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LEGISLATIVE SUMMARY

Bill C-74:

An Act to implement the accord between the Government of Canada and the Government of Quebec for the joint management of petroleum resources in the Gulf of St. Lawrence and to make consequential amendments to other Acts

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

Legislative Summary of Bill C-74
(Legislative Summary)

Publication No. 41-2-C74-E

Ce document est également publié en français.

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LEGISLATIVE SUMMARY OF BILL C-74: AN ACT TO IMPLEMENT THE ACCORD BETWEEN THE GOVERNMENT OF CANADA AND THE GOVERNMENT OF QUEBEC FOR THE JOINT MANAGEMENT OF PETROLEUM RESOURCES IN THE GULF OF ST. LAWRENCE AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 BACKGROUND

Bill C-74, An Act to implement the accord between the Government of Canada and the Government of Quebec for the joint management of petroleum resources in the Gulf of St. Lawrence and to make consequential amendments to other Acts[1] (short title: Canada–Quebec Gulf of St. Lawrence Petroleum Resources Accord Implementation Act) was introduced and received first reading in the House of Commons on 18 June 2015. The bill complements provincial legislation introduced in the Quebec National Assembly on 11June 2015.[2] The bill died on the Order Paper when the 41st Parliament was dissolved on 2 August 2015.

Bill C-74 establishes a transitional regime for the joint governance of oil- and gas-related activities, including exploration and production, within defined offshore areas in the Gulf of St. Lawrence. The legislation enables the management of land tenure and the awarding of permits and licences. It includes provisions related to environmental protection, worker safety, administrative monetary penalties, and spill prevention and response measures. In the event of a discharge or spill of petroleum, it implements the "polluter pays" principle by imposing unlimited liability on a person to whose fault or negligence the discharge or spill of petroleum is attributable, and liability of up to $1 billion, without proof of fault or negligence, on the person responsible for the petroleum operations.

The joint management of petroleum resources follows a two-step process. The first phase is transitional and applies to the pre-discovery period. In this phase, the governments of Canada and Quebec establish joint regulatory functions by coordinating existing regulatory capacity.[3] In the second, permanent phase, which is initiated after a commercial discovery of petroleum resources, the governments jointly establish a new, independent offshore board through additional legislation.

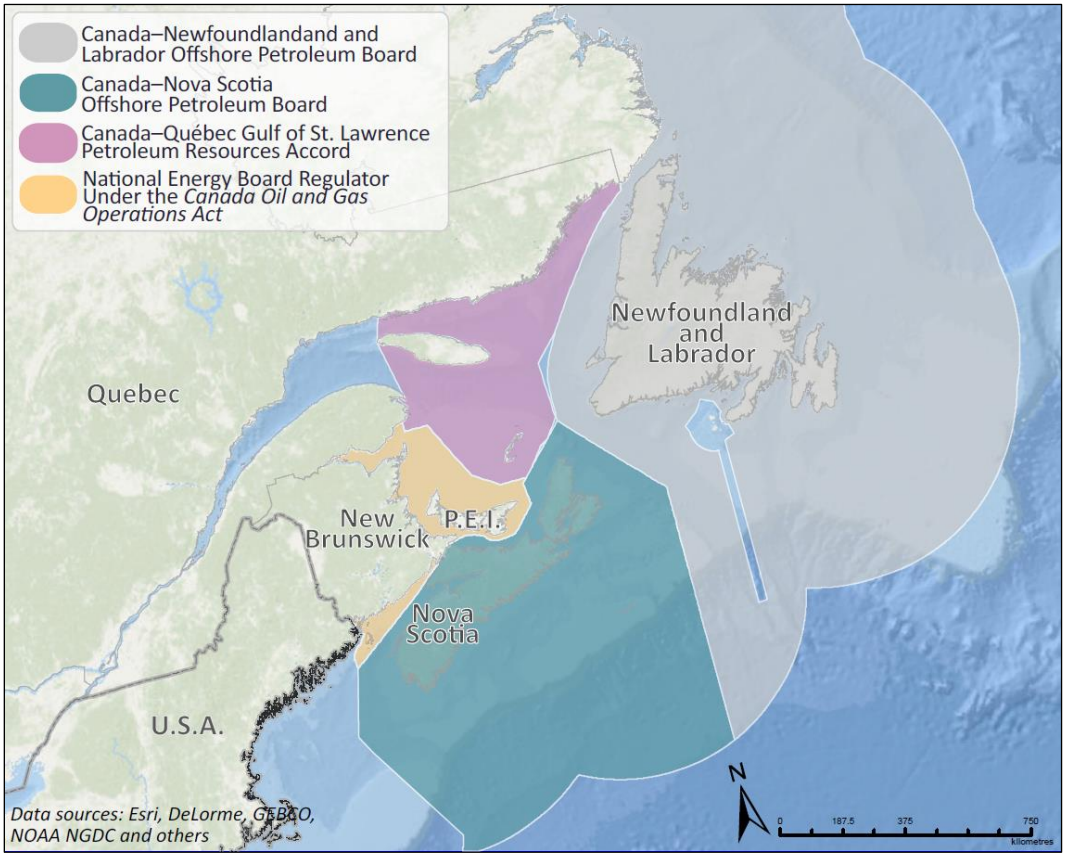
Two existing federal–provincial offshore accords ("Atlantic accords") are implemented federally by the *Canada–Newfoundland Atlantic Accord Implementation Act*, enacted in 1987,[4] and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act,* enacted in 1988.[5] Each of these accords and its implementing legislation has established a joint federal–provincial board that manages offshore petroleum activity.

1.1 Offshore Boundaries

Jurisdiction over the Canadian offshore seabed and subsoil of the continental shelf is assigned to the federal government under Canada's constitution. Federal–provincial joint management accords enable provinces to jointly regulate offshore petroleum resources with the federal government and to benefit from taxes, royalties and fees as though the resources were on provincial land. Currently, Natural Resources Canada and the National Energy Board regulate the oil and gas industry in the Gulf's offshore areas that are not covered by the Atlantic accords. The exception is the St. Lawrence estuary, which is considered Quebec territory and is administered by the Province of Quebec.[6]

The legislation sets out resolution mechanisms to settle boundary disputes between Quebec and other provinces that have a joint resource management agreement with Canada. The Gulf of St. Lawrence is bordered by the four Atlantic provinces and Quebec, among which there is no formal offshore boundary agreement. The provinces announced a tentative agreement in a joint statement released by the Atlantic provinces (1964) and in a communiqué that included Quebec (1972).[7] The Act has adopted the Quebec portion of the boundaries outlined in the 1972 communiqué in establishing the joint management area in the Gulf.[8]

Figure 1 – Resource Regulation in the Gulf of St. Lawrence



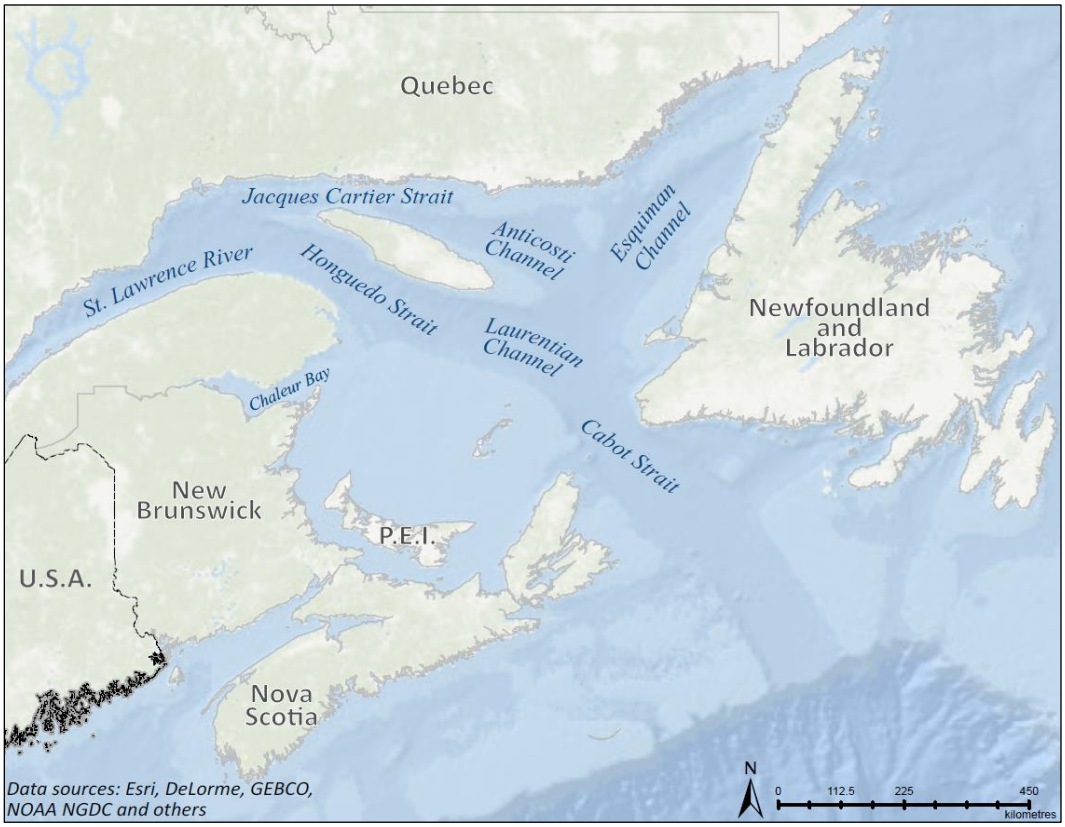
Sources: Figure prepared by Library of Parliament, Ottawa, 2015. The figure was created using data from the National Energy Board Library, *Devolution Boundaries,* 2015; and DIVA-GIS, *Administrative Boundaries,* 2015. The following software was used: Esri ArcGIS, version 10.3.1. The ocean basemap layer is the intellectual property of Esri and is used under licence; © 2015 Esri and its licensors.

However, Newfoundland and Labrador no longer supports the boundary agreement set out in the 1964 joint statement or the 1972 communiqué. The province's new position resulted in an offshore boundary dispute with Nova Scotia that was adjudicated in 2001 by a federal–provincial arbitration tribunal. The tribunal ruled in favour of Newfoundland and Labrador in its finding that neither the 1964 joint statement nor the 1972 communiqué had established the offshore boundary between Nova Scotia and Newfoundland and Labrador.[9] The tribunal also established a new maritime boundary between the two provinces in 2002; this boundary differs from the one described in the joint statement and the communiqué.

1.2 Characteristics of the Gulf of St. Lawrence

Given its partial isolation from the north Atlantic Ocean, the Gulf of St. Lawrence is similar to an inland sea.[10] Its many dynamic features include a large volume of freshwater drainage from the Great Lakes and the St. Lawrence Basin, seasonal ice cover, varying water densities and temperatures, areas of shallow depth, and steep troughs that funnel deep oceanic waters along the Laurentian Channel and Cabot Strait. The main water flow is counter-clockwise and stems from the St. Lawrence River. There are many areas of upwelling and gyres.

Figure 2 – Waterways in the Gulf of St. Lawrence



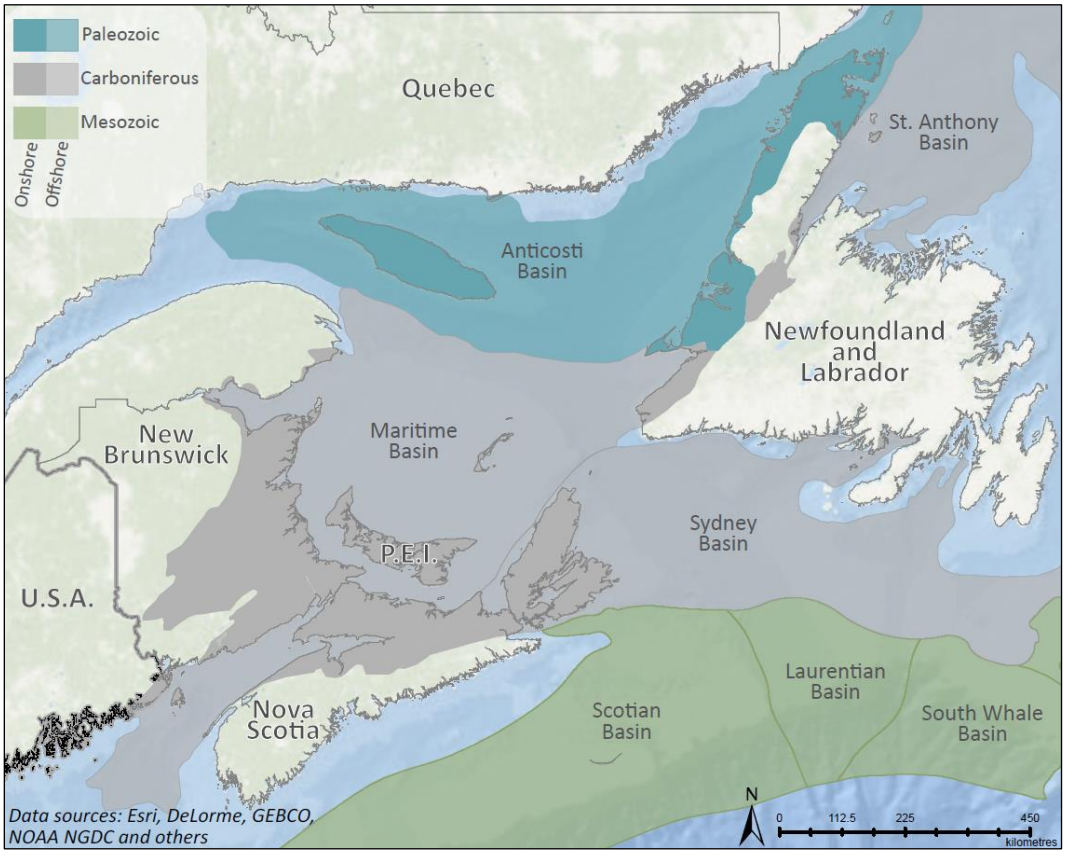
Sources: Figure prepared by Library of Parliament, Ottawa, 2015. It is based on the figure "Atlas of the Marine Environment and Seabed Geology of the Gulf of St. Lawrence," in Fisheries and Oceans Canada, *The Gulf of St. Lawrence: A Unique Ecosystem –The Stage for the Gulf of St. Lawrence Integrated Management (GOSLIM)*, 2005; and uses data from DIVA-GIS, *Administrative Boundaries*, 2015. The following software was used: Esri, ArcGIS, version 10.3.1. The ocean basemap layer is the intellectual property of Esri and is used under licence; © 2015 Esri and its licensors.

The Gulf's unique features create conditions for a highly productive marine ecosystem that sustains diverse organisms, including plants, invertebrates, fish, and sea mammals.[11] Many, such as crustaceans and molluscs (lobster, crab, shrimp, scallops, oysters, clams and mussels) and fish (cod, haddock, herring, mackerel, flatfish and redfish) are commercially valuable. The Gulf sustains many marine mammals, including several species of whales and seals. Other species in the Gulf include sharks, the leatherback sea turtle and marine birds.

1.3 Offshore Oil and Gas Exploration

The Gulf is home to two largely under-explored sedimentary basins: the Anticosti Basin and the Maritime Basin. The geology of both basins offers abundant potential hydrocarbon reservoirs.[12] The federal government estimates "that the Gulf of St. Lawrence and surrounding areas [have] the potential [to produce] 39 trillion cubic feet of gas and 1.5 billion barrels of oil."[13]

Figure 3 – Sedimentary Basins in the Gulf of St. Lawrence



Sources: Figure prepared by Library of Parliament, Ottawa, 2015. The figure was created using data from Government of Newfoundland and Labrador, *On/Offshore Basins*, 2015; and DIVA-GIS, *Administrative Boundaries*, 2015. The following software was used: Esri, ArcGIS, version 10.3.1. The ocean basemap layer is the intellectual property of Esri and is used under licence; © 2015 Esri and its licensors.

The first offshore drilling operation in the Gulf was an exploratory well drilled off the coast of Prince Edward Island in Hillsborough Bay during the 1940s.[14] Since that time, fewer than a dozen exploratory offshore wells have been drilled in the Gulf, of which none has reached the production stage. To date, there has been no significant discovery of hydrocarbon reserves comparable to those found in the Atlantic offshore areas.

Most of the exploration activities in the Gulf rely on seismic surveying methods, which consist mainly of emitting low-frequency sound waves from airguns attached to survey vessels. The reflected sound energy is converted to seismic data that are used to map possible hydrocarbon resources below the sea floor.

One of the more promising geological prospects in the Gulf – called "Old Harry" – is an area approximately 30 km long and 12 km wide within the Laurentian Channel. Old Harry straddles a disputed border in the Gulf of St. Lawrence between Quebec and Newfoundland and Labrador. Recently, seismic exploration of the area has been conducted on the Newfoundland and Labrador portion of the area, but no exploratory wells have been drilled.

1.4 Socio-Economic and Environment Considerations

The Gulf provides significant commercial, cultural, recreational and aesthetic value to those living in the region. The approximately 400 coastal communities in the area bordering the Gulf of St. Lawrence include Aboriginal groups such as Mi'kmaq, Montagnais (Innu), Maliseet and Métis.[15] The well-being of many of these communities is tied to goods and services provided by the Gulf: commercial, subsistence and recreational fishing, fish processing, aquaculture and tourism are important economic activities in the region.

Concerns have been raised over the impact of increased oil and gas activity on the Gulf's ecosystem, which is already strained by existing water- and land-based human activities. Several aquatic species, including salmon, cod, bluefin tuna, deepwater red fish and the leatherback sea turtle are threatened or endangered. There are concerns about the impact on aquatic species of the sound waves used for exploration as well as the risk of leaks and major oil spills and their threat to the viability of the fishery and tourism industries. Other concerns include increased marine traffic and potential damage to fishing gear and vessels. Many groups have called for a moratorium on oil and gas exploration and drilling in the Gulf.[16]

The Government of Canada has identified the Gulf of St. Lawrence as one of five priority Large Ocean Management Areas requiring large-scale collaborative management from various levels of government and Aboriginal organizations.[17] Fisheries and Oceans Canada "oversees the development of integrated management plans and implements various initiatives to improve the health of marine ecosystems"[18] in order to protect the Gulf's marine environment while taking into account of the needs of ocean users.

