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LEGISLATIVE SUMMARY

Bill C-44:

An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures

Publication No. 42-1-C44-E
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Economics, Resources and International Affairs Division
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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

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

Legislative Summary of Bill C-44
(Legislative Summary)

Publication No. 42-1-C44-E

Ce document est également publié en français.

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LEGISLATIVE SUMMARY OF BILL C-44: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 22, 2017 AND OTHER MEASURES*

1 BACKGROUND

Bill C-44, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures (short title: Budget Implementation Act, 2017, No. 1),[1] was introduced at first reading in the House of Commons on 11 April 2017. The Standing Senate Committee on National Finance began pre-study of the bill on 8 May 2017. After second reading in the House, Bill C-44 was studied by the House of Commons Standing Committee on Finance, which reported the bill to the House with amendments on 31 May 2017. Following third reading in the House, the bill received first and second readings in the Senate on 13 and 14 June 2017.

As the bill's short and long titles show, the purpose is to implement the government's overall budget policy, introduced in the House of Commons on 22 March 2017. Bill C-44 is the first implementation bill of the March 2017 Budget. Established legislative practice would have this bill followed by a second budget implementation bill in the fall.

Bill C-44 is divided into four parts:

- Part 1 implements income tax measures, such as eliminating the investment tax credit for child care spaces and the public transit tax credit (clauses 2 to 34).
- Part 2 implements goods and services tax/harmonized sales tax measures (clauses 35 to 41). It includes provisions on naloxone and on the definition of "taxi business."
- Part 3 implements excise measures (clauses 42 to 67). It includes provisions to increase the excise duty rates on alcohol products.
- Part 4, which is subdivided into 21 divisions, implements a range of measures (clauses 68 to 451). Some of them are contained in amendments to the *Parliament of Canada Act* (Parliamentary Budget Officer), the *Judges Act* (compensation for and number of judges), the *Employment Insurance Act* (parental and maternity leave) and the *Immigration and Refugee Protection Act* (application for permanent residence). Part 4 also enacts the Borrowing Authority Act, the Canada Infrastructure Bank Act, the Invest in Canada Act and the Service Fees Act. In addition, Part 4 provides funding to provinces for home care services and mental health services for the fiscal year 2017–2018.

This document provides a brief description of the main measures proposed in the bill by summarizing the substance of each part. For ease of reference, the information is presented in the same order as it appears in the summary of the bill.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: IMPLEMENTATION OF CERTAIN INCOME TAX MEASURES PROPOSED IN THE 2017 BUDGET

2.1.1 ELIMINATION OF THE INVESTMENT TAX CREDIT FOR CHILD CARE SPACES

The child care spaces tax credit currently available under sections 18 and 20 of the *Income Tax Act* (ITA)[2] provides a non-refundable tax credit for each eligible child care space created by an employer for its employees. The credit is generally 25% of eligible expenditures incurred when a new child care space is created, with a maximum credit of $10,000 per child care space. Unused credits in one year can be carried back three years or forward 20 years.

Clause 23[3] amends various parts of sections 127(5), 127(7) to 127(9), 127(11), 127(27), 127(28) and 127(30) of the ITA to repeal the investment tax credit for child care spaces. Clauses 3 and 4 repeal sections 18(9)(f) and 20(1)(nn.1) of the Act.

These changes apply for expenditures incurred on or after 22 March 2017, subject to a transitional provision: the child care space tax credit continues to be available for expenditures incurred before 2020 pursuant to any written agreement entered into before 22 March 2017.

2.1.2 ELIMINATION OF THE DEDUCTION FOR ELIGIBLE HOME RELOCATION LOANS

The purpose of an eligible relocation loan is to enable an employee who is starting a job in a new location to purchase a residence located at least 40 kilometres closer to the new place of work than the former residence.

Under current sections 80.4(4) and 110(1)(j) of the ITA, individuals may deduct from their income the taxable benefit resulting from an eligible relocation loan of up to $25,000.

Clauses 5 and 8 of the bill eliminate the deduction for eligible home relocation loans by amending section 80.4(4) and repealing section 110(1)(j) of the ITA.

These changes will take effect on 1 January 2018.

2.1.3 EXEMPTION FROM INCOME TAX OF CAREGIVER RECOGNITION BENEFITS UNDER THE VETERANS WELL-BEING ACT

As described in section 2.4.12 of this Legislative Summary, Division 12 of Part 4 of Bill C-44 introduces a caregiver recognition benefit payable to a person designated by a veteran. This replaces the family caregiver relief benefit granted under Part 3.1 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, which, through an amendment in Bill C-44, is now called the "Veterans Well-being Act."

Under section 81(1)(d.1) of the ITA, amounts received by an individual as a family caregiver relief benefit are currently excluded from the computation of the income of a taxpayer in a taxation year.

Clauses 6(1) and 6(2) amend section 81(1)(d.1) of the ITA to ensure that amounts received as a caregiver recognition benefit under the Veterans Well-being Act are exempt from tax, like those received under the family caregiver relief benefit.

Under clause 6(4), the tax exemption applicable to amounts received under the caregiver recognition benefit comes into force on 1 April 2018.

2.1.4 Elimination of Exemptions for Allowances Paid to Certain Public Office Holders

Under current sections 81(2) and 81(3) of the ITA, certain persons do not have to declare allowances for expenses incurred in the discharge of their duties. The exemption is limited to 50% of the compensation paid for their duties. These persons are:

- an elected member of a provincial or territorial legislative assembly;
- an elected officer of an incorporated municipality;
- an elected officer of a municipal utilities board or any other similar body; and
- a member of a public or separate school board or similar body governing a school district.

