Act*, R.S.C., 1985, c. E-15.

19. Stapled securities are two or more separate securities "stapled" together and thus are not transferable independently from each other; stapled securities must be publicly traded or listed. An example of a stapled security is a share of a public corporation being stapled to a debt of that corporation. To date, some specified investment flow-through entities [SIFTs] and partnerships, and real estate investment trusts [REITs] have taken deductions in relation to stapled securities that are not considered consistent with the tax regimes for SIFTS and REITs; these deductions would be permitted if the securities were "unstapled."

20. *Richard Lewin Re: The J.J. Herbert Family Trust #1 v. the Queen*, 2011 T.C.C. 476.

21. Department of Finance Canada, *The Alternative Minimum Tax*.

22. Section 237.1 of the ITA provides administrative rules relating to tax shelters. See Canada Revenue Agency, *Tax Shelter Reporting*; and Rosemarie Wertschek and James R. Wilson, "Shelter from the Storm: The Current State of the Tax Shelter Rules in Section 237.1," *Canadian Tax Journal*, Vol. 56, No. 2, 2008.

23. Canada Revenue Agency, *Anti-avoidance rules for RRSPs and RRIFs*.

24. "Excluded property" includes certain insured mortgages, newly created investment funds, investment funds that are winding up, and certain widely held investments.

25. Inter-corporate dividends are tax exempt; however, section 55 of the ITA deems certain inter-corporate dividends to be proceeds of disposition of a share and – thereby – taxable as a capital gain.

26. The definition of "related' is complex and is determined by reference to sections 55(3), 55(3.01), 55(3.1), 55(3.5), 55(5) and 251 of the ITA and relevant case law.

27. *Employment Insurance Act*, S.C. 1996, c.23.

28. Residents of Quebec have a lower premium rate because they have access to parental and maternity benefits through a provincial program, for which they pay a tax to the Government of Quebec.

29. *Employment Insurance (Fishing) Regulations*, SOR/96-445.

30. *Office of the Superintendent of Financial Institutions Act*, R.S.C., 1985, c. 18 (3rd Supp.), s. 20.

31. *Financial Consumer Agency of Canada Act*, S.C. 2001, c. 9, s. 15.

32. *Trust and Loan Companies Act,* S.C. 1991, c. 45, s. 164(*g*).

33. *Bank Act*, S.C. 1991, c. 46.

34. *Insurance Companies Act*, S.C. 1991, c. 47.

35. Section 160.1 of the *Bank Act* states that if the person is employed in a federal department or agency that is not involved in the regulation or supervision of financial institutions, the person's duties do not involve financial institutions and the bank is controlled by a cooperative credit society, he or she is not prohibited from being a director.

36. *Cooperative Credit Associations Act*, S.C. 1991, c. 48.

37. As noted by Passport Canada, the passport program was integrated into Citizenship and Immigration Canada on 2 July 2013. See Passport Canada, *About Passport Canada*; *Order Transferring the Control and Supervision of Certain Portions of the Federal Public Administration in Passport Canada from the Department of Foreign Affairs and International Trade to the Department of Citizenship and Immigration and to the Department of Human Resources and Skills Development*, SI/2013-56; and *Order Amending the Canadian Passport Order*, SI/2013-57.

38. *Criminal Code*, R.S.C., 1985, c. C-46, s. 57(5).

39. *Canadian Passport Order*, SI/81-86, s. 2.

40. *Department of Foreign Affairs, Trade and Development Act*, S.C. 2013, c. 33, s. 174, s. 11(1).

41. Note that the English version of subsection 2(2) of the *Department of Foreign Affairs, Trade and Development Act* specifically states that the Minister of Foreign Affairs is referred to in that Act as the "Minister," but the French version is silent in this regard.

42. *Consular Services Fees Regulations*, SOR/ 95-538.

43. *Passport and Other Travel Document Services Fees Regulations*, SOR/2012-253.

44. *Financial Administration Act*, R.S.C., 1985, c. F-11. For more information on the various fees and travel documents, see the "Regulatory Impact Analysis Statement" accompanying the *Passport and Other Travel Document Services Fees Regulations*.

45. *Canada Labour Code*, R.S.C., 1985, c. L-2.

46. *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34.

47. *Salaries Act*, R.S.C., 1985, c. S-3.

48. Natural Resources Canada, "Government of Canada Divestiture of Crown Lands," News release, 30 August 2013.

49. For information on this entity, see National Research Council of Canada, *Corporate overview*.

50. *National Research Council Act*, R.S.C., 1985, c. N-15.