The Government of Quebec is maintaining a moratorium on oil and gas activities within the Quebec portion of the Gulf of St. Lawrence and Chaleur Bay. Conditions for lifting the moratorium include the adoption of provincial legislation that mirrors Bill C-74 for the joint management of offshore oil and gas resources, revisions to the royalty regime and the adoption of further legislation to ensure the safety and protection of property and the environment.[19]

2 DESCRIPTION AND ANALYSIS

2.1 PROVISIONS THAT PRECEDE PART 1 (CLAUSES 2 TO 32 AND, FROM PART 2, CLAUSES 183 TO 186))

2.1.1 PURPOSE AND APPLICATION (CLAUSES 5, 12 AND 13)

Bill C-74 creates a new, stand-alone Act (the "Act") implementing an accord, signed 24 March 2011, between the governments of Canada and Quebec for the joint management of petroleum resources in the Gulf of St. Lawrence. Under the Act, the governments may jointly amend the accord (clause 13).The stated purpose of the Act is to regulate the development of petroleum in the joint management area of the Gulf of St. Lawrence by promoting transparency, sustainable management and best practices (clause 5).

The Act is binding on the federal and provincial governments (clause 12).

2.1.2 THE JOINT MANAGEMENT AREA (CLAUSES 2, 3, 4, 6, 11 AND 14 TO 16)

2.1.2.1 DESCRIPTION OF THE JOINT MANAGEMENT AREA (CLAUSES 2, 3, 6 AND 11(1))

Bill C-74 applies within the "joint management area," also known as the "petroleum resources joint management area." The bill also applies to the transportation of petroleum by pipeline beyond the joint management area but not beyond Quebec (clause 11(1)). A legal description of the joint management area is set out in Schedule 1 of the Act (clause 2). The federal Minister of Natural Resources and his or her provincial counterpart (the "provincial minister") may approve or issue charts setting out some or all the limits of the joint management area (clause 6(2)). With the provincial minister's approval, the Governor in Council may make regulations amending the description of the limits in Schedule 1 (clause 6(1)) or with respect to the division and subdivision of the joint management area for the purposes of Part 1 of the Act (clause 97(*a*)).

Bill C-74 does not provide a basis for any provincial claim to jurisdiction over the joint management area or its resources (clause 3).

2.1.2.2 Precedence of the Provisions of Bill C-74 in the Joint Management Area (Clauses 4 and 11)

The provisions of Bill C-74 prevail over any inconsistent or conflicting provisions of any other federal oil and gas Act that applies in the joint management area (clause 4(1)). However, the bill specifies that its provisions are not inconsistent or in conflict with the provisions of any other federal Act that implements a federal–provincial petroleum resources joint management agreement (such as the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* or the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act*) (clause 4(2)). Further, subject to three exceptions,[20] the provisions of the *Canada Oil and Gas Operations Act* do not apply within the joint management area (clause 11(3)).

2.1.2.3 Disputes in Relation to the Limits of the Joint Management Area (Clauses 14 to 16)

Bill C-74 provides a dispute resolution procedure to be followed in the event of a disagreement in relation to the limits of the joint management area between Quebec and any other province that is party to an offshore petroleum accord with Canada. The parties to the dispute may try to negotiate a settlement or, if that is unsuccessful, they may agree to mediation. If negotiation or mediation is unsuccessful, the parties may agree to submit the dispute to binding arbitration on conditions to which they jointly agree (clause 14(2)).

If the parties to the dispute are unable to settle the dispute within a reasonable time by the means described above, the dispute is to be submitted to binding arbitration. One of the provinces may initiate binding arbitration by serving notice on the other provinces that are parties to the dispute and on the Minister of Natural Resources (clause 14(3)).

The arbitration is carried out by a panel composed of neutral, independent members appointed by each party to the dispute and a chairperson appointed by the Governor in Council from a list of candidates agreed on by the provinces that are parties to the dispute (clauses 15(1), 15(2) and 15(4)). If the provinces do not provide a list of candidates within 60 days, the Governor in Council must appoint a chairperson after consulting with the parties to the dispute (clause 15(4)). The chairperson must not be a resident of a province that is party to the dispute and must be proficient in matters relating to maritime boundary delimitation (clause 15(5)). If a province that is a party to the dispute fails to appoint a member to the panel, the chairperson must make the appointment (clause 15(6)).

The arbitration panel must control the conduct of its affairs and apply principles of international law governing maritime boundary delimitation, modified as necessary (clauses 15(7) and 15(9)). The panel's decisions are made by majority vote, and the chairperson's vote decides any tie (clause 15(8)). The panel's decision is final and binding (clause 15(10)).

If a dispute is settled by negotiation, mediation or arbitration, the Governor in Council must make regulations amending the description of the joint management area in Schedule 1 to reflect the settlement. Such regulations do not require the approval of the

provincial minister. Any settlement pertains only to the limits of the joint management area and does not change constitutional jurisdiction over the area (clause 16).

2.1.3 Management and Administration (Clauses 8 to 10 and 17 to 25)

2.1.3.1 Joint Management by Ministers (Clause 17)

Decisions that the federal Minister of Natural Resources and his or her provincial counterpart (together referred to as the "ministers") make under Bill C-74 must be made jointly, and documents issued as a result of such decisions must be issued as joint documents (clauses 17(1) and 17(2)). The ministers may conclude agreements with each other and with appropriate federal and provincial government departments and agencies regarding any matter, including joint decision-making (clause 17(3)). The ministers may delegate their powers, duties or functions under the Act (clause 17(4)). The ministers may establish advisory councils to advise them about any matter relating to the application of the Act (clause 17(5)).

2.1.3.2 Joint Management by the Boards (Clauses 18 to 21)

The National Energy Board (NEB) and its Quebec counterpart, the Régie de l'énergie – together referred to as "the boards" – must jointly exercise their powers and perform their duties under the Act (clause 18(1)). The boards must coordinate their actions by encouraging consultation and collaboration to avoid duplication of work and by concluding an agreement that establishes their operational rules (clauses 18(2) and 18(3)). The boards may conclude agreements with each other – with the ministers' approval – or with appropriate government departments and agencies about any matters they consider appropriate, such as environmental assessment, emergency measures, marine regulation, aviation regulation, etc. However, the ministers must be parties to any such agreement about employment and industrial benefits (clauses 18(4) and 18(5)). The boards may generally or specifically delegate any of their powers, duties or functions under the Act to each other or to any of their members, officers or employees (clause 18(6)).[21]

The boards must make decisions under the Act jointly in accordance with the following process. Within 12 months of an applicant providing a complete application, the boards must communicate their confidential, individual decisions to one another and then make a joint decision that respects the individual decisions (clauses 19(1) to 19(4)). The joint decision is final and is issued to the person concerned as a joint document within three months after the 12-month period (clause 19(6)). The boards may amend or rescind their joint decisions on application or on their own initiative after allowing the person concerned to make representations (clause 20).[22] Any other documents – such as a notice, licence, authorization, order or declaration – provided after a joint decision has been made must also be provided jointly (clause 21(1)).

For the purposes of judicial review, a joint decision is deemed to be a decision of the Régie de l'énergie, and, when they make a joint decision, neither of the boards is a "federal board, commission or other tribunal" under the *Federal Courts Act* (clauses 19(7) and 19(8)). Any documents that must be sent to the boards under the Act must be sent to the head office of the Régie de l'énergie or any other place the boards specify in a public notice (clause 21(2)).

2.1.3.3 Public Hearings (Clauses 22 to 25)

The boards may conduct a public hearing under the Act (clause 22). Subject to some exceptions,[23] at such a hearing the boards may take steps necessary to ensure the confidentiality of information likely to be disclosed at the hearing if:

- disclosure of information could reasonably be expected to result in material gain or loss to a person directly affected by the hearing, or to prejudice the person's competitive position, and the potential harm outweighs the public interest in disclosure (clause 23(*a*));
- the information is confidential financial, commercial, scientific or technical information that a person directly affected by the hearing has consistently treated as confidential, and the person's interest in confidentiality outweighs the public interest in disclosure (clause 23(*b*)); or
- there is a real and substantial risk that disclosure of the information will impair security of pipelines, installations, vessels, aircraft or systems, and the need to prevent disclosure outweighs the public interest in disclosure (clause 24).

The boards may also take steps to maintain the confidentiality of information contained in an order for reasons of security described in paragraph (*c*) above (clause 24).

2.1.3.4 Cost Recovery (Clauses 8 to 10)

The Governor in Council may make regulations regarding fees and charges to be paid for the NEB's or the Minister of Natural Resources' provision of a service or product under the Act or for their activities under the Act or the *Canadian Environmental Assessment Act, 2012.* The regulations may also address refunds of fees and charges. Fees and charges must not exceed the cost of providing the service or product or carrying out the activity (clause 8). Amounts obtained must be paid to the Receiver General (clause 10). The *User Fees Act*[24] does not apply in respect of any such fees or charges (clause 9).

2.1.4 The Oil and Gas Committee (Clauses 26 to 31 and 183 to 186)

2.1.4.1 Function and Constitution (Clauses 26 to 28)

The Minister of Natural Resources and his or her provincial counterpart may establish a committee to be known as the Oil and Gas Committee (clause 26(1)). The ministers may refer a question or matter relating to petroleum operations to the Oil and Gas Committee for advice (clause 26(2)). In addition, the Oil and Gas Committee must hold hearings:

- on the request of the ministers, in respect of any request made by a person directly affected by a proposed drilling order, development order or order for the cancellation of interests. The Oil and Gas Committee must then submit recommendations regarding the proposed order (clause 26(3)); and
- with respect to pooling agreements, unit agreements and unit operating agreements, as set out in Part 2.3.9 of this Legislative Summary (clause 26(3)).

The Oil and Gas Committee may consist of up to five members whom the ministers appoint for terms of three years. One member is to be designated as chairperson for a term the ministers fix. A retiring member may be re-appointed to the Oil and Gas Committee (clause 27).

At least two members of the Oil and Gas Committee must have specialized or expert knowledge of petroleum (clause 28(1)). No more than three members of the Oil and Gas Committee may be federal or provincial public servants (clause 27(1)). A person may not be a member of the Oil and Gas Committee if he or she is employed in a federal or provincial branch of the natural resources department that is presided over by either of the ministers and that is charged with the day-to-day administration and management of oil and gas resources. However, the ministers may designate such a person as secretary of the committee (clause 28(2)). A member of the committee must not have a pecuniary interest in any relevant petroleum property and must not own more than 5% of the issued shares of a petroleum company in Canada. A member who owns any such shares must abstain from committee work relevant to the company (clause 28(3)).

Members of the Oil and Gas Committee who are not public employees are to be paid remuneration as authorized by the ministers (clause 28(5)). All members are entitled to reasonable travel and living expenses while working away from their homes on committee business (clause 28(6)).

The ministers must provide the Oil and Gas Committee with staff and may provide technical or professional expertise from the federal or provincial public service – or from elsewhere, with the ministers' approval – for temporary periods or specific projects (clause 28(4)).

2.1.4.2 Work of the Oil and Gas Committee (Clauses 29 and 30)

A quorum of the Oil and Gas Committee consists of a majority of the members, including one member who is not a public servant. The committee may make rules regulating its own practice, procedure and sittings (clause 29).

Subject to the exception described in the next paragraph, the committee has all the powers of a superior court of record to conduct inquiries and hearings to exercise its powers under the Act. During an inquiry or hearing, the committee has full jurisdiction to inquire into, hear and decide the relevant matter and to make orders and directions as provided by the Act. The committee's finding on a question of fact within its jurisdiction is final and binding (clauses 30(1) to 30(3)).

In a situation where the Oil and Gas Committee is acting within its legal authority, a person who does not comply with an Oil and Gas Committee order or refuses to answer a question or produce a document or other thing as requested by the committee, or who undermines the conduct of a hearing is guilty of contempt of court (clause 30(4)). The Oil and Gas Committee does not have the power to make a finding of contempt of court and impose a punishment for it, but it may apply to a judge of the Superior Court of Quebec to do so (clause 30(1)).

The Oil and Gas Committee may direct any of its members to conduct an inquiry or hearing, in which case the member has all the powers, rights and privileges of the committee. Following the inquiry or hearing, the member reports evidence and findings to the committee, which the committee may adopt or deal with in another manner (clauses 30(5) and 30(6)).

2.1.4.3 Appeals (Clauses 183 to 186)

Except as described in the paragraphs that follow, every decision or order (including minutes, records or documents) of the Oil and Gas Committee is final and binding (clause 183).

The Oil and Gas Committee may ask the Superior Court of Quebec for its opinion on a question of law or a question within the committee's jurisdiction. The Court must hear and determine the case and remit the matter to the committee with its opinion (clause 184).

The ministers may, at any time, vary or rescind any decision or order of the Oil and Gas Committee. Any order that the ministers make becomes a binding decision or order of the Oil and Gas Committee (clause 185).

A person may, on a question of law, appeal a decision or order of the Oil and Gas Committee to the Superior Court of Quebec if that Court has given its permission for the appeal in response to an application made within 30 days after the decision or order (or longer, if the Court allows) (clause 186(1)). If the Court gives permission for an appeal, the order in question is stayed (suspended) until the appeal is determined (clause 186(2)). After hearing the appeal, the Court must give its opinion to the committee, and the committee must make any order necessary to comply with the opinion (clause 186(3)). Such an order is subject to being varied or rescinded by the ministers (as described previously), unless the order has already been varied or rescinded by the ministers (clause 186(4)).

2.1.4.4 Enforcement (Clause 31)

An order made by the Oil and Gas Committee may be filed[25] in the Superior Court of Quebec in order to enforce the order as a judgment of that Court. An order may be cancelled by a rescinding or replacement order of the committee or of the ministers, and any such subsequent order may in turn be filed with the Court for enforcement purposes.

2.1.5 Regulations (Clauses 7(1) and 32)

Bill C-74 provides a broad and general power to the Governor in Council to make any regulations necessary to carry out the provisions of the Act that precede Part 1 of the Act (clause 32).

Except where otherwise specified in this Legislative Summary, the Minister of Natural Resources must consult with and obtain the approval of his or her provincial counterpart with respect to any regulation proposed to be made under the Act (clause 7(1)).

2.2 PART 1 – PETROLEUM RESOURCES (CLAUSES 33 TO 98)

2.2.1 INTRODUCTION (CLAUSES 40(2) AND 36)

Part 1 of Bill C-74 governs interests in the joint management area, including the issuance, exercise, transfer, assignment, registration and cancellation of interests. An "interest" means any exploration licence, significant discovery licence or production licence (definition in clause 2). An interest may be restricted to any geological formations and to specified substances (clause 40(2)).

The "owner" of an interest is the person who holds the interest (the "holder") or the group of holders who hold all the shares in the interest (see definitions in clause 33).

If an interest owner consists of a group of holders, the holders must appoint a representative or, with the ministers' approval, they may appoint different representatives for different purposes (clause 36(1)). If the holders fail to appoint a representative, the ministers may designate one of the holders as the representative (clause 36(2)). The representative's acts or omissions within the scope of his or her authority bind the interest owners (clause 36(3)).

2.2.2 INTERESTS (CLAUSES 37 TO 47 AND 97(*D*))

2.2.2.1 THE ISSUE OF INTERESTS (CLAUSES 40 TO 44, 47 AND 97(*D*))

The ministers may issue interests, meaning the licences governed by this Part, for any portion of the joint management area in accordance with the provisions described below (clause 40(1)).

Before issuing an interest in relation to Crown reserve areas (that is, portions of the joint management area where no interest is in force; see definition in clause 33), the ministers must make a call for bids by publishing a notice (clause 41(1)).[26] In selecting the portions of the joint management area to be specified in a call for bids, the ministers must consider any request that they may have received to make a call for bids for particular portions of the joint management area (clause 41(2)). Bill C-74 specifies the information that must be included in a call for bids, such as the portions of the joint management area, geological formations and substances to which the interest is to apply, the form and manner in which a bid is to be submitted, and the sole criterion the ministers will apply in assessing bids[27] (clause 41(3)). Unless the regulations specify otherwise, the notice must provide at least 120 days for bids to be submitted (clause 41(4)). The Governor in Council may – with the provincial minister's approval – make regulations relating to calls for bids, including regulations prescribing the terms and sole criterion to be specified in a call for bids (clauses 7(1) and 47).

The ministers may not select a bid unless it satisfies the terms and is in the form and manner specified in the call for bids. The selection must be on the basis of the criterion specified in the call for bids (clause 42(1)). The ministers must publish a notice setting out the terms of the bid selected (clause 42(2)). If an interest is to be issued, the terms of the interest must be substantially consistent with any terms specified in the call for bids, and they must be published in a notice (clauses 42(3) and 42(4)).

The ministers are not required to issue an interest as a result of a call for bids (clause 43(1)). If they do issue an interest, it must be done within six months after the close of the call for bids. After that time, the ministers must make a new call for bids before issuing an interest (clause 43(2)).

The ministers are not required to make a call for bids before issuing an interest for any Crown reserve area in either of the following circumstances:

- A portion of the joint management area has become a Crown reserve area through error or inadvertence and, within a year of this occurrence, the owner who last held an interest in that portion requests the ministers to issue an interest.
- The ministers are issuing an interest to an interest owner in exchange for the owner's surrender, at the ministers' request, of any other interest, or share in one, for all or part of the same portion of the joint management area (clause 44(1)).

If the ministers issue an interest without first making a call for bids (that is, under one of the above exceptions) they must – at least 90 days before issuing the interest – publish a notice setting out the terms of the interest (clause 44(2)).

With the provincial minister's approval, the Governor in Council may make regulations regarding fees and deposits to be paid in respect of interests (clause 97(*d*)).

2.2.2.2 Notice (Clauses 45 and 46)

The ministers must publish notices – in relation to a call for bids, a bid selection, an interest issued or the amendment of an exploration licence to include a Crown reserve area – in the *Canada Gazette* and in any other appropriate publication. Such a notice need contain only a summary of the required information along with a statement that the full text is available from the ministers upon request (clause 46). Failure to comply with the requirements respecting the form and content of, or the time and manner of publishing, a required notice does not vitiate any associated interest that is issued (clause 45).