Clauses 6(3) and 6(6) of the bill eliminate this tax benefit effective 1 January 2019, by repealing sections 81(2) and 81(3) of the ITA.

2.1.5 Elimination of the Exemption for Insurers of Farming and Fishing Property

Sections 149(1)(t) and 149(4.1) to 149(4.3) of the ITA and section 4802(2) of the *Income Tax Regulations* (ITR)[4] permit eligible insurers of farming and fishing property whose only business is insurance to exempt a portion of their taxable income. The amount of the exemption is based on the proportion of the insurer's gross annual income that is derived from insurance premiums (net of reinsurance ceded) for the insurance of farming or fishing property – including residences – relative to the insurer's total gross premium income for the year. The amount that an insurer is permitted to exempt is calculated as follows:

- If 90% or more of its gross premium income is derived from farming and fishing sources, all of its taxable income can be exempted.
- If 25% to 90% of its gross premium income is derived from farming and fishing sources, an equivalent percentage of its taxable income can be exempted.
- If 20% to 25% of its gross premium income is derived from farming and fishing sources, one half of an equivalent percentage of its taxable income can be exempted.
- If less than 20% of its gross premium income is derived from farming and fishing sources, no exemption is available.

Clauses 7, 24 and 33 of Bill C-44 eliminate this tax exemption for taxation years that begin after 2018 by repealing sections 149(1)(t) and 149(4.1) to 149(4.3) of the ITA, as well as section 4802(2) of the ITR; consequential amendments are made to sections 89(1) and 149(10) of the ITA.

2.1.6 Elimination of the Additional Deduction for Gifts of Medicine

Section 110.1(1)(a.1) of the ITA allows corporations to claim an additional deduction for the amount of certain donations of medicine for use by an eligible Canadian charity outside Canada.

Clause 9 of Bill C-44 repeals sections 110.1(1)(a.1), 110.1(8) and 110.1(9) of the ITA to eliminate the additional deduction for eligible medical gifts made to an eligible medical charity on or after 22 March 2017. The general tax treatment of corporate donations to registered charities is not affected.

Clauses 25 and 32 make consequential amendments to repeal section 149.1(15)(d) of the ITA and section 3505 of the ITR. The changes apply to gifts made on or after 22 March 2017.

2.1.7 Creation of the Canada Caregiver Credit

Under section 118(1)(c.1) of the ITA, an individual currently benefits from the "caregiver credit" if he or she provides in-home care to a parent or grandparent who is at least 65 years old or to a family member rendered dependent by a physical or mental infirmity. In 2017, the caregiver credit equalled 15% of a maximum base amount of $4,732, or $6,882 if the dependant was infirm. The maximum amount was reduced dollar-for-dollar by the dependant's net income above $16,163.[5]

Under section 118(1)(d) of the ITA, an individual currently benefits from the "infirm dependant credit" if he or she supports an adult family member – but not a spouse or common-law partner – rendered dependent by a physical or mental infirmity. Unlike the caregiver credit, the infirm dependant credit is granted both to individuals who reside with the supported family member and those who do not. In 2017, the infirm dependant credit equalled 15% of a maximum base amount of $6,883. The maximum amount was reduced dollar-for-dollar by the dependant's net income above $6,902.[6]

Clause 12(4) of the bill amends sections 118(1)(c.1) and 118(1)(d) of the ITA to replace the caregiver credit and the infirm dependant credit with a single Canada caregiver credit. Under new section 118(1)(d) of the ITA, the Canada caregiver credit is available to an individual providing care to an infirm adult dependant, whether or not they live together. The maximum base amount of the credit is $6,883. That amount is reduced dollar-for-dollar by the dependant's net income above $16,163.

Clause 12(5) amends sections 118(4)(d), 118(4)(e), and 118(6) of the ITA to take account of the new Canada caregiver credit.

- Existing section 118(4)(d) of the Act, made inoperable with the repeal of the caregiver credit, is removed.
- New section 118(4)(d) retains the substance of existing section 118(4)(e): it limits the amount multiple individuals can claim under the Canada caregiver credit for the same person.
- Section 118(6) currently defines the term “dependant” for the purpose of determining eligibility for the caregiver tax credit and the infirm dependant credit. The new section refers only to section 118(1)(d) of the Act, which establishes the new Canada caregiver credit.

Clause 12 amends section 118 to increase from $2,000 to $2,150 the maximum base amount of the tax credit that individuals receive when providing in-home care for a person who is rendered dependent by a physical or mental infirmity:

- Clause 12(1), which amends section 118(1)(a)(ii), applies to individuals caring for their spouse or common-law partner.
- Clause 12(2), which amends section 118(1)(b)(iv), applies to individuals who are not married or in a common-law partnership, or do not support or are not supported by their spouse or common-law partner and who care for a wholly dependent family member.
- Clause 12(3), which amends section 118(1)(b.1), applies to individuals caring for a child who, because of a physical or mental infirmity, will require significantly more assistance in comparison to children of the same age.

Under section 118(4)(c) of the ITA, an individual currently cannot accumulate tax credits received under sections 118(1)(b) and 118(1)(d) of the Act for the same person under their care. However, in order not to penalize individuals benefiting from a tax credit under section 118(1)(b) but still eligible for the tax credit under section 118(1)(d), section 118(1)(e) currently allows an individual to deduct the difference between the amount determined under section 118(1)(b) and the amount determined under section 118(1)(d).