51. *Veterans Review and Appeal Board Act*, S.C. 1995, c. 18.

52. Veterans Review and Appeal Board, *2012–13 Report on Plans and Priorities*, p. 5.

53. Veterans Review and Appeal Board, *2013–14 Report on Plans and Priorities*, p. 5.

54. Veterans Review and Appeal Board, *2011–12 Report on Plans and Priorities*, p. 8.

55. Veterans Review and Appeal Board, *2013–14 Report on Plans and Priorities*, p. 14.

56. *Canada Pension Plan Investment Board Act*, S.C. 1997, c. 40.

57. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

58. Part 1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* deals with record keeping, verifying identity, reporting suspicious transactions and the registration of money services businesses, while Part 1.1 of the Act implements measures to protect Canada's financial system from financial transactions originating from foreign states or entities.

59. *An Act to establish the Corporation for the Mitigation of Mackenzie Gas Project Impacts*, S.C. 2006, c. 4, s. 208.

60. *Conflict of Interest Act*, S.C. 2006, c. 9, s. 2.

61. *Lobbying Act*, R.S.C., 1985, c. 44 (4th Supp.).

62. *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

63. Citizenship and Immigration Canada, "Backgrounder – Expression of Interest (EOI): Preparing for Success in 2015."

64. A labour market opinion is issued by Employment and Social Development Canada to an employer who is able to establish that no Canadian is available to do the job in question, as an indication that the hiring of a foreign national will not adversely affect the labour market.

65. *Public Service Labour Relations Act*, S.C. 2003, c. 22, s.2.

66. *Canadian Human Rights Act*, R.S.C., 1985, c. H-6.

67. *Public Service Employment Act*, S.C. 2003, c. 22, ss. 12 and 13.

68. It has been noted that conciliation has been the route chosen by most public sector bargaining units. See C. Rootham, *Labour and Employment in the Federal Public Service*, Irwin Law, 2007, p. 229.

69. *Parliamentary Employment and Staff Relations Act*, R.S.C., 1985, c. 33 (2nd Supp.).

70. *Public Sector Equitable Compensation Act*, S.C. 2009, c. 2, s. 394.

71. *Supreme Court Act*, R.S.C., 1985, c. S-26.

72. Department of Justice, "Government of Canada takes steps to clarify certain eligibility criteria for Supreme Court justices," News release, 22 October 2013.

73. Prime Minister of Canada, "PM announces nominee for Supreme Court of Canada," News release, 30 September 2013.

74. Prime Minister of Canada, "The Honourable Mr. Justice Marc Nadon," Backgrounder, 30 September 2013.

75. Prime Minister of Canada, "Qualification of a member of the Federal Court with 10 years of experience as a member of the Québec bar to be appointed to the Supreme Court of Canada," Backgrounder, 30 September 2013.

76. Note that, on a certain reading of the text of section 5 of the *Supreme Court Act*, the English version appears to allow for present and past judges and advocates, but the French version appears to allow only for present and past judges while requiring present advocates.

77. See, in particular, proceedings launched in the Federal Court in Ontario, although it has been reported that the Quebec government will also challenge the appointment. (See Notice of Application, *Rocco Galati et al. v. The Right Honourable Stephen Harper et al.*, Federal Court file no. T-1657-13; *Proceedings Queries*, Federal Court no. T-1657-13; and Sean Fine, "MacKay rewording Supreme Court Act while seeking court's advice on legality of Nadon's appointment," *The Globe and Mail* [Toronto], 22 October 2013.) For another interpretation of the relevant provisions, see Michael Plaxton and Carissima Mathen, *Purposive Interpretation, Quebec, and the Supreme Court Act*, 23 October 2013.

78. With respect to declaratory provisions, see, for example, Stéphane Beaulac, *Handbook on Statutory Interpretation: General Methodology, Canadian Charter and International Law*, LexisNexis, 2008, p. 361:

> After a statute is enacted, in the large majority of cases, Parliament has done its job and will not get involved again in the legislative norm it created. However, it may happen on rare occasions that the author of the Act revisits it, explicitly, with a view of removing a doubt or specifying the scope of the legislation, by means of another piece of legislation. If this latter enactment is not intended to create or amend a statutory norm, but instead to clarify the existing one, we speak of *declaratory Acts* … [T]he main consequence of a declaratory Act is the retroactive legal effect it produces [emphasis in original].

79. Department of Justice (2013).

80. Privy Council Office, PC 2013-1105.