2.2.2.3 General Rules Respecting Interests (Clauses 37 to 39)

The ministers have the power to issue an order prohibiting the issuance of interests for any portion of the joint management area (clause 37). The ministers may also issue an order prohibiting an interest owner from carrying out work or activity in the joint management area if there is a serious environmental or social problem or if weather conditions are dangerous or extreme (clause 39(1)). Such an order has the effect of suspending requirements that consequentially cannot be complied with until the order is revoked, and the term of the interest and any periods provided for complying with requirements are extended for the time the order is in force (clauses 39(2) and 39(3)). The ministers may relieve a person from a requirement in relation to an interest or to a requirement under Part 1 (clause 39(4)).

An interest owner may – subject to regulations – surrender an interest for all or any portion of the joint management area subject to the interest. Such a surrender does not affect any liabilities of the interest owner to the federal government (clause 38).

2.2.3 Exploration, Discovery and Licensing (Clauses 48 to 69 and 98)

2.2.3.1 Exploration Licenses (Clauses 48 to 53 and 98)

With respect to a specific portion of the joint management area, an exploration licence confers the right to explore for petroleum; the exclusive right to drill and test for petroleum; the exclusive right to develop the portion of the joint management area in order to produce petroleum; and the exclusive right to obtain a production licence (subject to compliance with the Act) (clause 48).

Subject to the regulations, a share in an exploration licence may be held with respect only to a portion of the joint management area that is subject to the licence (clause 49). The regulations prescribe mandatory terms for exploration licences, and the ministers and licence owner may agree on additional terms (clause 50). The ministers and licence owner may agree to amend any provision of the licence. However, the ministers may amend the licence to include another portion of the joint management area that was a Crown reserve area only if they have the ability to issue an interest to the owner for that area under the circumstances described in clause 44(1) of the bill (summarized in the two bullet points of Part 2.2.2.1 of this Legislative Summary), and if they comply with the associated requirement to publish a notice (clauses 51(1) and 51(2)). On the request of exploration licence owners, the ministers may consolidate two or more exploration licences into a single exploration licence (clause 51(3)).

An exploration licence may have a term of up to nine years and may not be renewed. After the expiry of an exploration licence, portions of the joint management area to which the licence relates become Crown reserve areas unless they are subject to a significant discovery licence or a production licence (clause 52). Despite the term of an exploration licence, it continues to be in force during the drilling of a well that is being pursued diligently (including during any suspensions for weather or technical problems) and for as long afterward as is necessary to determine whether the results of the well indicate a significant discovery (clause 53).

Despite the normal bidding procedure for an exploration licence, described earlier in this Legislative Summary, one year after clause 98 of Bill C-74 comes into force the ministers must issue exploration licences under the Act to the holders of exploration licences issued under Quebec's *Mining Act* and listed in Schedule 2 of the Act for the portions of the joint management area specified in those licences (clause 98(1)). However, if the limits of the joint management area relevant to any such portion are in dispute, an exploration licence for that area must not be issued until the dispute is resolved under the Act, and the licence must give effect to any amendment to the limits of the joint management area (clauses 98(2) and 98(3)). If the issue of an exploration licence in this manner results in legal proceedings and a final judgment requiring the federal government to pay damages, the Quebec government undertakes to indemnify the federal government in relation to those damages (clause 98(4)).

2.2.3.2 Significant Discoveries (Clause 54)

A “significant discovery” is, in essence, a discovery that suggests the existence of an accumulation of petroleum that has the potential for sustained production (see definition in clause 33).

If a significant discovery is made in a portion of the joint management area, the boards may, on their own initiative, and must, on the application of the holder of an interest in the relevant portion, make a written declaration of this finding (clauses 54(1) and 54(2)). The declaration must describe the relevant portions of the joint management area, which then become known as the “significant discovery area” (clause 54(3) and definition in clause 33). The declaration may be amended or revoked on the basis of results of further drilling (clause 54(4)). However, a declaration may not be revoked or amended to decrease the significant discovery area until either the relevant exploration licence has expired or, if there is no relevant exploration licence, until three years after the relevant significant discovery licence takes effect (clause 54(5)). A copy of the declaration and any amendment or revocation of it must be sent by registered mail to any relevant interest owner (clause 54(6)).

Before the boards make a decision regarding a declaration of significant discovery, a person directly affected by the decision is given an opportunity to request a hearing in order to make representations and introduce witnesses and documents (clauses 54(7) to 54(11)). After the boards make a decision, they must give notice of their decision to each person who requested a hearing and, on request, provide reasons for the decision (clause 54(12)).

The boards may delegate their powers, duties and functions relating to a declaration of significant discovery to any of their members, officers or employees (clause 54(13)).

2.2.3.3 Significant Discovery Licences (Clauses 55 to 58)

With respect to a specific portion of the joint management area, a significant discovery licence confers the right to explore for petroleum; the exclusive right to drill and test for petroleum; the exclusive right to develop that portion of the joint management area in order to produce petroleum; and the exclusive right to obtain a production licence (subject to compliance with the Act) (clause 55).

The ministers may issue a significant discovery licence only if a declaration of significant discovery is in force. If the significant discovery area is subject to an exploration licence, the ministers must, on the holder’s application, issue the significant discovery licence to the exploration licence holder, at which time the exploration licence ceases to have effect (clauses 56(1) and 58(1)). The significant discovery licence takes effect on the day the application for the licence is submitted (clause 58(2)). If the significant discovery area extends to a Crown reserve area, the ministers may make a call for bids to select the person to whom to issue the significant discovery licence for the Crown reserve area (clause 56(2)).

If a significant discovery area is increased or decreased after the amendment of a significant discovery declaration, as described above (clause 54(4)), the relevant significant discovery licence is amended accordingly (clause 57). A significant

discovery licence continues in force as long as its associated declaration of significant discovery is in force or until a production licence is issued for the relevant area (clauses 58(3) and 68(1)). When a significant discovery licence expires, any portion of the relevant joint management area that is not subject to a production licence becomes a Crown reserve area (clause 58(4)).

2.2.3.4 Drilling Orders (Clauses 59 and 60)

The ministers may order the owner of an interest to drill a well on any portion of the relevant significant discovery area, and the order may specify that the drilling is to begin within one year or any longer period (clause 59(1)). No such order may be made either within six months of the interest owner having completed a well on the relevant portion of the significant discovery area; or, within three years after the abandonment, completion or suspension of the well indicating the relevant significant discovery (clauses 59(2), 59(3) and 59(5)). A drilling order must not require an interest owner to drill more than one well at a time on the relevant portion of the significant discovery area (clause 59(4)). A drilling order is subject to the hearing and judicial review provisions included in clause 96 and summarized in Part 2.2.7 of this Legislative Summary (clause 59(1)).

Despite the provisions of Bill C-74 aimed at protecting privileged information (clause 93), the ministers may provide information relating to a significant discovery – or direct the boards to provide such information – to an interest owner to assist the owner in complying with a drilling order (clause 60(1)). The owner may not disclose such information except if necessary to comply with the drilling order (clause 60(2)).

2.2.3.5 Commercial Discoveries and Development Orders (Clauses 61 and 62)

A “commercial discovery” is, in essence, a petroleum discovery that justifies investment to bring the discovery to production (see definition in clause 33).

If a commercial discovery is made in a portion of the joint management area, the boards may, on their own initiative, and must, on application of the holder of an interest in the relevant portion, make a written declaration of commercial discovery (clauses 61(1) and 61(2)). The provisions relating to a declaration of significant discovery, which are described in Part 2.2.3.2 of this Legislative Summary, apply, modified as necessary, in respect of a declaration of commercial discovery (clause 61(3)).[28] Portions of the joint management area described in a declaration of commercial discovery are known as a “commercial discovery area” (see definition in clause 33).

If a declaration of commercial discovery has been made and commercial production has not begun, the ministers may, on at least six months’ notice to the relevant interest owner, issue an order reducing the term of the interest to a period of three years or longer (clauses 62(1) and 62(3)). During the notice period, the ministers must provide a reasonable opportunity for the interest owner to make submissions in relation to the order (clause 62(2)). After an order is made, the ministers may extend the period specified in the order, or they may revoke the order (clause 62(6)). If commercial production begins while the interest is in force, the order reducing the

term of the interest is cancelled (clause 62(5)). An order reducing the term of an interest is subject to the hearing and judicial review provisions included in clause 96 and summarized in Part 2.2.7 of this Legislative Summary (clause 62(3)).

2.2.3.6 Production Licences (Clauses 63 to 68)

With respect to a specific portion of the joint management area, a production licence confers the right to explore for petroleum; the exclusive right to drill and test for petroleum, and to develop the relevant portion and produce petroleum; and title to the petroleum produced (clause 63(1)).

The ministers may authorize an interest holder to produce petroleum – on the portions of the joint management area subject to the interest – to use in the exploration, drilling or development of any portion of the joint management area (clause 63(2)).

The ministers must issue a production licence to one interest owner who applies for a production licence and who holds an exploration licence or a significant discovery licence applicable to all or a portion of one commercial discovery area (clause 64(1)(*a*)). The ministers may, on application, issue a production licence to one such interest owner in respect of two or more commercial discovery areas or portions of them; and to two or more such interest owners, in respect of one or more commercial discovery areas or portions of them (clause 64(1)(*b*)). If a declaration of commercial discovery applies to a Crown reserve area, the ministers may make a call for bids in order to select the person to whom they will issue a production licence for the Crown reserve area (clause 64(2)).

Two or more production licence owners may apply to have their licences consolidated (clause 65). If a commercial discovery area is increased or decreased after the amendment of a commercial discovery declaration, as described above (clauses 54(4) and 61(3)), the relevant commercial discovery licence is amended accordingly (clause 66). A production licence is cancelled if the relevant declaration of commercial discovery is revoked or amended to exclude all portions of the relevant commercial discovery area (clause 67(2)).

The term of a production licence is 25 years, but if petroleum is being produced commercially on the day the licence expires, the term of the licence is extended while commercial production continues (clause 67(1) and 67(3)). The ministers may extend the term of a production licence in respect of a portion of the joint management area where commercial production ceases, or is expected to cease, but is reasonably expected to restart after the expiry of the licence (clause 67(4)). The issuance of a production licence for a portion of the joint management area cancels other interests in that portion (clause 68(1)). When a production licence expires, the relevant portions of the joint management area become Crown reserve areas (clause 68(2)).

2.2.3.7 Subsurface Storage Licences (Clause 69)

Subject to any terms that they consider appropriate, the ministers may issue a licence authorizing subsurface storage of petroleum or another substance in the joint management area at depths greater than 20 metres.

2.2.4 Royalties (Clauses 70 to 76)

2.2.4.1 Payment of Royalties (Clauses 70 to 74)

Every holder of a share in a production licence and every person who conducts an extended formation flow test (see Part 2.3.3.5 of this Legislative Summary) must pay royalties, and possibly interest and penalties, as calculated under Quebec's *Mining Act,* to the Receiver General (clauses 70(1) to 70(3) and 73). Such amounts are debts due to the federal government (clause 74). The federal government must remit the amounts to the Quebec government without delay (clause 70(4)). It may pay these amounts out of the Consolidated Revenue Fund, on the request of the federal Minister of Natural Resources (clause 70(5)). With the Governor in Council's approval, the federal Minister of Natural Resources may enter into an agreement with the Quebec government regarding the collection and administration of royalties on behalf of the federal government (clause 72).

If a person is in default of the payment of royalties, the ministers may refuse to issue the person any interest – or may cancel their interest – in any portion of the joint management area, and they may refuse or suspend an authorization for that person to carry on any work or activity; however, the ministers may take these actions only after remedies under Quebec's *Mining Act* have been exhausted in respect of the default (clause 71).

2.2.4.2 Revenue Account (Clauses 75 and 76)

A "Quebec Revenue Account – Petroleum Resources Joint Management Area" is established in the accounts of Canada (clause 75(1)). The federal Minister of Natural Resources must credit this account with royalties, interest and penalties collected by the Quebec government, as described above, plus other amounts that are received under Parts 1 or 2 of Bill C-74 and that are not required to be returned, other than fees or charges collected to recover costs (described in Part 2.1.3.4 of this Legislative Summary). Amounts credited to the account are paid to the Quebec government annually from the Consolidated Revenue Fund (clauses 75(2) and 75(4)).[29] If the Quebec government receives any amount in excess of an amount to which it is entitled, that excess amount is a debt due to the federal government and may be offset against any other amounts the federal government owes to the Quebec government (clause 75(3)). The Governor in Council may make regulations prescribing the time and manner in which amounts must be credited or paid (clause 76).

2.2.4.3 Courts (Clause 77)

Quebec courts and judges have jurisdiction concerning matters relating to petroleum royalties and other amounts payable in respect of the joint management area, which, for these purposes, is deemed to be within the judicial district of Montréal.

2.2.5 Transfer, Assignment, Registration and Cancellation of Interests (Clauses 78 to 92)

2.2.5.1 Transfer, Assignment or Other Disposition of Interests (Clauses 79 and 88)

If a holder of an interest or any share in an interest enters into an agreement that results or may result in a transfer, assignment or other disposition of the interest or share, the holder must notify the ministers and provide a summary or copy of the agreement (clause 79). The transfer of an interest or share is not effective against the government before it is registered (clause 88).

2.2.5.2 Registration of Interests (Clauses 78, 80 to 82 and 89 to 91)

A public register of all interests issued under Bill C-74, and all instruments related to those interests, is to be established, and the ministers must designate a registrar and deputy registrar to administer the register (clause 80).[30] In this context, an "instrument" means a transfer of an interest or a share in an interest, a security notice or notice of the discharge of a security notice, an assignment of a security interest, or a postponement or notice of the discharge of a postponement (definition in clause 78).

A "security notice" is a notice of a security interest. A "security interest" is a charge or right in relation to an interest or a share in an interest that secures the payment of a debt; a bond, debenture or other security of a corporation; or the performance of obligations of a guarantor under a guarantee given for such a debt or security of a corporation (see definition in clause 78).[31] For example, a bank might lend money to an interest holder and receive, as a security interest, the right to take possession of petroleum if the debt is not paid. A "postponement" is a document evidencing the deferment of a security notice or an operator's lien (see definition in clause 78).[32]

Only interests and instruments may be registered (clause 81(1)). An instrument may not be registered unless it is in the form and contains the information required under the Act and a notice of official address for service of the instrument is filed with the registrar (clause 81(2) and 81(3)).[33] The bill specifies information that must be provided with a security notice for registration (clause 81(4)). A security notice registered in respect of an interest in a portion of the joint management area applies in respect of a significant discovery licence or a production licence subsequently issued in respect of the same portion of the joint management area (clause 82).

The registration of an instrument does not affect the ministers' rights or powers, and it does not derogate from rights and interests of the federal government in the joint management area (clause 89). The Governor in Council may make regulations relating to registration, subject to approval of the provincial minister (clause 91).

2.2.5.3 Date of Registration and Priority of Rights (Clauses 83 to 85)

The registrar must register – in the chronological order in which they are received – documents submitted for registration that meet all the requirements under the Act. Instruments are deemed registered when they are endorsed with the registration number and a time and date of registration. The registration of an instrument constitutes notice of the instrument (clause 84). The registrar must return any document he or she refuses to register, along with reasons for the refusal (clause 83).

A right in an interest or in a share in an interest has priority over a second right in the same interest or share if the right is registered before the second right, or, in a case where the second right must not be registered, if the right was registered before the second right was acquired (clause 85(1)). However, an operator's lien has – without the need for registration – priority over any other right and regardless of whether the operator's lien was acquired before or after another right was acquired or registered (clause 85(5)).[34]

For rights that are (i) acquired before the coming into force of the provisions of Bill C-74 dealing with registration of rights, and (ii) registered in the 180 days after the coming into force of these provisions, priority is determined as though the rights had been registered at the time that they were acquired (clause 85(2)). However, this priority rule does not apply if a person acquires and registers a right with actual knowledge of an existing right in the same interest or share that is not registered within the 180-day period (clause 85(3)).

2.2.5.4 Demand for Information (Clause 86)

Where a security notice has been registered in relation to an interest or a share in an interest, Bill C-74 provides a mechanism by which certain persons[35] may serve a "demand for information" on the secured party in respect of the security notice. To do so, such a person may send to the secured party, by registered mail or delivery to the official address for service, a demand notice requiring the secured party to make the relevant documents (or copies of them) available within a reasonable period and during normal business hours (clauses 86(2) and 86(3)). A person may comply with a demand for information by mailing or delivering a true copy of the documents to the person who sent the demand notice (clause 86(4)). Should the secured party fail to comply with a demand for information without reasonable excuse, the person who served the demand notice may apply to the court for an order requiring the secured party to comply with the demand. If the secured party does not comply, the court may make any other order it considers necessary or may cancel the registration of the security notice (clauses 86(5) and 86(6)).

2.2.5.5 Substantiating a Security Interest Claimed in a Security Notice (Clause 87)

The same persons who may serve a demand for information (described in the preceding part of this Legislative Summary) may also begin proceedings in court requiring a secured party to show why the registration of a security notice should not be cancelled (clause 87(1)(*b*)). Alternatively, such persons may serve on a secured party –

by registered mail or delivery to the official address for service – a "notice to take proceedings." Such a notice directs the secured party, within a given time, to apply to the court for an order substantiating the security interest claimed (clauses 87(1)(*a*) and 87(4)). If the secured party fails to apply to court or if the court proceedings are discontinued or dismissed, the registration of the security notice is subject to cancellation (clause 87(5)). The registrar must cancel the registration of a security notice on receipt of a court order or judgment directing cancellation (clause 87(7)). After cancellation, the secured party requires the court's permission to submit another security notice for registration in respect of the same security interest (clause 87(6)).

2.2.5.6 Cancellation of Interests (Clause 92)

If an interest owner or holder fails to meet a requirement of the Act, the ministers may notify that person that compliance with the requirement is required within 90 days or a longer period (clause 92(1)). Failure to comply with such a notice may result in the ministers cancelling the interest or share in an interest; however, cancellation is subject to the hearing and judicial review process set out in clause 96 and described in Part 2.2.7 of this Legislative Summary (clause 92(2)).