Clause 12(5) amends section 118(4)(c) of the ITA to prevent individuals from accumulating tax credits received under sections 118(1)(a) and 118(1)(d) of the Act for the same person under their care. Correspondingly, clause 12(4) amends section 118(1)(e) to allow an individual benefiting from a tax credit under section 118(1)(a) but still eligible for the tax credit established under section 118(1)(d) to deduct the difference between the amount determined under section 118(1)(a) and the amount determined under section 118(1)(d).

Under clause 12(7), clauses 12(1) to 12(6) apply to the 2017 and subsequent taxation years. However, the amounts expressed in dollars in the previous clauses must not be adjusted for the 2017 taxation year under current section 117.1(1) of the ITA.

Clause 11 repeals section 117(1.1) of the ITA to account for the new amounts established under Bill C-44.

Clause 14 amends section 118.041(1) of the ITA to account for the replacement of the caregiver credit and the infirm dependant credit by the new Canada caregiver credit in the definition of “eligible individual.”

2.1.8 Elimination of the Public Transit Tax Credit

The non-refundable public transit tax credit allows a 15% tax credit on certain transit expenses, including those for eligible transit passes and electronic fare cards.

Clause 13 amends section 118.02(2) of the ITA to eliminate the public transit tax credit with respect to any eligible public transit costs incurred by a taxpayer after 30 June 2017.

Clause 20 makes a consequential amendment to section 118.92 of the ITA.

2.1.9 Changes to the Medical Expense Tax Credit in Relation to the Use of Reproductive Technologies

Clause 15 amends section 118.2 of the ITA to add section 118.2(2.2) in relation to the eligibility of fertility expenses for the purpose of the medical expense tax credit.

In particular, eligible costs incurred by a taxpayer relating to the use of reproductive technologies in order to conceive a child are eligible for the non-refundable medical expenses tax credit. The taxpayer need not be medically infertile, but may only require some medical intervention in order to conceive.

This measure applies to fertility expenses incurred in 2017 and subsequent tax years, although a taxpayer who is an individual (other than a trust) or a graduated rate estate can deduct similar expenses for a tax year by filing a request for a refund with the Minister of National Revenue within 10 years, the time limit specified in section 164(1.5)(a) of the ITA.

2.1.10 Changes to the List of Medical Practitioners Who Can Certify Eligibility for the Disability Tax Credit

Clauses 16 and 17 amend sections 118.2(1)(a.2), 118.3(1)(a.3)(i), 118.3(1)(a.3)(ii) and 118.4(2) of the ITA to add nurse practitioners to the list of medical practitioners who can certify eligibility for the disability tax credit. An eligible medical practitioner, who varies depending on the nature of the disability, certifies on Form T2201 that a taxpayer meets one of the conditions required to claim the tax credit.

Beginning on 22 March 2017, authorized nurse practitioners can certify a taxpayer’s eligibility for the disability tax credit, provided that the taxpayer’s impairment is within the scope of their practice.

2.1.11 Changes in Relation to the Tuition Tax Credit and Student Eligibility

Under the ITA, individuals enrolled at an eligible educational institution benefit from a tax credit for eligible tuition fees. An eligible educational institution is either:

- a university, college or other educational institution providing courses at a post-secondary school level; or
- an institution certified by the Minister of Employment and Social Development to be an educational institution providing occupational skills courses.

An occupational skills course is a non–post-secondary course designed to furnish a person with skills or improve a person's skills related to an occupation. Examples of certified institutions providing occupational skills courses include the Truck Driving Academy of Stoney Creek in Ontario, the Académie Aéronautique Inc. in Québec and the Insurance Institute of British Columbia.[7] Because in the case of occupational skills courses the ITA restricts the tuition tax credit to individuals enrolled at certified institutions, individuals enrolled in a similar course at a post-secondary educational institution do not currently benefit from this credit.

Clause 18(1) amends section 118.5(1)a)(ii.1) of the ITA to make certain fees paid for occupational skills courses at a post-secondary institution eligible for a tuition tax credit.

Clause 19 amends the definition of "qualifying educational program" in section 118.6(1) of the ITA, making certain fees to attend occupational skills courses at a post-secondary institution eligible for a deduction under child care expenses (section 63 of the ITA) or disability supports (section 64 of the ITA).

The changes effected by clauses 18 and 19 apply to the 2017 and subsequent taxation years.

2.1.12 Extension of the Mineral Exploration Tax Credit for Flow-Through Share Investors

Mineral resource corporations typically incur exploration expenses long before income is generated from commercial production, with the result that they may have to wait several years before being able to deduct exploration and development expenses from income in order to reduce their tax payable. Flow-through shares[8] allow these corporations to raise funds by transferring certain unused exploration and development expenses to purchasers of the shares. Such investors can claim the 15% non-refundable mineral exploration tax credit and these unused expenses against their income.[9] This credit was first announced in the *Economic Statement and Budget Update* of 18 October 2000. It has since been extended several times.

Clause 23[10] amends sections 127(9)(a), 127(9)(c) and 127(9)(d) of the ITA, which define the term "flow-through mining expenditure," to extend the eligibility period of the mineral exploration tax credit by one year. With this change, the tax credit is available for eligible mineral exploration expenses incurred by a corporation after March 2017 and before 2019 under a flow-through share agreement entered into after March 2017 and before April 2018.

2.1.13 Elimination of the Tobacco Manufacturers' Surtax

Clauses 26 and 27 repeal the tobacco manufacturers' surtax, according to which a 50% surtax is imposed on tobacco manufacturers' profits for a taxation year; the result is an additional tax of approximately 10.5% on corporate income.

Clause 26 amends section 182 of the ITA to prorate the surtax for the number of days in a corporation's 2017 taxation year that precede 23 March 2017. This clause is applicable for taxation years that include 22 March 2017.

Clause 27 repeals Part II of the ITA for taxation years that begin after 22 March 2017. Part II includes sections 182 and 183, the latter of which sets out the administrative requirements for tobacco manufacturers in relation to the surtax.

2.1.14 Electronic Distribution of T4 Information Slips

Section 209 of the ITR requires employers to distribute two paper copies of an employee's T4 information slip to that employee, unless he or she expressly consents – in writing or in electronic format – to receive his or her T4 information slip electronically.

Clause 28 of Bill C-44 adds section 221.01 to the ITA to allow employers to distribute a T4 information slip to an employee electronically without that employee's express consent, provided that the employer has in place privacy safeguards that meet the standards that will be set by the Minister of National Revenue. Clause 31 adds section 209(5) to the ITR to list exceptions to the electronic distribution of T4 information slips. In particular, an employer must provide a paper copy of a T4 information slip to any employee who makes such a request; similarly, if an individual cannot reasonably be expected to have access to an electronic copy of his or her T4 information slip – for example, if the employee is on extended leave or is no longer employed by the employer – then the employer must provide the individual with paper copies.

This measure applies to T4 information slips that must be issued for the 2017 taxation year and thereafter.

2.1.15 Timeline for Repeal of Provisions Relating to the National Child Benefit Supplement

The *Budget Implementation Act, 2016, No. 1*[11] (BIA, 2016) replaced the Canada child tax benefit, the universal child care benefit and the National Child Benefit (NCB) Supplement with the new Canada child benefit that came into effect in July 2016. Most provinces and territories rely on the amounts determined for the NCB Supplement to calculate adjustments to their own social assistance and child benefit amounts. To provide time for the provinces and territories to adjust their benefit system to the disappearance of the NCB Supplement, the BIA, 2016 retained a reference to the NCB Supplement, to be repealed on 1 July 2017. However, in March 2017, the Department of Finance announced that provinces and territories required more time to implement the necessary policy changes.[12]

Clause 30 amends section 29(9) of the BIA, 2016 to delay the repeal of the NCB Supplement to 1 July 2018.

Clause 34 establishes contingency measures should section 29(9) of the BIA, 2016 produce its effects before clause 30 comes into force. In that event, the bill provides for two consequences. First, clause 30 will be deemed never to have come into force and will be repealed. Second, clause 34(2) will make a series of amendments to section 122.61(1) of the ITA that will be deemed to come into force on 1 July 2017 and that are designed to delay the repeal of the NCB Supplement to 1 July 2018.

2.2 Part 2: Implementation of Certain Goods and Services Tax/ Harmonized Sales Tax Measures Proposed in the 2017 Budget

2.2.1 Changes to Zero-Rated Non-prescription Drugs

Until 22 March 2016, naloxone was available only by prescription; for this reason, the Goods and Services Tax/Harmonized Sales Tax (GST/HST) was not applied. In an effort to improve access and avoid delays in administering naloxone, on 22 March 2016, Health Canada removed the requirement for a prescription in situations where the drug is needed for emergency use for opioid overdoses outside hospital settings.

Clause 41 of Bill C-44 amends Schedule VI to the *Excise Tax Act* (ETA)[13] to restore the GST/HST-exempt status for naloxone and its salts by adding them to the list of zero-rated[14] non-prescription drugs that can be used to treat conditions that are life-threatening.

The measure comes into effect on 22 March 2016, although it does not apply to any supply, importation, or bringing into a participating province of naloxone that occurred after 21 March 2016 but on or before 22 March 2017 and for which the GST/HST was charged, collected, remitted or paid.

2.2.2 Amendment to the Definition of "Taxi Business"

Clause 35 amends the definition of a "taxi business" in section 123(1) of the *Excise Tax Act* to include ride-sharing services in a municipality and its environs if the transportation is arranged or coordinated through an electronic platform or system. This new definition does not include the following:

- school transportation of elementary or secondary students;
- sightseeing transportation and services; and
- a prescribed business or a prescribed activity of a business.

This amendment requires all providers of commercial ride-sharing services (such as Uber) that are arranged or coordinated through a Web application to register for a GST/HST account and collect the applicable taxes on their services in the same manner as taxi operators.

This measure comes into force on 1 July 2017.

2.2.3 Elimination of the Non-resident Rebate for the Accommodation Portion of Tour Packages

Clauses 36 to 40 remove the GST/HST rebate available to non-residents for the GST/HST payable on the Canadian accommodation portion of tour packages for packages or accommodations arranged after 22 March 2017.

However, as an interim measure, the rebate will continue to be offered on the Canadian accommodation portion of tour packages for tour packages or accommodations arranged after 22 March 2017 but before 1 January 2018, if the full amount is paid before 1 January 2018.

2.3 Part 3: Implementation of Certain Excise Measures Proposed in the 2017 Budget

2.3.1 Adjustment to the Excise Duty Rates on Tobacco Products

Part 3 of Bill C-44 increases the excise duty rates on tobacco products, and makes amendments to other tobacco-related taxes and fines.

Clauses 45, 46, 47 and 48 amend sections 58.1, 58.2(1), 58.5(1)(a) and 58.6(1)(a), respectively, of the *Excise Act, 2001*[15] in order to levy the cigarette inventory tax on manufacturers, importers, wholesalers and retailers that hold more than 30,000 cigarettes; it was last levied in 2014. The tax rate is lowered from $0.02015 to $0.00265 per cigarette, and is applicable for inventories held on 23 March 2017.