2.2.6 Information (Clauses 34, 35, 93 to 95, 97(*b*) and 97(*c*))

2.2.6.1 Notices, Documents and Application Forms (Clauses 34, 35, 97(*b*) and 97(*c*))

A notice required under Part 1 of the Act must be given in the manner prescribed in regulations and must be in the form and contain information specified by the ministers (clauses 34 and 97(*b*)).

The ministers may establish the form of any document to be provided under Part 1 (clause 35(1)). With the approval of the provincial minister, the Governor in Council may make regulations:

- prescribing information to be given in an application for a declaration of significant discovery or of commercial discovery, a significant discovery licence or a production licence (clauses 35(3) and 97(*b*)); and
- prescribing information and documentation that owners and holders of an interest must provide (clause 97(*c*)).

2.2.6.2 Protection and Disclosure of Privileged Information (Clauses 93 to 95)

As a general rule, information or documentation provided for the purposes of the Act is privileged and must not be knowingly disclosed without the written consent of the person who provided it. However, privileged information may be disclosed without the consent of the person who provided it for the administration or enforcement of the Act or for related legal proceedings (clause 93(2)). In relation to other types of legal proceedings, a person is not required to give evidence relating to privileged information (clause 93(3)).

This general rule does not apply to registered documents, as described in Part 2.2.5.2 of this Legislative Summary (clause 93(4)); to information or documentation provided for the purposes of a public hearing,[36] as described in Part 2.1.3.3 of this Legislative Summary (clause 93(10)); or to information or documentation regarding:

- the person applying for an operating licence or authorization (described under Part 2.3.2 of this Legislative Summary), or information about the proposed work or activity for which the authorization is sought[37] (clause 93(9));
- the drilling of an exploratory well, a delineation well,[38] or a development well[39] after various specified periods have elapsed;
- geological or geophysical work, engineering research, a feasibility study or experimental project, including geotechnical work[40] carried out on or in relation to any portion of the joint management area, after various specified periods have elapsed;
- any contingency plan for emergencies stemming from petroleum operations;
- diving work, weather observation or the status of operational activities or of the development of or production from a pool or field, including the quantity of petroleum extracted from a pool or well;
- accidents, incidents or petroleum spills if necessary for reporting under the Act; and
- an environmental study[41] after a specified period has elapsed (clause 93(5)).

The boards may disclose any information or documentation they obtain under the Act to the federal government or a provincial or foreign government for the purposes of a law that deals with petroleum-related work or activity if (i) the receiving government undertakes to keep the information or documentation confidential; (ii) the disclosure is made in accordance with conditions agreed to by the boards and the receiving government; and (iii) in the case of disclosure to a foreign government, the ministers consent in writing (clause 93(6)). The boards may disclose to the ministers any information or documentation that they disclosed to a government, as described in the preceding sentence. However, the ministers may not further disclose such information or documentation without written consent from the boards (which the boards can provide only if they are authorized to disclose the information or documentation) or if one of the ministers is required by law to disclose it (clauses 93(7) and 93(8)).

The boards may disclose information or documentation related to safety or environmental protection that is provided in relation to an operating licence or authorization as described in Part 2.3.3 of this Legislative Summary. However, the boards are not permitted to disclose such information or documentation if the potential harm stemming from disclosure outweighs the public interest in disclosure (clause 93(11)).[42] Bill C-74 provides a procedure that must be followed before the boards may disclose such information or documentation. The procedure includes notice of the intended disclosure to the person who provided the information or documentation; an opportunity for that person to make written representations as to why the information or documentation should not be disclosed; and, if the boards nevertheless decide to disclose the information or documentation, an opportunity for the person to apply to the Superior Court of Quebec for a review of the boards' decision (clause 94).

The ministers are entitled, and do not require consent, to access any information or documentation relating to petroleum resources activities in the joint management area that is provided for the purposes of the Act (clause 95(1)). The boards may disclose such information or documentation to each other without requiring consent (clause 95(2)). Each year, the ministers must make a public report detailing the amount of petroleum extracted by an owner and the amount of royalties paid by that owner (clause 95(4)).

2.2.7 Hearings and Judicial Review (Clause 96)

The following types of orders, described earlier in this Legislative Summary, are subject to a hearing and judicial review procedure: drilling orders, orders reducing the term of an interest and orders cancelling an interest. At least 30 days before making any such order, the ministers must give written notice to the persons directly affected by the proposed order (clause 96(1)). Such persons may request a hearing – to be held by the Oil and Gas Committee described in Part 2.1.4 of this Legislative Summary – and they may make representations and introduce witnesses and documents at the hearing (clauses 96(2) and 96(3)). After such a hearing, the ministers must consider the committee's recommendations before making any decision in respect of the proposed order and notifying the person who requested the hearing of the order and, on request, the reasons for the order (clauses 96(4) to 96(6)). An order made after a hearing is subject to judicial review by the Superior Court of Quebec in accordance with Quebec law (clause 96(8)).

2.3 Part 2 – Petroleum Operations (Clauses 99 to 182, 187 to 233, 245 and 246)

2.3.1 Purpose and Application (Clauses 100 and 101)

Part 2 of Bill C-74 applies in respect of the exploration and drilling for and the production, conservation, processing and transportation of petroleum in the joint management area (clause 101). The purpose of Part 2 is to promote safety, environmental protection, accountability for environmental harms, the conservation of petroleum resources, joint production arrangements and economically efficient infrastructures (clause 100).

2.3.2 Jurisdiction and Powers of the Boards (Clauses 119 to 122)

The boards have full and exclusive jurisdiction, on their own initiative, to inquire into, hear and determine any matter, whether of law or of fact:

- relating to compliance with Part 2 of the Act, an order or direction of the boards made under Part 2, or an operating licence or authorization for a work or activity; or
- if it appears to them that the circumstances may require them, in the public interest, to make an order or give a direction, leave or approval that they are authorized to make or give under the law, or that relates to Part 2 (clause 119).

The boards may order any person to do any act or thing required under Part 2 of the Act, and they may prohibit a person from doing any act or thing contrary to the provisions of Part 2 (clause 120).

The boards' jurisdiction and powers summarized in the preceding paragraphs of this part of the Legislative Summary do not apply to any act or thing that is required or prohibited by any decision or order of the Oil and Gas Committee (clause 121).

The boards may delay the coming into force of an operating licence, an authorization for a work or activity or an order. They may make the coming into force contingent on any condition, approval or specified requirements having been met; and, they may direct that a licence, authorization or order is to be in force for a limited time or until a specified event. The boards may make an interim order (clause 122).

2.3.3 Operating Licences and Authorizations for a Work or Activity (Clauses 104 to 109, 113 to 115, 123 and 142(1))

2.3.3.1 General Information Regarding Licences and Authorizations (Clauses 104 to 109, 123 and 142(1))

A person requires an operating licence or an "authorization for a work or activity" issued by the boards in order to carry on any petroleum-related work or activity in the joint management area (clauses 104 and 106(1)).

An operating licence is subject to requirements determined by the boards and to requirements and deposits prescribed in regulations (clause 106(3)). An operating licence expires on 31 March each year but may be renewed for successive periods of up to one year (clause 106(2)).

An authorization is subject to approvals, requirements and deposits that the boards determine or that are set out in regulations. Such requirements may relate to liability, environmental programs, and the payment of expenses the boards incur in approving production facilities and platforms (clauses 106(5) and 142(1)(*i*)).

An authorization gives a person a right to enter and use a portion of the joint management area in order to carry on a work or activity; however, if that portion is lawfully occupied by another person, that other person's consent is required for the authorization-holder to enter and use the portion. If the occupier refuses to consent, an arbitrator may grant consent subject to conditions, in accordance with regulations (clauses 109 and 142(1)(*h*)). The boards may delegate their power to issue an authorization for a work or activity to any of their members, officers or employees (clause 106(8)).

The holder of an authorization to construct or operate a pipeline requires the boards' permission to sell, transfer or lease a petroleum-related pipeline that is capable of being operated; to purchase or lease any other pipeline; to enter into an agreement for amalgamation with any person; or to abandon the operation of a pipeline (clauses 105(1) and 105(2)). Also, that holder must keep any records, books of account or other documents required by the boards as necessary for the

administration of Part 2 of the Act. The holder must produce those documents or make them available for inspection or copying at any time set by the boards (clause 123).

If an application for an authorization for a work or activity or an application for the approval of a development plan (described in Part 2.3.3.2 of this Legislative Summary) triggers a requirement for an environmental assessment under federal or Quebec legislation – and, in the case of the federal legislation, if the NEB is responsible for carrying out the environmental assessment – the boards must not issue an authorization or approval until the relevant environmental assessment requirements are met (clauses 107(1) and 107(3)). The NEB must complete the federal environmental assessment process within 12 months of the application (clause 107(2)). However, time taken for the applicant to comply with any NEB requirement to provide information or to undertake a study is not included in the 12-month period (clause 107(4)). The NEB has the authority to establish a funding program to facilitate the participation of the public in a federal environmental assessment process (clause 108).

The boards may vary the term of an operating licence or authorization for a work or activity, and they may suspend or revoke an operating licence or authorization for failure to comply with any of the numerous requirements specified in the bill (clauses 106(6) and 106(7)).

2.3.3.2 Development Plans (Clause 113)

As stated in the preceding part of this Legislative Summary, an authorization for a work or activity is subject to further approvals determined by the boards or prescribed in regulations (clause 106(5)). Any such approval that is related to the development of a pool or field and that is prescribed in regulations is not to be granted unless the boards have approved a related development plan (clause 113(1)).

A development plan submitted for approval must be set out in two parts. The first part must provide specific information about the general approach to the proposed development. The second part must provide the technical information and proposals necessary for a comprehensive review and evaluation of the proposed development (clause 113(3)). The boards' approval of a development plan is subject to the ministers' consent for the first part of the development plan and any requirements the boards consider appropriate or that may be prescribed in regulations (clause 113(4)).

After a development plan has been approved, it may be amended – and a requirement to which the approval is subject may be amended – following the same process and requirements for obtaining the boards' approval of the original development plan. If the amendment relates to the first part of the development plan, its approval is subject to the ministers' consent (clauses 113(5) and 113(6)).

The boards may delegate their powers to approve a development plan and impose related requirements to any of their members, officers or employees, but the boards may not delegate those powers to each other (clause 113(7)).

2.3.3.3 Declarations, Certificates, Site Plans and Location Maps (Clauses 114 to 116 and 142(1))

No authorization for a work or activity is to be issued unless the boards have received a declaration from the applicant stating that the equipment and installations that are to be used are fit for their purposes, the operating procedures are appropriate, the personnel are qualified and competent, and the applicant will ensure that these points continue to be true as long as the work or activity continues (clause 114(1)). If any of the equipment, installations, operating procedures or personnel specified in the declaration change, a new declaration must be provided (clause 114(2)). The boards are not liable to anyone solely for having issued an authorization on the basis of such a declaration (clause 114(3)).

If certain types or classes of equipment or installations, which are prescribed in regulations, are to be used in a work or activity, no authorization for that work or activity is to be issued unless the boards have received a certificate issued by a certifying authority prescribed by regulations (clauses 115(1), 142(1)(*j*) and 142(1)(*k)*). The certificate must state that the equipment or installation is fit for the intended purposes, may be operated safely and is in conformity with all applicable requirements and conditions (clause 115(3)). The holder of the authorization must ensure that the certificate remains in force as long as the equipment or installation is used in the work or activity (clause 115(2)).

The certificate is not valid if the certifying authority has not complied with a required procedure or has participated to an extent greater than prescribed in regulations in the design, construction or installation of the equipment or installation (clause 115(4)). An applicant for an authorization must give the certifying authority access to the equipment or installation and to any related information (clause 115(5)). The boards are not liable to anyone solely for having issued an authorization on the basis of such a certificate (clause 115(6)).

A holder of both an operating licence and an authorization for a work or activity must ensure that a certified site plan and location map are made to confirm the location of a well on the seabed. The site plan and location map are to be made by a person who is licensed under the *Canada Lands Surveyors Act* and is also a member of l'Ordre des arpenteurs-géomètres du Québec (clause 116(1)). A site plan or location map is subject to the specifications and requirements of this Act rather than those of the *Canada Lands Surveys Act* (clause 116(2)). A certified copy of the site plan and location map is to be sent to the boards, to the federal Surveyor General and to the Surveyor-General of Quebec (clause 116(3)).

2.3.3.4 Benefits Plan (Clauses 117 and 118)

A benefits plan is "a plan for the employment of Canadians and for providing Canadian manufacturers, consultants, contractors and service companies with a full and fair opportunity to participate on a competitive basis in the supply of goods and services used in any proposed work or activity referred to in the benefits plan."[43]

The federal Minister of Natural Resources, in consultation with the provincial minister, must approve a benefits plan (or waive the requirement) before a development plan may be granted and an authorization for a work or activity may be issued. The federal minister may require that an affirmative action program be included in the benefits plan (clause 117).[44]

Within 30 days of the issuance of an authorization for a work or activity, the holder must establish a committee that follows the approved benefits plan to maximize benefits in accordance with the principles of sustainable development (clauses 118(1) and 118(2)). The majority of the committee's members must be independent of the holder. The holder is to determine, with the boards' approval, the composition of the committee and the method for selecting members (clause 118(3)). The Governor in Council may make regulations, subject to the provincial minister's approval, respecting the operation of the committee (clause 118(4)). The committee must continue until the development of the pool or field for which the authorization was issued ceases (clauses 118(1) and 118(2)).

2.3.3.5 Title to Petroleum Produced During an Extended Formation Flow Test (Clause 124)

Whether or not a person has a production licence, petroleum produced during an extended formation flow test belongs to the person who conducts the test in accordance and compliance with an authorization for a work or activity, with every related approval and requirement and with any applicable regulation (clauses 124(1) and 124(2)).[45]

2.3.4 Pipeline Traffic, Tolls and Tariffs (Clauses 125 to 141)

2.3.4.1 Power of the Boards and Definitions (Clauses 125, 126 and 141)

The Boards may make orders with respect to all matters relating to pipeline traffic, tolls or tariffs (clause 126).[46] A "toll" includes any rate, charge or allowance charged or made for providing a pipeline or transmitting through a pipeline oil, gas or a substance incidental to the drilling for or production of oil or gas (a "related substance") for storage, demurrage and the like (definition in clause 125). A "tariff" is a schedule of tolls, terms, classifications, practices or rules and regulations that apply to pipeline services (definition in clause 125). In this context, the person authorized to construct or operate a pipeline is referred to as a "holder," since that person holds the authorization to construct or operate a pipeline (definition in clause 125).

For the purposes of the provisions dealing with pipeline traffic, tolls and tariffs, the Governor in Council may make regulations, subject to the provincial minister's approval, designating any of the following substances that result from processing hydrocarbons as oil or gas: asphalt, a lubricant or a substance that is a source of energy by itself or when combined with something else (clause 141).

2.3.4.2 Oversight of Tolls, Tariffs and Liability (Clauses 127 to 137)

A holder may charge only such tolls that are specified in a tariff that is filed with the boards and is in effect, or that are approved by an order of the boards (clause 127(1)). If a holder transmits its own gas through its pipeline, the holder must file copies of the gas sale contracts with the boards, and those copies constitute a tariff (clause 127(2)). If a tariff filed with the boards includes a toll for making a pipeline available and ready to transmit, the boards may establish the day on which the tariff is to come into effect (clause 128).

All tolls must be just and reasonable and must always, under substantially similar circumstances and conditions, be charged equally to all persons at the same rate (clause 129). The boards may determine whether a holder has charged just and reasonable tolls and whether there has been unjust discrimination in tolls, service or facilities (clause 130). If the boards have made an interim order authorizing a holder to charge tolls, the boards may make a subsequent order directing the holder to either refund or recover an amount representing the difference between the tolls charged under the interim order and the tolls determined by the boards to be just and reasonable, plus interest (clause 131).

The boards may disallow any tariff or portion of a tariff that they consider to be contrary to any provision of the Act or any of their orders. They may suspend a tariff and require a holder to substitute a tariff that is satisfactory to them or establish other tariffs in lieu of the disallowed tariff (clauses 132 and 133).

A holder must not make any unjust discrimination in tolls, service or facilities against any person or locality (clause 134). If a holder discriminates, the holder bears the burden of proving that the discrimination is not unjust (clause 135). A holder or shipper must not use a rebate or other means (including false billing, classification, reporting or other device) for a person to obtain pipeline transmission from the holder at a rate less than that specified in the current tariff. Prosecution for contravention of this provision may be instituted only with the boards' permission (clause 136).

A contract, condition or notice to limit a holder's liability in respect of its transmission of oil, gas or a related substance through a pipeline is not effective unless that class of contract, condition or notice is included as a term of the holder's tariffs filed with the boards, or unless it has been first authorized or approved by order of the Boards (clause 137(1)). The boards may determine the extent to which a holder's liability may be limited, and they may establish the terms under which oil, gas or another related substance may be transmitted by the holder (clauses 137(2) and 137(3)).

2.3.4.3 Transmission of Oil or Gas (Clauses 138 and 139)

Subject to the provisions in Part 2 of the Act, a holder may transmit oil, gas or a related substance by pipeline, and it may regulate the time and manner in which it is to be transmitted and the tolls to be charged for the transmission (clause 139).

A holder that operates an oil pipeline must receive, transport and deliver all oil and any related substance that the holder is requested to transmit, subject to any exemptions or conditions that the boards may establish (clause 138(1)). The boards

may issue an order requiring a holder that operates a gas pipeline to receive, transport and deliver gas and any related substance that the holder is requested to transmit (clause 138(2)).

The boards may require a holder to provide facilities for the transmission or storage of oil, gas or a related substance or for the junction of its pipeline with other facilities if the boards find that such a requirement will not place an undue burden on the holder and if they consider it in the public interest (clause 138(3)).

The boards may require a holder who operates a gas pipeline to sell gas to a locality or entity that distributes gas locally to the public. The boards may require the holder to extend or improve its facilities in order to facilitate the junction of its pipeline with the locality's or entity's facilities, and to construct branch lines to communities adjacent to its pipeline. Such requirements may be imposed only if the boards find that they will not place an undue burden on the holder and if they consider them to be in the public interest (clause 140(1)). However the boards cannot compel a holder to sell gas to additional customers if doing so would impair the holder's ability to provide service to its existing customers (clause 140(2)).