Clause 51 amends sections 216(2)(a)(i) to 216(2)(a)(iv) and 216(3)(a)(iii) to 216(3)(a)(iv) of the *Excise Act, 2001* in order to increase the fines relating to the unlawful possession or sale of tobacco products. Clause 54 amends sections 240(a) to 240(c) to increase the fines for a tobacco licensee that unlawfully removes tobacco from its excise warehouse.

Clauses 58 to 63 amend schedules 1 and 2 of the *Excise Act, 2001* in order to increase the rates of excise duty paid on tobacco products. The rate increases for the various tobacco products are as follows:

- from $0.52575 to $0.53900 per five cigarettes;
- from $0.10515 to $0.10780 per tobacco stick;
- from $6.57188 to $6.73750 per 50 grams of manufactured tobacco; and
- from $22.88559 to $23.46235 per 1,000 cigars.

Schedule 2 sets out an additional excise duty on cigars; this duty is increased from the greater of $0.08226 per cigar or 82% of its sale price, to the greater of $0.08434 per cigar or 84% of its sale price.

These amendments are deemed to have come into force on 23 March 2017.

2.3.2 Adjustments to the Excise Duty Rates on Alcohol Products

Part 3 of Bill C-44 increases the excise duty rates on beer, spirits and wine, and provides that these rates will be automatically adjusted for inflation.

Clause 42 adds section 170.2 to the *Excise Act*[16] so that the excise duty rates for beer and malt liquor are adjusted annually by the Consumer Price Index, beginning on 1 April 2018.

Clauses 43 and 44 amend the schedule to the *Excise Act* to increase the excise duty rates on beer and malt liquor. The applicable excise duty rate depends on two factors: the percentage of alcohol by volume; and the amount of beer or malt liquor brewed in Canada.

These amendments are deemed to have come into force on 23 March 2017.

Clauses 49 and 50 add sections 123.1 and 135.1, respectively, to the *Excise Act, 2001* so that the excise duty rates for spirits and wine are adjusted annually by the Consumer Price Index, beginning on 1 April 2018.

Clauses 52 and 53 amend sections 217(2)(a)(i), 217(2)(a)(ii), 217(3)(a)(i), 217(3)(a)(ii), 218(2)(a)(i), 218(2)(a)(ii), 218(3)(a)(i) and 218(3)(a)(ii) so as to increase the fines for certain offences relating to spirits and wine. Clauses 55 to 57 make similar amendments to sections 242, 243(1)(b), 243(2)(b) and 243.1(b) to increase fines for contraventions of the *Excise Act, 2001*. Clauses 52, 53 and 55 to 57 also introduce subsequent amendments to the same provisions that will link the amount of the fine to the rates of excise duty imposed on spirits or wine. These subsequent amendments will come into force on 1 April 2018.

Clauses 64 and 65 amend schedules 4 and 6, respectively, of the *Excise Act, 2001* to increase the excise duty rates on spirits and wine. The excise duty rate depends on the percentage of alcohol by volume found in the spirit or wine. These rates are applicable after 22 March 2017.

2.4 Part 4: Implementation of Various Other Measures

2.4.1 Division 1: Amendments to the *Special Import Measures Act*

Division 1 of Part 4 of Bill C-44 amends the *Special Import Measures Act* (SIMA)[17] by making various changes to Canada's trade remedy system, which is administered by the Canada Border Services Agency (CBSA) and the Canadian International Trade Tribunal. These changes are further to the consultations conducted by the government following Budget 2016 and involve, in particular, ways to improve trade remedy measures, fight circumvention, and address market and price distortions.

Clauses 75(1) and 75(2) expand section 16 of the SIMA by giving the CBSA greater discretionary power in evaluating price reliability in export countries during dumping investigations where the CBSA finds price distortion owing to a "particular market situation." In such circumstances, the CBSA is authorized to take an approach

deemed necessary to ensure a fairer comparison between the price of goods in the export country and the price when exported to Canada.

Clause 89 adds provisions allowing any interested person to submit an application to the CBSA president for a ruling on the scope of a measure related to trade remedies, that is, a formal review to determine whether a particular product is within the scope of such a measure. The CBSA president is also authorized to initiate a scope proceeding for any goods.

Clause 89 also amends the SIMA by adding provisions to create a new mechanism that will allow Canadian producers to file a complaint regarding trade and business practices that are specifically designed to circumvent Canadian trade remedy duties. As a result of the CBSA's anti-circumvention investigations, a surcharge may be applied to goods imported from abroad through practices designed to circumvent such rules.

Clauses 68, 69, 74, 75, 84 to 91, 97(2) and 98 to 101 will come into force on the date fixed by order of the Governor in Council, while the other clauses in this division will come into force when the bill receives Royal Assent.

2.4.2 Division 2: Enactment of the Borrowing Authority Act and Various Amendments with Respect to the Applicable Rate of Currency Exchange

Clause 103 of Bill C-44 enacts An Act to provide the Minister of Finance with borrowing authority and to provide for a maximum amount of certain borrowings (short title: Borrowing Authority Act). The Act authorizes the Minister of Finance to borrow money on behalf of Her Majesty in right of Canada with the authorization of the Governor in Council. Section 4 of the Act stipulates that the total of the following amounts must not exceed $1.168 trillion:

- the total amount of money borrowed by the minister under section 3 of the new Borrowing Authority Act, the *Financial Administration Act* (FAA),[18] and the borrowing authority Acts listed in the schedule to the new Act;
- the total amount of money borrowed through the issue and sale of Canada Mortgage Bonds that are guaranteed by the Canada Mortgage and Housing Corporation; and
- the total amount of money borrowed by all agent corporations, by way of the issue and sale of their securities or otherwise, other than amounts that they borrowed from Her Majesty in right of Canada, and amounts that they are deemed under any other Act of Parliament to have borrowed.

Amounts borrowed by the minister through an order made under section 46.1(c) of the FAA or under an order made through section 46.1(a) of that Act, for the payment of any amount in respect of a debt that was originally incurred through an order made under section 46.1(c) of that Act, do not count in the calculation. The total amount borrowed by the minister may exceed the maximum amount referred to in the Borrowing Authority Act if this excess is the result of borrowing made through an order made under section 46.1(a) or section 46.1(b) of the FAA. Every three years,

the minister must cause to be tabled a report indicating the total amount of money borrowed under the new Act and through orders made under sections 46.1(a) to 46.1(c) of the FAA. In this report, the minister must assess whether the maximum amount of borrowing referred to in section 4 of this Act should be increased or decreased. Section 46.1 of the FAA was repealed in 2007 but is still referenced in the Borrowing Authority Act because some orders made under that section might still be in force.

Clause 104 amends section 48(2) of the FAA to allow the amount borrowed in currency to be calculated at any rate of exchange in use that the minister considers appropriate, in addition to the existing stipulation that the amount be calculated at the daily average rate of exchange quoted by the Bank of Canada.

Clause 105 amends section 3(3) of the *Hibernia Development Project Act*[19] so that guaranteed amounts payable in a currency are calculated at the daily average rate of exchange quoted by the Bank of Canada rather than the Bank's quoted exchange rate.

Clause 106 repeals section 186 of the BIA, 2016, which established the minister's responsibility to ensure that total amounts borrowed by agent corporations other than from the Crown do not exceed any limit set by any other Act of Parliament.

Clause 107 stipulates that section 103 comes into force on the day to be fixed by order of the Governor in Council on which section 183 of the BIA, 2016 comes into force.

2.4.3 Division 3: Amendments to the *Canada Deposit Insurance Corporation Act* and the *Bank Act*

Clause 108 of Bill C-44 adds section 7(d) to the *Canada Deposit Insurance Corporation Act*[20] to provide that the Canada Deposit Insurance Corporation may act as the resolution authority for its member institutions, and thereby protect eligible deposits by taking a lead role if one of those institutions fails.

Clause 109(1) adds section 11(2)(e) to the Act to allow the Corporation's board of directors to make by-laws about the development, content, submission and maintenance of resolution plans by domestic systemically important banks (D-SIB). D-SIBs are banks that the Superintendent of Financial Institutions has designated as systemically important. Clause 109(2) adds section 11(2.01) to stipulate that a by-law made by the board under section 11(2)(e) requires the Minister of Finance's approval in order to become effective.

Clause 110 adds section 39.01 to the Act to indicate that, if requested by the Corporation, a D-SIB must develop and maintain a resolution plan in accordance with section 11(2)(e), and submit that plan to the Corporation. Clause 112(1) provides that clause 110 will come into force on a day fixed by order of the Governor in Council.

Clause 111 amends section 485(1.2) of the *Bank Act*,[21] which is not yet in force, and adds section 485(1.21) to that Act. With these changes, the Superintendent of Financial Institutions can determine the amount that constitutes each D-SIB's minimum capacity to absorb losses; in determining that amount, the Superintendent

can consider any criteria that he or she deems appropriate. Clause 112(2) stipulates that clause 111 comes into force on the later of the day that section 160 of the *Budget Implementation Act, 2016, No. 1* comes into force or the day that Bill C-44 receives Royal Assent.

2.4.4 Division 4: Amendments to the *Shared Services Canada Act*

Clause 113 of the bill replaces section 7 of the *Shared Services Canada Act*.[22] The new provision authorizes the minister responsible for Shared Services Canada to exercise any of the powers or perform any of the duties that are set out in sections 6(a), 6(b), 6(c) and 6(g) of the *Department of Public Works and Governments Services Act* not only for departments and Crown corporations, as currently stipulated, but also for persons, organizations and governments to which those services are provided.

New section 7 also authorizes the minister responsible for Shared Services Canada to delegate any of the powers under the *Shared Services Canada Act*, for any period and under any terms and conditions that he or she considers suitable, to a department's appropriate minister as defined in section 2 of the *Financial Administration Act*. The appropriate minister may, in turn, delegate any of these powers to a chief executive within the meaning of new section 7.1(3) of the *Shared Services Canada Act*, and the chief executive may also delegate to any person under his or her jurisdiction. Any delegation is subject to the terms and conditions defined by the minister responsible for Shared Services Canada for any period he or she considers suitable.

Clause 114 of Bill C-44 adds section 9.1 to the *Shared Services Canada Act*. This new section stipulates that – notwithstanding sections 6(a) and 6(c) of the Act, which set out the services that the minister responsible for Shared Services is required to provide through Shared Services Canada and that departments must obtain exclusively through Shared Services Canada – the minister responsible for Shared Services Canada may, in exceptional circumstances, authorize a department to obtain services other than through Shared Services Canada. This applies to:

- part of a service for the entire department; or
- all of a service for one or more portions of the department.

In both cases, a department may obtain the service internally. These exceptions are subject to the terms and conditions specified by the minister responsible for Shared Services Canada.

2.4.5 Division 5: Funding for the Canadian Artificial Intelligence Strategy

Clause 115 of the bill authorizes a payment of up to $125 million to the Canadian Institute for Advanced Research, upon request of the Minister of Industry, to establish a pan-Canadian Artificial Intelligence Strategy. Funds are to come from the Consolidated Revenue Fund.