2.3.5 Regulation of Operations (Clauses 142 to 164)

2.3.5.1 Regulatory Powers (Clause 142)

Bill C-74 lists numerous matters in relation to which the Governor in Council is empowered, with the approval of the provincial minister, to make regulations for the purposes of safety, environmental protection and accountability as well as for the production and conservation of petroleum resources (clause 142(1)). Matters that may be regulated include:

- notices, applications, requests, reports, records, site plans and location maps under the Act;
- exploration and drilling for petroleum, and the production, processing and transportation of petroleum;
- responses to spills, including the use of spill-treating agents[47] and inquiries;
- introduction of substances into the environment; and
- circumstances for making a recommendation regarding a liability limit in respect of a spill or discharge of petroleum (clause 142(1)).

The Governor in Council may make regulations relating to the following matters on the recommendation of the federal Minister of Natural Resources and Minister of Labour and with the approval of those ministers' provincial counterparts:

- safety of any work or activity that involves explosives or is carried out at heights, above water, under water or in a confined space;
- standards for and use of equipment, materials and other things that may be used by employees in their work;

- standards relating to ventilation, lighting, temperature, humidity, sound, vibration and exposure to chemical agents, biological agents and radiation;
- qualifications of persons authorized to carry out training prescribed in regulations;
- fire safety and emergency measures; and
- maintenance of records and communication of information (clause 142(2)).

Regulations may apply to all persons or to one or more classes of persons (clause 142(4)). They may incorporate any material by reference[48] without the need to publish the incorporated material in the *Canada Gazette* (clauses 142(5) and 142(6)).

2.3.5.2 Occupational Health and Safety (Clause 145)

The following legislation applies on any marine installation or structure related to petroleum operations within the joint management area: Quebec labour legislation and regulations, the *Oil and Gas Occupational Safety and Health Regulations* (made under the *Canada Labour Code*), and certain provisions[49] of the *Canada Labour Code* that impose obligations on an employer to make relevant regulations available to employees, to ensure that activities do not endanger health and safety and to inform of hazards in the workplace.[50] The federal requirements take precedence over Quebec labour legislation and regulations, and Bill C-74 prevails over Quebec labour legislation and regulations to the extent of any inconsistency or conflict (clauses 145(2), 145(3) and 145(5)). The *Non-smokers' Health Act* and Parts I and III of the *Canada Labour Code* do not apply in this context (clause 145(4)). Any complaint or remedy must be made under Quebec labour legislation unless the complaint or remedy relates substantially to a matter to which the *Oil and Gas Occupational Safety and Health Regulations* apply (clause 145(6)).

However, when an independent joint board is established to manage petroleum resources in the joint management area, the *Oil and Gas Occupational Safety and Health Regulations* and the relevant provisions of the *Canada Labour Code* cease to apply to a marine installation or structure, and Quebec occupational health and safety legislation applies (clause 145(9)).

A "marine installation or structure" includes an offshore platform, subsea installation, pipeline, living accommodation, pumping station, storage structure or ship, but does not include a vessel that provides supply or support services. The definition is subject to precision and exceptions in regulations, which may be made by the Governor in Council on the recommendation of the federal ministers of Natural Resources, Labour and Transport, and with the approval of the provincial counterpart to the Minister of Natural Resources as well as the provincial minister responsible for occupational health and safety (clauses 145(1) and 145(8)).

2.3.5.3 Emergency Situations (Clause 146)

In a type of emergency situation prescribed in regulations, if the federal Minister of Natural Resources is of the opinion that there is a conflict between provisions of Part 2 of Bill C-74 and other federal law (other than provisions implementing an international treaty) and that compliance with both is likely to endanger the safety of

persons or property, the minister has the power to issue a declaration to that effect (clause 146(1)). Information to be provided in the declaration is specified (clause 146(2)). The declaration causes Part 2 of Bill C-74 to prevail over the other federal law in the context specified in the declaration until either the Minister of Natural Resources or the Governor in Council revokes the declaration (clause 146(3)). Before the minister issues or revokes a declaration, the minister responsible for the other federal law must be consulted (clause 146(4)). That other federal minister may submit the declaration to the Governor in Council for revocation (clause 146(5)).

2.3.6 Chief Safety Officer and Chief Conservation Officer (Clauses 102, 106(4), 110, 144 and 147 to 152)

2.3.6.1 Designation and Powers (Clauses 102 and 144)

The boards may designate one of their members, officers or employees (other than the Chief Executive Officer of either of the boards) as the Chief Safety Officer and another member, officer or employee as the Chief Conservation Officer (clause 102).

The Chief Safety Officer and the Chief Conservation Officer may grant an exemption from regulations in respect of equipment, methods, measures or standards, and they may authorize the use of equipment, methods, measures or standards despite regulations, provided the level of safety, environmental protection and conservation that would be achieved without complying with the regulations would be equivalent to the level achieved by compliance with the regulations (clause 144(1)). These powers may be exercised by the Chief Safety Officer alone if the regulatory requirement does not relate to environmental protection or conservation, and they may be exercised by the Chief Conservation Officer alone if the regulatory requirement does not relate to safety (clause 144(2)).

2.3.6.2 Role of the Chief Safety Officer in Authorizations (Clauses 106(4) and 110)

When the boards receive an application for an authorization for a work or activity or an application to amend such an authorization, they must provide a copy of the application to the Chief Safety Officer (clause 106(4)).

Before issuing an authorization for a work or activity, the boards must consider the safety of the work or activity by reviewing, in consultation with the Chief Safety Officer, the system as a whole and its components (clause 110).

2.3.6.3 Production Orders (Clauses 147 and 148)

The Chief Conservation Officer may issue a production order to begin, continue or increase petroleum production – or an order to decrease, cease or suspend production – if the officer reasonably believes that to do so would stop waste (clauses 147(1) and 147(2)). Before making such an order, the Chief Conservation Officer must hold an investigation at which interested persons have the opportunity to be heard (clause 147(4)). The Chief Conservation Officer may, without an

investigation, make a peremptory order to shut down operations if necessary to protect persons, property or the environment, but an investigation must be held as soon as is feasible and no later than 15 days after the order is made (clause 147(5)). After an investigation, the Chief Conservation Officer may set aside, vary or confirm a peremptory order (clause 147(6)), and an aggrieved person may apply to the boards for a review of an order. The boards have the power to make any appropriate order (clause 148).

A person subject to such an order must provide access to premises, files and records for reasonable purposes related to the order (clause 147(3)).

2.3.6.4 Waste (Clauses 149 to 152)

Bill C-74 prohibits committing waste (clause 149(1)). The term “waste” includes its ordinary meaning as well as waste as understood in the petroleum industry, which includes: (i) inefficient use of reservoir energy; (ii) the spacing of a well such that it results in a reduction in the quantity of petroleum recoverable; (iii) operating a well such that it causes excessive loss of petroleum after production; (iv) inefficient petroleum storage; (v) production of petroleum in excess of available storage; (vi) the flaring of gas that could be economically recovered or used; or (vii) the failure to use suitable methods when it appears that those methods would increase the quantity of petroleum recoverable (clause 149(2)).

If the Chief Conservation Officer reasonably believes that waste is being committed, he or she may take action, depending on the type of waste. For waste other than a type listed in items (vi) or (vii), above, the officer may order that operations giving rise to the waste cease until the waste has stopped. Before making such an order, the Chief Conservation Officer must hold an investigation similar to that described in the preceding part of this Legislative Summary relating to production orders (clause 150). The same power to make a peremptory order and right of appeal exist in this context (clause 150). To give effect to the order, the Chief Conservation Officer may authorize any person to take over management and control of operations and do all things necessary to stop the waste (clauses 151(1) and 151(2)). The cost of stopping the waste is to be borne by the person who holds the exploration or production licence and is a debt due to the federal government (clause 151(3)).

For waste of a type listed in items (vi) or (vii), above, the Chief Conservation Officer may apply to the boards for an order requiring the operators to show cause at a hearing why the boards should not make a direction in respect of the waste (clause 152(1)). At the hearing, the Chief Conservation Officer, the operators and other interested persons are to be given an opportunity to be heard (clause 152(2)). After the hearing, if the boards are of the opinion that waste is occurring, the boards may order the introduction of a scheme for managing produced gas; the repressurizing, recycling or pressure maintenance for the pool and the injection of any substance into the pool; the shut-down of operations if the order requirements are not met or if an approved scheme is not in operation by a deadline; or the continuation of operations, subject to conditions, if a scheme or action is in the course of preparation (clauses 152(3) to 152(5)).

2.3.7 Spills and Debris (Clauses 111, 143, 143.1, 153 to 159, 245 and 246)

2.3.7.1 Response to a Spill (Clause 154)

A person must not cause or permit a petroleum spill in any portion of the joint management area (clause 154(1)). If a spill occurs in the joint management area, any person carrying on petroleum activities in the area of the spill must report the spill to the Chief Conservation Officer and take all reasonable measures to prevent any further spill, to remedy the situation and to reduce or mitigate damage or danger (clauses 154(2) and 154(3)). If such action is not being taken or will not be taken but immediate action is necessary, the Chief Conservation Officer may take any action or direct that action be taken (clause 154(4)). The officer may authorize and direct a person to take over management and control of a work or activity in the area of the spill, and that person must take all reasonable measures to prevent any further spill, to remedy the situation and to reduce or mitigate damage or danger (clauses 154(5) and 154(6)).

Costs incurred in taking over management or control must be borne by the person who obtained the authorization for the work or activity from which the spill emanated (the “responsible person”), and until costs are paid they are a debt due to the federal government (clause 154(7)). If a person other than the responsible person takes action in response to the spill, that person may recover reasonably incurred costs and expenses from the federal government (clause 154(8)).

A person aggrieved by any action or measure taken, authorized or directed in response to a spill may apply to the boards for a review (clause 154(9)). After hearing an application, the boards may make any order that they consider appropriate (clause 154(10)). No person who is required, authorized or directed to act in response to a spill is personally liable for an act or omission in the course of complying unless the act or omission is due to the person’s gross negligence, wilful misconduct or gross or intentional fault (clause 154(11)).

The federal government is not liable for authorizing – by regulations made by the Governor in Council – any discharge of petroleum (clause 153(2)).

2.3.7.2 Use of Spill-Treating Agents (Clauses 111, 143, 143.1, 155 to 159, 245 and 246)

A “spill-treating agent” is an agent that appears both on a list of spill-treating agents that the Minister of the Environment may establish in a regulation as well as on a list established under Quebec’s *Environment Quality Act* (definition in clause 2 and clause 143.1). After the Minister of the Environment establishes the list by regulation, the minister must notify the provincial minister and the boards of the making of the list and any amendment to it (clause 158).

A spill-treating agent may be used in clean-up efforts after a spill if the relevant authorization for a work or activity permits the use of a spill-treating agent and if the Chief Conservation Officer approves the use of the agent. The boards must not

permit the use of a spill-treating agent in an authorization unless the use of the spill-treating agent is likely to achieve a net environmental benefit (clause 111). Before approving the use of an agent, the Chief Conservation Officer must consult with the federal Minister of Natural Resources and that minister's provincial counterpart; the Minister of Natural Resources must consult with the Minister of the Environment; and the Chief Conservation Officer must have determined that the use of the spill-treating agent is likely to result in a net environmental benefit (clause 155(3)).

When a spill-treating agent is used as authorized, certain federal environmental laws or regulations set out in Schedule 3 or Schedule 4 of the Act do not apply to the deposit of the spill-treating agent or in respect of any harm caused by the deposit (clause 155(1)). However, the legal provisions listed in Schedule 4 continue to apply in respect of harm caused by the spill or by the interaction between the spill-treating agent and the spilled oil (clause 155(2)). The Governor in Council may amend Schedule 3 or 4 on the recommendation of the federal Minister of Natural Resources and every minister responsible for the administration of a federal Act or regulation referred to in the amendment (clause 143).

Certain provisions of the *Canadian Environmental Protection Act, 1999* that prohibit importing or exporting a substance and that regulate loading a substance for disposal in the sea do not apply in respect of a spill-treating agent (clause 156).[51] If a spill-treating agent that is deleterious to fish is deposited in fish-bearing waters in response to a spill, section 42 of the *Fisheries Act* applies to impose civil liability on the authorization holder from whose work or activity the spill emanated as well as on the person who caused or contributed to the spill, in order to compensate the government for costs incurred as well as to compensate fishermen for loss of income (clause 157).

The Minister of the Environment may authorize and establish conditions for the deposit of an agent to treat spills, oil or oil surrogate for the purpose of a research project on the use of the agent in mitigating the environmental impact of a spill (clause 159).

2.3.7.2.1 Future Amendments to Bill C-74 (Clauses 245 and 246)

Like most provisions of Bill C-74, the provisions relating to the use of a spill-treating agent come into effect on a day or days to be fixed by order of the Governor in Council; however, regulations relating to spill-treating agents are to be made in the future. Amendments to the provisions relating to the use of a spill-treating agent that will give effect to these future regulations will come into effect within five years of the Act receiving Royal Assent (clause 258(2)). The future regulations will:

- prescribe factors that the boards must take into account when determining whether the use of a spill-treating agent is likely to achieve a net environmental benefit and, consequently, whether its use will be permitted in an authorization for a work or activity (clause 245 will amend clause 111);
- prescribe factors that the Chief Conservation Officer must take into account when determining whether the use of a spill-treating agent is likely to achieve a net environmental benefit and, consequently, whether the officer will approve its use (clause 246(3) will amend clause 155(3));

- prescribe requirements for a use of a spill-treating agent to qualify as a "small-scale test" that does not require the Chief Conservation Officer's approval (clause 246(1) will amend clause 155(1)(*b*)); and
- generally set out requirements for the use of a spill-treating agent (clause 246(2) will add a new clause 155(1)(*d*)).

2.3.7.2.2 Coordinating Amendments (Clause 257)

The *Energy Safety and Security Act,* [52] which received Royal Assent on 26 February 2015, added new section 14.2 to the *Canada Oil and Gas Operations Act* in order to establish a list of spill-treating agents. Clause 143.1 of Bill C-74 also establishes a list of spill-treating agents. Bill C-74 includes a coordinating amendment stating that, when both these provisions are in force, clause 143.1 of Bill C-74 is repealed, and the list of spill-treating agents established under the *Energy Safety and Security Act* is to be used for the purposes of Bill C-74 (clause 257).

However, new section 14.2 of the *Canada Oil and Gas Operations Act* came into force the day after Bill C-74 was introduced in the House of Commons.[53] Accordingly, clause 143.1 of Bill C-74 is repealed, and the federal list of spill-treating agents is established under the *Canada Oil and Gas Operations Act*.

2.3.7.3 Liability for Spills, Discharges of Petroleum and Debris (Clause 160)

In the case of a spill, or a discharge of petroleum authorized by regulation, in the joint management area, liability is attributed as follows:

- All persons to whose fault or negligence the discharge or spill is attributable (or persons responsible for the persons at fault or negligent) are jointly and severally, or solidarily,[54] liable. If a contractor is at fault or negligent, the person who is required to obtain the authorization to carry out the relevant work or activity and who retained the contractor is jointly and severally, or solidarily, liable with the contractor.
- The person required to obtain an authorization for the work or activity from which the discharge or spill emanated is liable for up to $1 billion without proof of fault or negligence (known as "absolute liability").

These persons are liable for all actual loss or damage[55] incurred; costs or expenses reasonably incurred by any person in responding to the discharge or spill;[56] and all loss of non-use value[57] relating to a public resource (clauses 160(1), 160(4) and 160(5)).

Bill C-74 also provides for liability for loss or damage as a result of debris or as a result of any action or measure taken in relation to debris. "Debris" refers to any petroleum-related installation or structure that was abandoned without authorization or any material that has broken away or been displaced in the course of work or activity (definition in clause 153(1)). The following persons are liable for the actual loss or damage; for costs and expenses of the boards or either government in taking

any action or measure in relation to debris; and for any loss of non-use value relating to a public resource:

- All persons to whose fault or negligence the debris is attributable (or persons responsible for the persons at fault or negligent) are jointly and severally, or solidarily, liable. If a contractor is at fault or negligent, the person who is required to obtain the authorization to carry out the relevant work or activity and who retained the contractor is jointly and severally, or solidarily, liable with the contractor.
- The person required to obtain an authorization for the work or activity from which the debris originated is liable for up to $1 billion without proof of fault or negligence (clause 160(2), 160(4) and 160(5)).

With the provincial minister's approval, the Governor in Council may, by regulation, increase the $1 billion absolute liability limit (clause 160(6)). If a person faces absolute liability under both Bill C-74 and under any other Act for the same occurrence, the person is liable up to the greater of the two liability limits set out in the two Acts. However, if liability under the other Act is unlimited, then the liability limit under Bill C-74 does not apply (clause 160(7)).

Claims for amounts for losses, damages, costs and expenses rank in the following order:

- in favour of persons incurring actual loss or damage, without preference;
- to meet any costs and expenses, without preference; and
- to recover a loss of non-use value (clause 160(10)).

The fact that an act or omission is an offence under Division 2 of Part 2 of Bill C-74, (which regulates petroleum operations) or gives rise to liability as described above does not suspend or limit other legal liability or remedies; relief available to a liable person against any other person; or the operation of any applicable law that is consistent with the liability regime described above (clause 160(11)).

The limitation period for bringing a claim is three years after the loss, damage, costs or expenses were incurred; however, no claim may be brought after six years from the day the spill or discharge occurred or the debris was abandoned or broke away (clause 160(12)).

2.3.7.4 Inquiry After a Spill, Debris, Accident or Incident (Clause 164)

The ministers *may* initiate an inquiry by any qualified person (the "investigator") after a spill, or debris, or an accident or incident results in death, injury or danger to public safety or the environment (clause 164(1)). The investigator has all the powers of a commissioner under the *Inquiries Act*, other than the power to rule on contempt of court, which a judge of the Superior Court of Quebec may do (clause 164(3)). A person is guilty of contempt of court if he or she contravenes an order of the investigator, refuses to answer a question or to produce documents that the investigator has the legal authority to request or undermines the hearing (clause 164(4)).

The ministers *must* initiate an inquiry under circumstances prescribed in regulations. In this case, the investigator may not be part of the federal or provincial public service for which either minister is responsible (clause 164(2)).