2.4.6 Division 6: Amendments to the *Canada Student Financial Assistance Act* and the *Canada Education Savings Act*

Clause 116 of the bill amends section 2(1)(a) of the *Canada Student Financial Assistance Act*[23] by expanding one of the criteria under the definition of "qualified student" to include a person who is registered as an Indian under the *Indian Act*. The current definition includes Canadian citizens and persons protected under section 95(2) of the *Immigration and Refugee Protection Act* (IRPA). This provision comes into force on 1 August 2018 (clause 121(1)).

Clauses 117 to 120 amend the *Canada Education Savings Act* (CESA)[24] and come into force on 1 January 2018 (clause 121(2)).

Clause 117 clarifies that the terms "cohabitating spouse" and "common-law partner" have the same meaning as assigned in section 122.6 of the ITA.

Clauses 118 and 119 permit the cohabitating spouse or common-law partner of a child's primary caregiver to designate the trust or trustee for the Canada Learning Bond or Canada Education Savings grant. These clauses amend sections 5(6.1), 5(7), 5(7.1) and 5(7.2) of the CESA. In addition, they permit the payment of an additional amount of the Canada Education Savings grant in situations where more than one trust has been designated.

Clause 120 amends section 9.1(1) of the CESA to permit the primary caregiver's cohabitating spouse or common-law partner to apply to the minister to waive any program requirements should there be extenuating circumstances that cause undue hardship.

2.4.7 Division 7: Board of Internal Economy and Parliamentary Budget Officer

2.4.7.1 Amendments to the *Parliament of Canada Act*: Board of Internal Economy

The *Parliament of Canada Act* (PCA)[25] establishes an administrative body, known as the Board of Internal Economy, responsible for making decisions regarding all financial and administrative matters respecting Canada's House of Commons, its premises, its services, the staff and all Members.

In current practice, the Board meets approximately once every two weeks when the House is sitting. These meetings are held in camera, and transcripts, written or otherwise, are not made available to the public. However, since the 35th Parliament (January 1994), the minutes of the Board's meetings have been tabled in the House, thus making the documents public, and since the 41st Parliament (June 2011), the minutes of the Board's meetings have been posted on the parliamentary website.

Clause 123 of Bill C-44 adds new section 51.1 to the PCA to provide that meetings of the Board be open to the public, although some meetings or portions of meetings can be held in camera under these circumstances:

- the matters being discussed relate to security, employment, staff relations or tenders;
- the circumstances prescribed by a by-law made under new section 52.5(1)(a.1) exist; or
- every member of the Board present agrees that the meeting be held in camera.

Clause 125(1) adds new section 52.5(1)(a.1) to the PCA, providing the Board with the power to prescribe the circumstances in which a meeting of the Board will be held in camera. A by-law under this section can only be made following a vote in which members of the Board who are present unanimously agree to its adoption (clause 125(2)).

Clause 124 replaces former section 52.2(2) of the PCA, which provided immunity from personal liability to members of the Board in carrying out the functions of the Board. New section 52.2(2) states that for greater certainty, the proceedings of the Board are proceedings in Parliament. This section is meant to provide members of the Board with the protections afforded by parliamentary privilege. Parliamentary privilege provides Members and parliamentary institutions with certain rights and immunities required in order for them to perform and execute their parliamentary functions.

Each member of the Board must take an oath or affirmation of fidelity and secrecy, as set out in Form 3 in the schedule to the PCA. Current section 50(6) of the Act allows members of the Board to communicate any information discussed at a Board meeting with their party caucus, provided it does not relate to security, employment, staff relations, tenders or investigations of a Member of the House. However, this section applies to Board meetings that are, by default, held in camera, and so is made largely obsolete by the provisions set out in clause 123 of Bill C-44.
Clause 122 replaces current section 50(6) with a section that allows members of the Board to communicate information or documents discussed in, or prepared for, a meeting of the Board that was open to the public.

Similarly, clause 130 amends the oath or affirmation found in Form 3 in the schedule to the PCA to prohibit communication, without the authority of the Board, of any information or documents discussed in, or prepared for, a meeting of the Board that is held in camera.

Of note, the new provisions appear to allow investigations by the Board in relation to a Member of the House to be conducted in public.

Clause 126 amends section 75(4) of the PCA to delete a reference to the Parliamentary Budget Officer from a provision dealing with the employment of “other officers and employees” of the Library of Parliament, while clause 127 amends section 78 to delete a reference to the Parliamentary Budget Officer from a provision dealing with the performance of duties by librarians and staff of the Library.

2.4.7.2 AMENDMENTS TO THE *PARLIAMENT OF CANADA ACT*: PARLIAMENTARY BUDGET OFFICER

2.4.7.2.1 APPOINTMENT AND POWERS

Clause 128 of Bill C-44 repeals sections 79.1 to 79.5 of the PCA, which deal with the position of Parliamentary Budget Officer (PBO), and replaces them with new sections 79.1 to 79.5, thus providing a new legal framework for this function that is separate from the Library of Parliament.

New section 79.01 specifies that the incumbent of the position must be "independent and non-partisan" and that the incumbent's mandate is to support Parliament and promote greater budget transparency by providing analyses, including analysis of "macro-economic and fiscal policy."

New section 79.1(1) of the PCA establishes an appointment process for this office. The PBO is appointed by the Governor in Council after two parliamentary stages:

- consultation with the Leader of the Government in the Senate, the Leader of the Opposition in the Senate, the leader of every caucus and of every recognized group in the Senate[26] and the leader of every recognized party in the House of Commons;[27] and
- the adoption of a resolution to that effect by the Senate and the House of Commons.