The investigator may consult with appropriate authorities to ensure that procedures and practices for the inquiry are compatible with those followed by the authorities (clause 164(5)). As soon as is feasible after the inquiry, the investigator must submit a report to the ministers along with the evidence and any other materials (clause 164(6)). The ministers must jointly publish the report within 60 days, and they may supply copies of the published report (clauses 164(7) and 164(8)).

2.3.8 Financial Resources and Responsibility (Clauses 112, 161 to 163)

An applicant seeking authorization for a work or activity in order to drill for, develop or produce petroleum in the joint management area must provide proof of having the financial resources necessary to pay the liability limit, which is $1 billion or a greater amount prescribed by regulations. (That amount may be increased as determined by the boards, and it may be decreased with the ministers' approval on the boards' recommendation) (clauses 161(1), 163(1) and 163(2)). An applicant seeking authorization to carry out any other type of work or activity must provide proof of having the financial resources necessary to pay an amount that the boards determine (clause 161(2)). In determining the amount that an applicant must provide proof of, the boards are not required to consider any potential loss of non-use value of a public resource that could be affected by a spill or discharge (clause 161(3)).

An applicant seeking authorization for a work or activity must provide proof of financial responsibility in the form of a letter of credit, a guarantee or an indemnity bond, or in any other form satisfactory to the boards. The amount of financial responsibility that must be proven is $100 million for drilling, development or production in the joint management area. (That amount may be increased as determined by the boards, and it may be decreased with the ministers' approval on the boards' recommendation.) In any other case, the amount is to be determined by the boards (clauses 162(1), 163(1) and 163(3)).

The boards must ensure that an applicant has complied with the requirements to provide proof of financial resources and financial responsibility before issuing an authorization for a work or activity (clause 112).

The holder of an authorization must ensure that the proof of financial resources and the proof of financial responsibility remain in force for the duration of the work or activity in respect of which the authorization is issued. This proof must also remain in force for one year after the last well is abandoned. The boards may reduce that period and may reduce the amount of financial resources or financial responsibility for which proof must be maintained during that period (clauses 161(4), 161(5), 162(2) and 162(3)).

When a claim related to a spill, discharge or debris may be instituted as described in the preceding part of this Legislative Summary (whether or not the proceedings have

actually been instituted), the boards may require that money be paid out of the funds available under the letter of credit, guarantee, indemnity bond or other form of financial responsibility. The amount required to be paid may not be more than the amount prescribed in regulations (clause 162(4)). Regulations may also prescribe the manner of payment as well as the person or classes of persons to or for whom the money must be paid (clause 162(5)). In the absence of relevant regulations, the boards may determine the amount, manner and beneficiaries of payments (clauses 162(4) and 162(5)). If a claimant initiates legal proceedings and is awarded an amount in respect of loss, damage, costs or expenses incurred, amounts that the claimant has already received through payments described in this paragraph are to be deducted from the award (clause 162(6)).

2.3.9 Production Arrangements (Clauses 165 to 182)

2.3.9.1 Pooling (Clauses 165 to 170)

"Pooling" means consolidating the interests of owners in a spacing unit (the area allocated to a well). It is prohibited to produce petroleum – other than for testing – from a spacing unit in which there are two or more production licences or two or more separately owned working interests[58] unless a pooling agreement has been or is deemed to have been entered into (clause 170).

The working interest owners who have separately owned working interests in a spacing unit and the royalty owners[59] who own all the interests in the spacing unit may pool their working interests and royalty interests in the spacing unit for the purposes of drilling for and/or producing petroleum (clause 166(1)). If they do so, they must file a copy of the pooling agreement with the Chief Conservation Officer (clause 166(2)). The ministers may enter into a pooling agreement on behalf of their governments (clause 166(3)).

In the absence of a pooling agreement, a working interest owner may apply to the ministers for a pooling order directing the other working interest owners and the royalty owners within the spacing unit to pool their interests (clause 167(1)). The ministers must refer the application to the Oil and Gas Committee to hold a hearing at which all interested parties are given an opportunity to be heard (clause 167(2)). Before the hearing, the applicant must provide a proposed pooling agreement and the other working interest holders must provide any information that the Oil and Gas Committee considers necessary (clause 167(3)). After the hearing, the committee may issue a pooling order deeming all the owners to have entered into a binding pooling agreement set out in the pooling order (clauses 167(4) and 168).

A pooling order must provide for the drilling and/or operation of a well on the spacing unit; for the appointment of an operator responsible for the well; for the allocation of the petroleum produced from the pooled spacing unit; for paying the costs of drilling, completing, operating and abandoning the well, or, if no petroleum is produced, for the applicant to pay the costs of drilling and abandoning the well; and for the operator to sell a working interest owner's share of petroleum if that person fails to take and dispose of that share (clause 167(5)). A pooling order may provide for a penalty against a working interest owner who does not pay their share of the costs to drill

and complete the well, but the penalty amount cannot exceed one half of a working interest owner's share of the costs (clause 167(6)). Such costs and penalties can be recovered only out of that working interest owner's share of production from the spacing unit (clause 167(7)).

If the working interest owners of more than 25% of the working interests in a pooled spacing unit apply to the Oil and Gas Committee to have a pooling order varied, amended or terminated, the Oil and Gas Committee must hear the application. However, the committee has the discretion to order a hearing on the application of any of the working interest owners or royalty owners (clause 169(1)). After the hearing, the Oil and Gas Committee may vary, amend or terminate the pooling order (clause 169(2)). Note that no variation or amendment may alter the ratios of tract participation[60] between the pooled tracts as originally set out in the pooling order (clause 169(3)).

2.3.9.2 Unitization (Clauses 171 to 181)

If the area of a pool[61] is more than the area of a spacing unit, any one or more of the owners of a working interest in the pool may, together with the royalty owners, enter into an agreement to unitize the interests of owners (a "unit agreement"), a copy of which must be filed with the Chief Conservation Officer (clauses 171(1) and 171(2) and definition in clause 165). The ministers may enter into a unit agreement on behalf of their respective governments (clause 171(3)). If a unit agreement provides that a unit operator must be the agent or mandatary[62] of the parties to the agreement, the unit operator's exercise of powers and performance of duties or functions, or failures in this regard, are attributed to the parties otherwise having those powers, duties and functions (clause 171(4)).

If the Chief Conservation Officer is of the opinion that unit operation of a pool would prevent waste, the officer may apply to the Oil and Gas Committee for an order requiring the working interest owners to enter into a unit agreement and a unit operating agreement[63] (clause 172(1)). The committee must then hold a hearing at which all interested persons are given an opportunity to be heard (clause 172(2)). After the hearing, if the committee agrees with the officer, it may make the order (clause 172(3)). The working interest owners and royalty owners are given at least six months to enter into the agreements, which must be approved by the committee. If they fail to do so, all drilling and production operations within the pool must cease until the agreements have been concluded, approved by the committee and filed with the Chief Conservation Officer (clause 172(4)). However, the committee may permit the continued operation of the pool – subject to conditions – after the time specified if the agreements are in the course of being entered into (clause 172(5)).

One or more working interest owners may apply to the ministers for an order (a "unitization order") to make the unit agreement and unit operating agreement they provide in the application valid contracts that bind all the owners who have an interest in the area subject to the agreements (the "unit area"). To make such an application, the owners must, in total, own 65% or more of the working interests in the unit area (clause 173(1)). Bill C-74 lists contents of the application for a unitization order as well as the contents that must be included in the unit agreement

and the unit operating agreement that would be subject to the unitization order (clause 174). The ministers must refer the application to the Oil and Gas Committee to hold a hearing at which all interested persons are to be given an opportunity to be heard (clauses 173(2) and 175(1)). After the hearing, the committee may make the unitization order (which may vary the agreements) if:

- the agreements would accomplish more efficient or economical production of petroleum from the geological formation subject to the unit agreement;
- the agreements have been executed by one or more working interest owners who own, in total, at least 65% of the total working interests in the unit area; and
- the unit agreement has been executed by one or more royalty owners who own, in total, at least 65% of the total royalty interests in the unit area (clauses 175(2) and 175(4)).

A unitization order becomes effective no sooner than 30 days after it is made (clause 176(1)). If a unitization order varies a unit agreement or a unit operating agreement, the applicant may render the unitization order ineffective (causing the committee to revoke the order) if, before the date it becomes effective, the applicant withdraws the application on behalf of the working interest owners (clauses 176(2) and 176(3)). Similarly, working interest owners and royalty owners who signed the versions of the agreements originally submitted with the application may render the unitization order ineffective and have it revoked. To do so, the owners must own the specified percentage of working interests and royalty interests in the unit area, and they must file written statements objecting to the order before the date the order becomes effective (clauses 176(2) and 176(3)). A unitization order is not invalid by reason only of irregularities in giving notice of the application for the order (clause 177).

The Oil and Gas Committee may amend a unitization order on application of a working interest owner after holding a hearing at which all interested parties are given the opportunity to be heard (clause 178(1)). The committee may amend the order as proposed if one or more working interest owners who own, in total, at least 65% of the total working interests in the unit area and one or more royalty owners who own, in total, at least 65% of the total royalty interests in the unit area have consented to the proposed amendment (clause 178(2)). However, no such amendment may alter the ratios between the tract participations[64] of those tracts (portions of the unit area) that were qualified for inclusion in the unit area before the hearing (clause 179).

After a unitization order comes into effect, any petroleum operations in the unitized zone[65] must be carried out in accordance with the unit agreement and the unit operating agreement (clause 180).

2.3.9.3 Pooled Spacing Unit within a Unit Area (Clause 182)

A pooled spacing unit that has been pooled under a pooling order and on which a well has been drilled may be included in a unit area as a single unit tract. The Oil and Gas Committee may make amendments to the pooling order if necessary to remove any conflict between the pooling order and the unitization (clause 182(1)). Subject to some exceptions,[66] if a pooled spacing unit is included in a unit area, the provisions

of the unit agreement, unit operating agreement or unitization order prevail over the provisions of the pooling order in the event of a conflict (clause 182(2)).

2.3.10 Administration and Enforcement (Clauses 187 to 233)

2.3.10.1 Designation of Safety and Conservation Officers (Clauses 187 and 192)

The ministers must designate an individual whom the boards have recommended from among their officers and employees to serve as a safety officer or a conservation officer to administer and enforce Part 2 of the Act. The ministers must make the designation within 30 days of the boards' recommendation – unless the ministers are not satisfied that the individual is qualified – and notify the boards of the designation or decision not to designate (clauses 187(1) to 187(3)). The boards must provide every officer, including the Chief Safety Officer and the Chief Conservation Officer, with a certificate of designation or appointment that the officer must produce when entering any place to administer or enforce the Act, as described below (clause 187(4)).

A person must not obstruct or make a false statement to a safety officer, the Chief Safety Officer, a conservation officer or the Chief Conservation Officer while the officer is performing duties or functions under Part 2 of the Act (clause 192).

2.3.10.2 Powers to Verify Compliance in a Place (Clauses 188 to 191)

Bill C-74 provides safety and conservation officers and the Chief Safety or Conservation Officer (an "officer") with broad powers in order to verify compliance with Part 2 of the Act. An officer may order any person who is in charge of a relevant place to inspect anything in the place; to pose questions or conduct tests or monitoring in the place; to take photographs or measurements or make recordings or drawings; to accompany or assist the officer in the place; to produce a document or other thing in his or her possession or control; to provide information; to ensure that the place is not disturbed for a given period; and to remove anything from the place and provide it to the officer for examination, testing or copying (clause 188(1)).

Upon entering a place to verify compliance with Part 2 of the Act, an officer may inspect anything; pose questions or conduct tests; take samples; remove anything for examination, testing or copying; take photographs or measurements or make recordings or drawings; use any computer system to examine data; prepare a document based on the data; use copying equipment; be accompanied or assisted by a person while in the place; meet with any person in private in the place, if the person agrees; and order any person in the place to do anything described in the preceding paragraph (clauses 188(2) and 188(3)). Anything removed from a place must, upon request, be returned unless it is needed for prosecution (clause 188(4)).

The owner of a place entered by an officer, every person in charge of the place and every person found in the place must give all reasonable assistance to the officer. If the place is a marine installation or structure, the person in charge must provide the officer and every person accompanying the officer with free transportation, accommodation and food at the marine installation or structure (clause 189).

The officer must provide the holder of the authorization for a work or activity with written reports about anything inspected, tested or monitored for the purpose of verifying compliance with Part 2 of the Act (clause 190).

Special rules apply if a place that is to be entered is living quarters (that is, sleeping quarters on a marine installation or structure, and any room for the exclusive use of the occupants that contains a toilet or urinal) (clause 191(8)). Neither a conservation officer nor the Chief Conservation Officer may enter living quarters to verify compliance, and a safety officer or the Chief Safety Officer requires the occupant's consent to enter. Without consent, the safety officer or Chief Safety Officer may enter the living quarters only with a warrant or, with reasonable notice to the occupant, to verify that the living quarters on a marine installation or structure are structurally sound (clauses 191(1) and 191(2)). However, the safety officer or Chief Safety Officer requires a warrant to open a locker in the living quarters (clause 191(3)).

On *ex parte* application,[67] a justice of the peace may issue a warrant (including by telephone or other means of telecommunication)[68] authorizing a safety officer or the Chief Safety Officer to enter living quarters, subject to specified conditions, if the justice is satisfied that:

- the living quarters are used for a work or activity in respect of which Part 2 of the Act applies or the officer has reasonable grounds to believe that the living quarters are a place in which there is anything to which Part 2 of the Act applies;
- entry to the living quarters is necessary to verify compliance with Part 2 of the Act; and
- the occupant refused entry or entry cannot be obtained from the occupant (clause 191(4)).

The officer may use force in executing the warrant only if the warrant authorizes the use of force (clause 191(6)). The warrant may authorize the officer to open a locker, subject to conditions, if the justice is satisfied that opening the locker is necessary to verify compliance with Part 2 of the Act and that the occupant refused to allow that the locker be opened or consent to opening it cannot be obtained (clause 191(5)).

2.3.10.3 Search and Seizure (Clauses 193 and 194)

On *ex parte* application, a justice of the peace may issue a warrant (including by telephone or other means of telecommunication) authorizing an officer or any other person to search a place where there are reasonable grounds to believe there is something that will provide evidence or information relating to an offence under Part 2 of the Act. The warrant may authorize the person to seize anything specified in the warrant and, subject to conditions, it may authorize the person to conduct examinations, tests or monitoring; take samples; take photographs or measurements; or make recordings or drawings (clauses 193(1), 193(2) and 193(8)).

An officer may search a place and seize something without a warrant if the conditions for obtaining a warrant exist but exigent (urgent) circumstances make it infeasible to obtain the warrant (clause 193(3)). Exigent circumstances include

circumstances in which a delay in obtaining a warrant would result in danger to human life or the environment or loss of evidence (clause 193(4)).

A person authorized to search a computer system in a place may use any computer system in the place to search any data; reproduce any data, including through a printout; seize any printout or other output; and use any copying equipment in the place to make copies of data (clause 193(5)). Every person in charge of a place where a search is carried out must, on presentation of the warrant, permit the individual carrying out the search to use any computer system and copying equipment as described above (clause 193(6)).

If a marine installation or structure is subject to a search warrant, the person in charge must provide free transportation, accommodation and food to the individual executing the warrant (clause 193(7)).

A seized thing may be stored where it was seized or may be removed to another place for storage at the expense of the owner or person who possesses it (clause 194(1)). If a seized thing is perishable, an officer may destroy or otherwise dispose of the thing and pay any proceeds from its disposition to the Receiver General (clause 194(2)).

2.3.10.4 Dangerous Petroleum Operations (Clauses 195 and 196)

If a safety officer or the Chief Safety Officer has reasonable grounds to believe that a petroleum-related work or activity in the joint management area is likely to result in serious bodily injury, the officer may order the operation to cease, or to be continued subject to terms in the order (clause 195(1)). The officer who makes an order must affix notice of the order at the scene of the work or activity. If the order is made by a safety officer, this officer must advise the Chief Safety Officer, who may modify or revoke the order (clauses 195(2) and 195(4)).

The order expires after 72 hours unless it is confirmed by the Chief Safety Officer (clause 195(3)). If the person carrying out the work or activity to which the order relates, or any other person with a monetary interest in the work or activity, requests that the Chief Safety Officer refer the order to the boards for review, the officer must do so (clause 195(5)). During the boards' inquiry into the need for the order, the person who requested the referral to the boards bears the burden of establishing that the order is not needed. The boards may confirm the order or set it aside. Their decision is final (clauses 195(6) and 195(7)).

An order made by a safety officer or the Chief Safety Officer prevails over an order made by a conservation officer or the Chief Conservation Officer to the extent of any inconsistency between the orders (clause 196).

2.3.11 Status of an Order (Clause 103)

An order made under the Act by a safety officer, the Chief Safety Officer, a conservation officer, the Chief Conservation Officer, the Oil and Gas Committee or the boards is not a statutory instrument (clause 103).[69]

2.3.12 Installation Manager (Clause 197)

If a certain type of installation prescribed by regulations is to be used in a work or activity, the person who holds the authorization for a work or activity must put an installation manager in command of the installation. The installation manager, who must meet qualifications prescribed by regulations, is responsible for the safety of the installation and the persons at it (clause 197(1)).

The installation manager may give orders to any person at the installation, order that a person at the installation be restrained or removed, and obtain information and documents (subject to federal law) (clause 197(2)). In a type of emergency situation prescribed by regulations, the installation manager's powers also apply to each person in charge of a vessel, vehicle or aircraft at, leaving or approaching the installation (clause 197(3)).

2.3.13 Offences and Penalties (Clauses 198 to 211)

2.3.13.1 Offences and Punishments (Clauses 198, 200, 207 and 209)

Under Bill C-74, it is an offence to do any of the following:

- contravene any provision of Part 2 of the Act or the regulations made under it;
- make a false entry or statement in a report, record or other required document, or destroy or falsify such a document;
- produce petroleum under a unit agreement before the unit agreement is filed with the Chief Conservation Officer;
- undertake a work or activity without authorization or without complying with related approvals or requirements; or
- fail to comply with a direction, requirement or order of an officer, or with an order of an installation manager, the Oil and Gas Committee or the boards (clause 198(1)).

The limitation period for instituting summary proceedings for an offence under Part 2 of the Act is five years after the subject matter of the proceedings arose (clause 207). No proceedings may be instituted without the consent of the attorney general of either Canada or Quebec (clause 209).

In a prosecution, it is a defence for a person to prove that they exercised all due diligence to prevent the offence (clause 198(8)).[70] The maximum punishments on summary conviction for the above offences are a fine of $300,000 or imprisonment for 18 months, or both (but imprisonment may not be imposed in default of payment of a fine). On conviction on indictment, the maximum punishments are a fine of $6 million or imprisonment for four years, or both (clauses 198(2) and 200).

The *Criminal Code* sets out principles and factors that a court is required to take into consideration when sentencing an offender.[71] In addition to those principles and factors, a court sentencing an offender under Part 2 of the Act must consider that the amount of a fine should be increased to account for every aggravating factor, and it should reflect the gravity of each aggravating factor associated with the offence (clause 198(3)).

The bill lists the following aggravating factors for a court to consider when sentencing:

- The offence caused:
  - harm or risk of harm to human health or safety; or
  - damage[72] or risk of damage to the environment, or to any unique, rare, particularly important or vulnerable component of the environment;
- The damage or harm is extensive, persistent or irreparable.
- The offender:
  - committed the offence intentionally or recklessly;[73]
  - failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
  - increased their revenue or decreased their costs (or intended to do so) by committing the offence or failing to take action to prevent it;
  - has a history of non-compliance with federal or provincial safety or environmental legislation; and
  - after the commission of the offence, attempted to conceal its commission, failed to take prompt action to prevent, mitigate or remediate its effects, or failed to take prompt action to reduce the risk of committing similar offences in the future (clause 198(4)).

The absence of an aggravating factor is not a mitigating factor (clause 198(5)). If the court decides not to increase the amount of the fine despite the existence of one or more aggravating factors, the court must give reasons for that decision (clause 198(7)).

The offence of waste may be prosecuted only with permission of the boards and only if a person committed waste after failing to comply with an order of the boards to take measures to prevent waste (clause 198(9)).

2.3.13.2 Corporate Offenders (Clause 199)

If a corporation commits an offence under Part 2, any director, officer, agent, mandatary, manager or supervisor of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to the offence and is liable to punishment, whether or not the corporation is prosecuted. The fact that the offence was committed by an employee, agent or mandatary of an accused is sufficient proof of an offence, regardless of whether or not the employee, agent or mandatary is identified or prosecuted.

2.3.13.3 Order of Court (Clauses 201 to 203 and 205)

If a person is found guilty of an offence under Part 2 of the Act, in addition to imposing any other punishment, the court may make an order prohibiting the offender from:

- committing an act or engaging in an activity that may result in the continuation or repetition of the offence; or

- taking measures to acquire an interest or from applying for any new licence or other authorization under the Act during a period that the court considers appropriate.

The court may make an order directing the offender to:

- take appropriate action to remedy or avoid harm to the environment from the offence;
- carry out, or to pay for, environmental effects monitoring;
- make changes to its environmental management system;
- have an environmental audit conducted, and remedy any deficiencies revealed during the audit;
- pay an appropriate amount of money to the boards for the purpose of conducting research, education and training in environmental protection, petroleum conservation or petroleum operations safety;
- publish the facts of the offence and details of the punishment imposed, including any orders;
- notify any person aggrieved or affected by the offender's conduct of the facts of the offence and details of the punishment imposed, including costs;
- post a bond or pay an amount of money into court to ensure that the offender complies with any prohibition, direction, requirement or condition specified in the order;
- perform community service;
- pay an amount of money to environmental, health or other groups to assist in their work;
- pay an amount of money to an educational institution, including for environmental studies scholarships;
- comply with conditions for securing the offender's good conduct; or
- comply with the provisions of the Act or regulations that the person contravened (clauses 201(1) and 205).

The order (other than an order of the type listed in the final bullet point) may not continue in force for more than three years (clause 201(2)). If an offender does not comply with an order requiring the publication of facts relating to the offence and details of the punishment imposed, the boards may publish those facts and details and recover the costs of publication from the offender (clause 201(3)). Such costs constitute a debt to the boards and may be recovered in any court of competent jurisdiction (clause 201(4)).

If a change in the offender's circumstances after an order was made warrants a variation to the order, the offender or the boards may apply to the court for a hearing at which both the offender and the boards may be heard. The court may also direct that notice of the hearing be given to any interested persons, and the court may hear any of those persons. After the hearing, the court may change, extend, decrease or

relieve an offender of compliance with any prohibition, direction, requirement or condition specified in the order, but the period during which the order is to remain in force may not be extended by more than one year (clause 202). After the court hears an application to vary an order, the court's permission is required before another application to vary an order may be made in relation to the same offender (clause 203).

2.3.13.4 Miscellaneous Provisions Related to Offences and Punishments (Clauses 204, 206 and 208 to 211)

If a person convicted of an offence fails to pay a fine on time or if a court order requires a payment, the prosecutor may file[74] the conviction or order in the Superior Court of Quebec. Doing so makes the conviction or order a judgment that is enforceable against the person as if it were a civil judgment that the court rendered against that person (clause 204).

A person is liable to be convicted for a separate offence for each day on which the person commits or continues the offence (clause 206). In a prosecution, a copy of an order or document purporting to have been made and signed under Part 2 of the Act is, in the absence of evidence to the contrary, proof of the matters set out in the order or document (clause 208).

Even if a prosecution has been instituted for an offence, the ministers may commence other legal proceedings to stop a person from committing any such offence (clause 210(1)). No civil remedy for an act or omission is affected by reason that the act or omission is an offence under Part 2 of the Act (clause 210(2)). In any proceedings for an offence, an information[75] may include more than one offence committed by the same person. All the offences may be tried concurrently, and one conviction may be made for any or all of the offences (clause 211).

2.3.14 Administrative Monetary Penalties (Clauses 212 to 233)

2.3.14.1 Background Information

An administrative monetary penalty (AMP) is a civil sanction that may be an appropriate response for certain types of violations that require more than a warning but are not serious enough to warrant a criminal prosecution. According to an Environment Canada consultation document:

> Most AMPs are issued directly by a government department to the violator using a simple form that sets out the violation in respect of which the AMP is issued, the amount of the penalty, and the options for payment. … An AMP is designed to ensure compliance with legislation and can address a range of compliance issues: some relatively minor, and some more severe. An AMP takes away the financial incentives of rule-breaking and thereby removes any financial benefit, advantage, or gain a person or corporation achieved by committing a violation. It helps ensure future compliance and may discourage others from violating legislation.[76]

2.3.14.2 Designation of Violations (Clauses 212(1)(*a*) and 214)

The Governor in Council may make regulations designating as a "violation" the contravention of specific provisions of Part 2 of the Act or regulations made under Part 2. The Governor in Council may also designate as a violation the contravention of any direction, requirement, decision or order made under Part 2, or the failure to comply with any term, condition or requirement of an operating licence, authorization, approval, leave or exemption granted under Part 2. Before such regulations are made, the federal Minister of Natural Resources must consult with, and obtain the approval of, the provincial minister (clause 212(1)(*a*)). Every person who commits a violation is liable to an AMP. The purpose of the penalty is to promote compliance with the Act rather than to punish (clause 214).

2.3.14.3 Notice of Violation (Clauses 217 and 228)

A notice of violation may be issued and served on a person believed, on reasonable grounds, to have committed a violation. The notice must:

- name the person and set out the facts surrounding the violation;
- set out the amount of the penalty and inform the person of the manner of paying the penalty;
- inform the person of the right to request a review; and
- inform the person that failure to either pay the penalty or request a review, will result in the person being considered to have committed the violation and being liable to the penalty (clauses 217 and 228).

2.3.14.4 Amount of Administrative Monetary Penalties (Clauses 212(1)(*b*) and 212(2))

The Governor in Council may – with the provincial minister's approval – make regulations respecting the determination of the amount payable as the penalty, which may be different for individuals and other persons[77] for each violation (clause 212(1)(*b*)). However, the maximum penalties for a violation by an individual and another person are $25,000 and $100,000, respectively (clause 212(2)).

2.3.14.5 Directors, Officers, Employees, Agents and Mandataries (Clauses 215 and 216)

If a corporation commits a violation, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to the violation and is liable to a penalty, whether or not the corporation is proceeded against (clause 215). The fact that the violation was committed by an employee, agent or mandatary of a person is sufficient proof of a violation by the person, regardless of whether or not the employee, agent or mandatary is identified or proceeded against (clause 216).

2.3.14.6 Rules About Violations (Clauses 218 to 221, 223, 227 and 232)

Bill C-74 sets out the following rules regarding violations:

- Proceeding with any act or omission as a *violation* under Part 2 of the Act precludes proceeding with it as an *offence* under Part 2, and vice versa. Therefore, section 126 of the *Criminal Code*, which sets out the offence of disobeying a federal statute, does not apply as a violation (clause 220).
- A person named in a violation cannot defend by arguing that they exercised due diligence to prevent the commission of the violation or that they reasonably and honestly believed in the existence of exonerating facts. However, common law rules and principles that render any circumstance a justification or excuse in relation to a charge for an offence under Part 2 of the Act also apply in respect of a violation, as long as they are not inconsistent with Part 2 (clause 218).
- A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued (clause 219).
- The limitation period for issuing a notice of violation is two years after the day on which the matter giving rise to the violation occurred (clause 221).
- A person authorized to issue notices of violation may cancel or correct an error in a notice of violation at any time before the boards receive a request for a review in respect of the notice (clause 223).
- If a person pays the penalty, that person is considered to have committed the violation, and proceedings for it are ended (clause 227).
- The boards may make public the facts surrounding a violation, the name of a person who committed it and the amount of the penalty (clause 232).

2.3.14.7 Reviews (Clauses 213(*d*), 222 and 224 to 226)

A person served with a notice of violation has 30 days – or longer if the boards allow it – to make a request to the boards for a review of the amount of the penalty, the facts surrounding the violation, or both (clause 222). Either the boards or a person designated by the boards may conduct the review (clauses 224(1) and 213(*d*)). The object of the review is to determine whether the person committed the violation, whether the amount of the penalty was determined in accordance with the regulations, or both (clause 225(1)).

If the facts of the violation are reviewed, the person who issued the notice of violation bears the burden of establishing, on a balance of probabilities, that the person named in the notice committed the violation (clause 226). If it is determined that the amount of the penalty for the violation was not determined in accordance with the regulations, the boards or the person conducting the review must correct the amount (clause 225(3)). The determination and the reasons for it must be rendered in writing and served upon the person who requested the review (clause 225(2)). The determination is final and binding and, except for judicial review by the Superior Court of Quebec, is not subject to appeal or to review by any court (clause 225(5)).

2.3.14.8 Recovery of Administrative Monetary Penalties (Clauses 229 and 230)

Proceedings to recover an AMP may not be instituted more than five years after the day on which the penalty becomes payable. An AMP constitutes a debt due to the Quebec government that may be recovered in the Superior Court of Quebec (clause 229). To recover the debt, the boards may issue and register in the Superior Court of Quebec a certificate of non-payment specifying the unpaid amount, which has the same effect as a judgment of that court for a debt of the specified amount plus all related registration costs (clause 230).

2.3.14.9 Documents and Notices (Clauses 212(1)(*c*), 213(*a*) to 213(*c*) and 231)

In the absence of evidence to the contrary, a document that appears to be a notice of violation is presumed to be authentic and true in any proceeding about a violation (clause 231). The Governor in Council may make regulations – with the approval of the provincial minister – respecting the service of documents required or authorized under various sections, including the manner and proof of service (clause 212(1)(*c*)). The boards may establish the form of notices of violations, designate persons authorized to issue notices of violations, and establish short-form descriptions of violations to be used in notices (clauses 213(*a*) to 213(*c*)).

2.4 Part 3 – Sharing Tax Revenues (Clauses 234 to 244)

2.4.1 Introduction (Clauses 234(3), 235(3), 236(3), 237(3), 238, 241 and 242)

In respect of the joint management area, Part 3 of Bill C-74 provides for the federal and Quebec governments to enter into one or more administration agreements under Part III of the *Federal-Provincial Fiscal Arrangements Act* (an "administration agreement") providing for corporate income tax, payroll tax and insurance premiums tax to be imposed under existing Quebec law, adapted as necessary.[78] However, these taxes, which would otherwise be payable to the provincial Minister of Revenue are, under Bill C-74, payable to the federal government through the Receiver General for Canada and are a debt due to the federal government (clauses 235(3), 236(3), 237(3) and 242).

At least 60 days before an administration agreement begins to apply, and within 60 days after an administrative agreement is terminated, the Minister of National Revenue must publish in the *Canada Gazette* notice of the day the agreement begins or is terminated (clause 241)).

The following provisions of Bill C-74 do not apply in respect of Part 3:

- the requirements under clause 7 for the federal Minister of Natural Resources to consult with one or more provincial ministers with respect to proposed regulations under the Act and for approval of the provincial minister or ministers before a regulation is made;

- the delimitation of the Act's application in the joint management area in clause 11 and the non-application of other federal petroleum statutes within this area; and
- the requirement in clause 17 that the federal Minister of Natural Resources and the provincial minister make decisions and issue documents jointly under the Act (clause 234(3)).

2.4.2 Corporate Income Tax (Clause 235)

In respect of the joint management area, corporations must pay income tax for every taxation year that begins while an administration agreement is in effect (definition in clause 234(1) and clause 235(1)). Certain specified provisions of Quebec's *Taxation Act* and *Tax Administration Act* apply to determine the corporate income tax imposed.[79] These provisions are incorporated by reference into Bill C-74 with modifications that the circumstances require (clause 235(2)). For a taxation year, if a corporation has to pay income tax under the specified provisions of Quebec's *Taxation Act* for activities carried on in the joint management area, then the corporation is not required also to pay income tax under Bill C-74 (clause 235(4)).

2.4.3 Payroll Tax (Clause 236)

In respect of a work establishment in the joint management area, payroll tax is imposed on an employer for work performed by an employee while an administration agreement is in effect (clause 236(1)). Certain specified provisions of Quebec's *An Act respecting the Régie de l'assurance maladie du Québec* and *Tax Administration Act* apply to determine the payroll tax imposed.[80] These provisions are incorporated by reference into Bill C-74 with modifications that the circumstances require (clause 236(2)). In respect of the wages of an employee who mainly reports for work outside the joint management area, if payroll tax is payable under the specified provisions of Quebec's *An Act respecting the Régie de l'assurance maladie du Québec,* then payroll tax is not also payable under Bill C-74 (clause 236(5)).

2.4.4 Insurance Premiums Tax (Clause 237)

In respect of the joint management area, a tax is payable on insurance premiums that are paid while an administration agreement is in effect (clause 237(1)). Certain specified provisions of Quebec's *An Act respecting the Québec sales tax* and *Tax Administration Act* apply to determine the insurance premiums tax imposed.[81] These provisions are incorporated by reference into Bill C-74 with modifications that the circumstances require (clause 237(2)). In respect of an insurance premium that is reasonably attributable to risks that may occur outside the joint management area, if tax is imposed under *An Act respecting the Québec sales tax,* then insurance premiums tax is not also payable under Bill C-74 (clause 237(5)).

2.4.5 Administration and Enforcement of Part 3 (Clauses 239 and 243)

The Minister of National Revenue must administer and enforce Part 3 of the Act. The Commissioner of Revenue appointed under the *Canada Revenue Agency Act* may exercise all the powers and perform all the duties of the minister under Part 3 of the Act (clause 239(1)).

The Minister of National Revenue may delegate his or her powers and duties under Part 3 to an officer or agent (clause 239(2)). If the Quebec and federal governments have entered into an administration agreement in respect of a tax, Quebec's Minister of Revenue may act on behalf of the federal Receiver General or the federal Minister of National Revenue, and the President and Chief Executive Officer of the Agence du revenue du Québec may act on behalf of the federal Commissioner of Revenue under the section imposing the tax in respect of which the agreement applies (clause 239(3)).

Quebec courts and judges have jurisdiction in respect of matters relating to taxes payable in relation to activities in the joint management area, which, for these purposes, is deemed to be within the judicial district of Montréal (clause 243).

2.4.6 Remittance of Taxes (Clause 240)

Under an administration agreement, for each fiscal year:

- the Quebec government must remit to the federal government the total taxes it collected under Part 3 on behalf of the federal government less the amount of related payments – such as rebates, refunds and remissions – that the Quebec government paid on behalf of the federal government (clause 240(1));
- the federal Minister of Natural Resources must credit the "Quebec Revenue Account – Joint Management Area" with the amount that the Quebec government remits, described above (clause 240(2)(*a*)); and
- the federal Minister of Natural Resources must then pay that amount to the Quebec government. The amount may be paid out of the Consolidated Revenue Fund (clauses 240(2)(*b*) and 240(3)).

Any overpayments to the Quebec government may be recovered from future payments the federal government makes to the Quebec government under this or any other Act (clause 240(4)).

2.4.7 Regulations Relating to Part 3 (Clause 244)

Bill C-74 empowers the Governor in Council on the recommendation of the ministers of Finance or National Revenue to make regulations for the purposes of Part 3 of the Act. Regulations may relate to how a Quebec tax statute is to be interpreted or adapted for the purposes of Part 3, and they may incorporate by reference any document (clause 244(1)). Regulations may not be retroactive unless they so provide and they:

- have a relieving effect only;
- correct any ambiguity or deficiency in an earlier regulation;
- are required consequentially after the Act or a Quebec tax statute is amended; or
- give effect to a budgetary or other public announcement (clause 244(2)).

However, a regulation that gives effect to a budgetary or other public announcement and that is not also described in any of the first three bullet points may not come into effect until either the taxation period in which the announcement was made (if the regulation applies in respect of a taxation period) or the day on which the announcement was made (clause 244(2)). Also, regulations that interpret or adapt a provision of a Quebec tax statute cannot come into effect earlier than the provision of the Quebec tax statute begins to apply, and in any other case, regulations cannot come into effect before Bill C-74 receives Royal Assent (clause 244(3)).

2.5 Consequential Amendments (Clauses 247 to 256)

2.5.1 *Canada Pension Plan* (Clause 247)

Bill C-74 adds a new section 4.01 to the *Canada Pension Plan* [82] that results in the Canada Pension Plan not applying to employment in the joint management area. Rather, Quebec's pension plan legislation applies to any establishment of an employer located in the joint management area.

2.5.2 *National Energy Board Act* (Clause 248)

Bill C-74 amends the definition of "pipeline" in section 2 of the *National Energy Board Act* [83] so that that Act does not apply to a pipeline to which Bill C-74 applies.

2.5.3 *Canada Oil and Gas Operations Act* (Clauses 249 to 251)

Bill C-74 amends section 5.4 the *Canada Oil and Gas Operations Act* [84] to expand the membership of the Oil and Gas Administration Advisory Council by one person who is designated by the provincial minister as defined in Bill C-74. The Oil and Gas Administration Advisory Council promotes consistency and improvement in the administration of the regulatory regime in force under the *Canada Oil and Gas Operations Act* and the Part III of each of the *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act* and the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act.* Under Bill C-74, that role is expanded to include promoting consistency and improvement under Part 2 of Bill C-74 (clauses 249 and 250). Also, the bill amends section 5.5 to expand the membership of the Offshore Oil and Gas Training Standards Advisory Board by one person to a total of not more than 10 members (clause 251).

2.5.4 *Income Tax Act* (Clauses 252 to 254)

Bill C-74 amends the definition of "province" in section 124(4) of the *Income Tax Act* [85] to include the joint management area in the same way that the definition already includes the Newfoundland offshore area and the Nova Scotia offshore area (clause 252(2)). The definition is used in section 124(1) of the *Income Tax Act,* which provides a corporate tax deduction equal to 10% of a corporation's taxable income earned in the year *in a province*. The amended definition and tax deduction apply to taxation years after an administration agreement comes into effect imposing corporate income tax under Quebec law in the joint management area (clause 252(3)).

In addition, Bill C-74 amends section 241(4)(*d*)(vi) of the *Income Tax Act* to allow taxpayer information to be provided to an official of the Quebec government for the purposes of the corporate income tax provisions relating to the joint management area under the Act (clause 253(1)). The bill also amends section 241(11) of the *Income Tax Act* to allow for the use and disclosure of taxpayer information:

- in the course of the administration and enforcement of Part 3 of Bill C-74; or
- for a purpose relating to the supervision, evaluation or discipline of an employee assisting in the administration or enforcement of Part 3 of Bill C-74 (clause 253(2)).

2.5.5 *Canadian Environmental Assessment Act, 2012* (Clauses 255 and 256)

Bill C-74 amends section 15(*b*) of the *Canadian Environmental Assessment Act, 2012* [86] to make the National Energy Board responsible for the environmental assessment of a project that is regulated under Bill C-74 and that requires a federal environmental assessment (clause 255). The decision statement that the National Energy Board issues at the end of an environmental assessment is considered to be part of the authorization issued or the approval given under Bill C-74 (clause 256). This is relevant for enforcement purposes because the decision statement includes any conditions with which the proponent of the project must comply.

2.6 Coming into Force (Clause 258)

Subject to the exceptions explained below, the provisions of Bill C-74 come into force on a day or days to be fixed by order of the Governor in Council (clause 258(1)).

Clause 257 of Bill C-74 comes into force on Royal Assent. This clause coordinates the coming into force of provisions of Bill C-74 that relate to the list of spill-treating agents with the coming into force of a similar provision in section 15 of the *Energy Safety and Security Act.* For more information, see Part 2.3.7.2 of this Legislative Summary.

Clauses 245 and 246 come into force five years after Royal Assent or on an earlier day or days fixed by order of the Governor in Council. These clauses will amend certain provisions of Bill C-74 to refer to regulations relating to the use of spill-treating agents once the regulations are made. For more information, see Part 2.3.7.2 of this Legislative Summary.

NOTES

1. Bill C-74: An Act to implement the accord between the Government of Canada and the Government of Quebec for the joint management of petroleum resources in the Gulf of St. Lawrence and to make consequential amendments to other Acts, 2nd Session, 41st Parliament.

2. Bill n° 49: An Act to implement the Accord Between the Government of Canada and the Government of Quebec for the Joint Management of Petroleum Resources in the Gulf of St. Lawrence, Quebec National Assembly, 41st Legislature, 1st Session.
3. Natural Resources Canada, "Harper Government Introduces Legislation to Implement Canada-Quebec Offshore Accord," News release, 18 June 2015.
4. *Canada–Newfoundland and Labrador Atlantic Accord Implementation Act*, S.C. 1987, c. 3.
5. *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, S.C. 1988, c. 28.
6. Fisheries and Oceans Canada, *Gulf of St. Lawrence: Human Systems Overview Report*, Oceans, Habitat and Species at Risk Publication Series, Newfoundland and Labrador Region, No. 0002, 2010, p. 51.
7. Ibid., p. 51.
8. Quebec National Assembly, *Journal des débats de l'Assemblée nationale*, 39th Legislature, 2nd Session, 24 March 2011 (Jean Charest, Premier of Quebec).
9. University of New Brunswick, Law Library, *Newfoundland and Nova Scotia Boundary Arbitration*.
10. Fisheries and Oceans Canada, *The Gulf St. Lawrence, a Unique Ecosystem, The Stage for the Gulf of St. Lawrence Integrated Management (GOSLIM)*, 2005, p. 2.
11. Ibid.
12. Fisheries and Oceans Canada (2010), p. 53.
13. Natural Resources Canada (2015).
14. Fisheries and Oceans Canada (2010), p. 53.
15. Ibid., p. iv.
16. Save Our Seas and Shores, *Moratorium Needed on Exploration and Drilling in the Gulf of St. Lawrence*.
17. Fisheries and Oceans Canada, "Large Ocean Management Areas," *Oceans*.
18. Fisheries and Oceans Canada, *Management of Marine Activities*.
19. Quebec, "The approach," *The government action plan*.
20. Sections 5.4 and 5.5 of the *Canada Oil and Gas Operations Act*, R.S.C. 1985, c. O-7 apply in the joint management area. Those sections establish the Oil and Gas Administration Advisory Council and the Offshore Oil and Gas Training Standards Advisory Board, respectively. An adapted version of section 5.2 of the *Canada Oil and Gas Operations Act* also applies in the joint management area. Section 5.2 deals with a "benefits plan" to employ Canadians and use Canadian supplied goods and services in any proposed work or activity. Section 5.2 is adapted as set out under clause 117 of Bill C-74.
21. The following powers, duties or functions of the boards may be delegated only to their members, officers or employees: matters related to significant discoveries under clause 54 or to commercial discoveries under clause 61; authorizing a work or activity under clause 106(1)(*b*); and approving a development plan under clause 113(4).
22. The boards' power to amend or rescind their joint decision does not apply to decisions regarding a significant discovery under clause 54 or to a commercial discovery under clause 61, to decisions regarding operating licences and authorizations for a work or activity under clause 106 and to decisions regarding development plans under clause 113.

23. However, the boards must *not* take steps to keep confidential the kinds of information or documentation referred to in clauses 93(5)(*a*) to 93(5)(*e*) and 93(5)(*i*) of the bill (clause 25). Such information or documentation broadly relates to an exploratory, delineation or development well; geological or geophysical work relating to a portion of the joint management area; engineering research or a feasibility study or experimental project carried out in relation to a portion of the joint management area; or an environmental study. See the provisions of the bill for full details.

24. The *User Fees Act*, S.C. 2004, c. 6 imposes requirements on regulating authorities to consult with clients, service users and others before setting or increasing user fees. It also sets out a procedure for resolving complaints about proposed user fees.

25. Filing an order in court is a process of formally submitting the order to the court.

26. For more information about the notice required by this clause, see Part 2.2.2.2 of this Legislative Summary.

27. The concept of selecting a successful bid on the basis of a sole criterion is common in federal oil and gas law. Examples of the sole criterion that may be applied include the total amount of money that the bidder proposes to spend doing exploratory work within a given period or the total amount of a bid in the form of a one-time, non-refundable payment to the Receiver General for Canada.

28. As an exception to this statement, the provision included in clause 54(5) does not apply in the context of a declaration of commercial discovery. That provision describes the revocation or amendment of a declaration of significant discovery to decrease the significant discovery area.

29. Note that the requirement of the federal government to remit amounts to the Quebec government “without delay” (clause 70(4)) applies only in respect of royalties, interest and penalties. It does not apply to the total of amounts received under Parts 1 and 2 of Bill C-74 that are not required to be returned and that are not to recover costs under clause 8 (clause 75(4)).

30. No court proceedings are to be commenced against the Registrar, the Deputy Registrar or anyone acting under their authority for any act done or not done in good faith in the exercise of a power or performance of a duty or function (clause 90).

31. A “security interest” does not include an operator’s lien. An “operator’s lien” is a charge or right in relation to an interest or a share in an interest that arises under contract and that secures the interest holder’s payments to the operator for work the operator carries out related to exploration, development or production of petroleum in the relevant portion of the joint management area (see definitions in clause 78).

32. An “operator’s lien” is described in the preceding endnote.

33. In this context, “service” is a legal term that means delivery.

34. An operator’s lien does not have priority over another right if the operator’s lien is postponed with respect to the other right by registration of a postponement (clause 85(5)).

35. Persons who may serve a demand for information in respect of a security notice are the holder of the relevant interest or share in an interest; the person from whom the security interest was acquired; the secured party under another security notice registered in respect of the same interest or share in an interest; a person who is a member of a class of persons prescribed by regulations; and a person who obtains permission from the court to serve a demand for information (clause 86(1)).

36. This exemption does not cover information or documentation described in the second and third bullet points that follow the statement of this exemption. The information or documentation described in those two bullet points is privileged until the relevant specified period has elapsed (clause 93(12)).

37. This exemption does not cover information or documentation described in the next two bullet points. The information or documentation described in those two bullet points is privileged until the relevant specified period has elapsed (clause 93(12)).

38. A “delineation well” is a well drilled into a pool of petroleum in order to determine the commercial value of the pool (see definition in clause 93(1)).

39. A “development well” is a well drilled for the purposes of production or observation or for the injection or disposal of a fluid into or from a pool (see definition in clause 93(1)).

40. Definitions for the various types of work and studies are set out in clause 93(1).

41. The definition of an “environmental study” is set out in clause 93(1).

42. This provision for the boards to disclose information or documentation related to safety or environmental protection and its limitation for the disclosure of information or documentation that could cause harm does not apply in respect of information or documentation described in the second and third bullet points of the second paragraph of this part 2.2.6.2 of the Legislative Summary. Such information and documentation is privileged until the relevant specified time period has elapsed (clause 93(12)).

43. *Canada Oil and Gas Operations Act*.

44. This requirement is incorporated from section 5.2 of the *Canada Oil and Gas Operations Act,* modified as necessary.

45. This section applies only in respect of an extended formation flow test that provides significant information for determining the best recovery system for a reservoir, the limits of a reservoir or the productivity of a well producing petroleum from a reservoir and that does not adversely affect the ultimate recovery from a reservoir (clause 124(3)).

46. Note that in any proceedings with respect to traffic, tolls or tariffs, the boards may take measures to ensure the confidentiality of any information that is likely to be disclosed in the proceedings. This power is set out in clauses 23 to 25 of Bill C-74 and is summarized (in the context of a public hearing) in Part 2.1.3.3 of this Legislative Summary.

47. Regulations respecting a spill-treating agent must be made on the recommendation of the federal ministers of Natural Resources and the Environment (clause 142(3)).

48. To incorporate material by reference means to include that material (text, information, etc.) in a legislative text by referring to it in the text rather than by reproducing it in the text.

49. Namely, sections 125(1)(*e*), 125(1)(*y*) and 125(1)(*z.14*) of the *Canada Labour Code*.

50. Note that the English and French versions of clause 145(5) of Bill C-74 are inconsistent. The English version includes the word “and” after the words “*Canada Labour Code*.” The French version does not include the corresponding word, “et.”

51. The provisions of the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, that do not apply are sections 123 and 124(1) to 124(3).

52. *Energy Safety and Security Act*, S.C. 2015, c. 4.

53. See *Order Fixing the Day after the Day on which this Order is made as the Day on which Certain Provisions of the Act Come into Force*, S.I./2015-0059, P.C. 2015-0845, 18 June 2015.

54. Joint and several liability is a common law concept. In a situation where two or more persons are liable for damages resulting from a discharge or spill, joint and several liability allows a claimant to exact the full amount of compensation due from any of the persons. The persons are liable to make contributions to each other or to indemnify each other in the degree to which they are respectively at fault or negligent (clause 160(3)). Solidary liability is the civil law (Quebec) equivalent of joint and several liability.

55. "Actual loss or damage" includes loss of income, including future income, and, with respect to any Aboriginal peoples of Canada, includes loss of hunting, fishing and gathering opportunities, but does not include loss of income incurred by a licensed commercial fisherman that is recoverable under section 42(3) of the *Fisheries Act* (definition in clause 153(1)).

56. Costs or expenses that the federal or Quebec government may recover are not also recoverable under section 42(1) of the *Fisheries Act* (clause 160(8)).

57. Use values and non-use values are defined in Environment Canada, *Measuring Economic Values for the Environment*:

> Use values are associated with direct use of the environment such as fishing and swimming in a lake, hiking in a forest – or commercial uses such as logging or farming. Non-use values are related to the knowledge of the continued existence of the environment (*existence values*), or the need to leave environmental resources to future generations (*bequest values*).

Only the federal or Quebec government may bring an action to recover a loss of non-use value in this context (clause 160(9)).

58. A "working interest" is a right to produce and dispose of petroleum from a pool and a related obligation to pay for all or a portion of the costs of drilling for, recovering and disposing of the petroleum (definition in clause 165).

59. A "royalty owner" is a person who owns a royalty interest, which is any interest – but not a working interest – or right in petroleum produced and saved from a field or pool or the proceeds from its sale (definition in clause 165).

60. In this context, "tract participation" means the share of production from a pooled spacing unit that is allocated to a portion of a pooled spacing unit (a "pooled tract") under a pooling agreement or pooling order (definitions in clause 165).

61. This use of the word "pool" here is different than in references to pooling in the preceding part of this Legislative Summary. In the present context, "'pool' means a natural underground reservoir containing or appearing to contain an accumulation of petroleum that is or appears to be separated from any other such accumulation" (definition in clause 2).

62. A "mandatary" is the civil law (Quebec) equivalent of an agent.

63. A "unit operating agreement" is an agreement providing for the management and operation of a unit area and a unitized zone (geological formation within the unit area) (definition in clause 165).

64. In this context, "tract participation" means the share of production from a geological formation that is allocated to a portion of the unit area (a "unit tract") under a unit agreement or unitization order (definition in clause 165).

65. "'Unitized zone' means a geological formation that is within a unit area and subject to a unit agreement" (definition in clause 165).

66. Despite the precedence of the unit agreement, unit operating agreement or unitization order over a pooling agreement:

- The share of the unit production that is allocated to the pooled spacing unit must in turn be allocated to the separately owned tracts in the pooled spacing unit in the same proportion as production actually obtained from the pooled spacing unit would have been shared under the pooling order.
- The owners of the working interests in the pooled spacing unit must pay the costs and expenses of unit operation allocated to the pooled spacing unit in the same proportion as would apply under the pooling order.

- The credits allocated under a unit operating agreement to a pooled spacing unit for adjustment of investment for wells and equipment must be shared by the owners of the working interests in the same proportion as would apply to the sharing of production under the pooling order (clause 182(3)).

67. An *ex parte* application is an application made without the presence of one of the parties and their counsel. The party absent from the proceedings is the one whose place is to be searched.

68. Section 487.1 of the *Criminal Code*, R.S.C. 1985, c. C-46 sets out requirements for issuing a warrant by telephone or other means of telecommunication (clause 191(7)).

69. This means that the federal requirements set out in the *Statutory Instruments Act* for making instruments, such as regulations, do not apply to the making of these orders.

70. The defence of due diligence is not available for the offences of:

- knowingly disclosing privileged information – when this is not permitted under clause 93(2) – without the written consent of the person who provided it;
- knowingly being a party to a false billing, false classification or false report resulting in a rate being charged that is less than that specified in the tariffs (clause 136(1)(*b*)); or
- falsifying a report, record or other document (clause 198(1)(*c*)).

71. See sections 718.1 to 718.21 of the *Criminal Code*.

72. "Damage" includes loss of use value and non-use value (clause 198(6)).

73. This aggravating factor does not apply to the offences described in endnote 70.

74. To "file" a conviction or order in court is to formally submit it to the court.

75. An "information" is a formal criminal charge.

76. Environment Canada, *Administrative Monetary Penalty System – Consultation Document*.

77. The term *persons* is being used in its legal sense and includes corporations.

78. Bill C-74 provides specific technical information as to how the Quebec tax statutes are adapted to apply in respect of activities the joint management area (clause 238).

79. The relevant provisions are: *Taxation Act*, CQLR, c. I-3, Part I, Part II, Part III, Part III.0.0.1, Part III.0.1, Part III.0.1.1, Part III.0.2, Part III.9, Part III.9.0.1, Part III.9.0.2, Part III.10.1.1.2, Part III.10.9.2, Part III.10.10, Part III.14 and Part VI.3.1; and *Tax Administration Act*, CQLR, c. A-6.002, other than sections 9 to 9.0.6, 16.1 and 94 to 94.0.4 and division VIII of chapter III (definitions in clause 234(1)).

80. The relevant provisions are: *An Act respecting the Régie de l'assurance maladie du Québec*, CQLR, c. R-5, subdivisions 1, 2, and 4 of Division I of Chapter IV and the same provisions of the *Tax Administration Act* specified in endnote 79 (definitions in clause 234(1)).

81. The relevant provisions are: *An Act respecting the Québec Sales Tax*, CQLR, c. T-0.1, Titles III, VII and VIII and the same provisions of the *Tax Administration Act* specified in endnote 79 (definitions in clause 234(1)).

82. *Canada Pension Plan*, R.S.C. 1985, c. C-8.

83. *National Energy Board Act*, R.S.C. 1985, c. N-7.

84. *Canada Oil and Gas Operations Act*.

85. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

86. *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, s. 52.