In its report to the House of Commons on 31 May 2017,[28] the House of Commons Standing Committee on Finance added section 79.1(1.1), which stipulates that the candidate for the position of PBO must have "demonstrated experience and expertise in federal or provincial budgeting" at the time of appointment.

New section 79.1(2) of the PCA stipulates that the PBO may hold office for a term of seven years, unless removed for cause by a resolution of the Senate and the House of Commons. Section 79.1(3) stipulates that the PBO may be reappointed for a second term of up to seven years.

New section 79.11 of the PCA gives the PBO the rank of a deputy head of a government department who has the power to enter into contracts and hire staff. The Finance Committee removed a clause that, in the first version of the bill, proposed to vest the direction and control of the office of the PBO in the Speaker of the Senate and the Speaker of the House of Commons.

New section 79.12 of the PCA creates an obligation for the Parliamentary Budget Officer and the Parliamentary Librarian to "take all reasonable steps" to avoid any unnecessary duplication of research and analysis services provided by these two institutions in support of Parliament.

Pursuant to new section 79.13, before each fiscal year, the PBO must prepare an annual work plan for that year that includes:

- the criteria used to allocate resources to each function within the PBO's mandate;

- a list of matters of particular significance relating to the nation's finances or economy that should be brought to the attention of the two Houses of Parliament;[29] and
- a statement of the manner in which the PBO intends to prioritize requests for services from parliamentary committees and members of the Senate and the House of Commons.

The first version of the bill stipulated that this annual work plan had to be approved by the Speaker of the Senate and the Speaker of the House of Commons, and tabled in their respective Houses. In exercising this duty, the Speakers could have been assisted by the chairs of the following committees:

- a joint committee designated or established for that purpose, as referred to in then-section 79.12;
- the Standing Senate Committee on National Finance; and
- the House of Commons Standing Committee on Finance.

Further to amendments submitted by the Finance Committee, section 79.13(2) authorizes the PBO to update the annual work plan during the fiscal year. The committee also removed the requirement that the annual work plan be approved by the Speaker of the Senate and the Speaker of the House of Commons. Section 79.13(3) now states that, once the work plan has been provided to the Speaker of the Senate and the Speaker of the House of Commons, the speakers must table it in the House over which they preside.

2.4.7.2.2 Mandate: Parliament Not Dissolved

New section 79.2 of the PCA sets out the mandate of the PBO during periods when Parliament is not dissolved.[30] This mandate includes six duties.[31] Table 1 lists these duties, as well as the obligations associated with the publication by the PBO of reports and responses.

Table 1 – Mandate of the Parliamentary Budget Officer Under Bill C-44
When Parliament Not Dissolved

Clients	Duties	Reports and Responses
Two Houses of Parliament	The Parliamentary Budget Officer (PBO) may prepare reports containing an analysis of the following documents: • a budget tabled by or on behalf of the Minister of Finance; • an economic and fiscal update or statement issued by the Minister of Finance; • a fiscal sustainability report issued by the Minister of Finance; and • the estimates of the government for a fiscal year. (Section 79.2(1)(a) of the *Parliament of Canada Act*)[a]	• A report prepared under section 79.2(1)(a) or 79.2(1)(b) of the *Parliament of Canada Act* is presented to the Speaker of the Senate and the Speaker of the House of Commons. • Each Speaker tables the report in the House over which he or she presides. • The PBO may make the report public one day after the day on which the report is provided to the Speakers. (Section 79.2(2))
	The PBO may prepare reports on matters of particular significance relating to the nation's finances or economy that are listed in the annual work plan. (Section 79.2(1)(b))	
Parliamentary committees	If requested to do so by certain parliamentary committees identified in the legislation,[b] the PBO shall undertake research into and analysis of matters relating to the nation's finances or economy. (Section 79.2(1)(c))	• A report containing the research, analysis or estimate requested by a committee under sections 79.2(1)(c) to 79.2(1)(e) is provided to the chair of the requesting committee. • The PBO may make the report available to the public one business day after the day on which the report is provided to the chair of the committee that requested it. (Section 79.2(3))
	If requested to do so by a parliamentary committee mandated to consider the estimates of the government, the PBO shall undertake research into and analysis of those estimates. (Section 79.2(1)(d))	
	If requested to do so by a parliamentary committee, the PBO shall estimate the financial cost of any proposal that relates to a matter over which Parliament has jurisdiction. (Section 79.2(1)(e))	
Individual parliamentarians	If requested to do so by a member of the Senate or of the House of Commons, the PBO shall estimate the financial cost of any proposal that relates to a matter over which Parliament has jurisdiction. (Section 79.2(1)(f))[c]	• A report containing the estimate requested under section 79.2(1)(f) is provided to the requesting member. • The PBO may make the report available to the public one business day after the day on which the report is provided to the requesting member. (Section 79.2(4))

Notes: a. New section 79.2(1)(a) replaces current section 79.2(a) of the *Parliament of Canada Act,* in which the mandate of the PBO was described in more general terms: "provide independent analysis to the Senate and to the House of Commons about the state of the nation's finances, the estimates of the government and trends in the national economy."

b. These are the Standing Senate Committee on National Finance, the House of Commons Standing Committee on Finance, the House of Commons Standing Committee on Public Accounts, and the House of Commons Standing Committee on Government Operations and Estimates.

c. In the first version of the bill, a senator or member could only request an assessment of the financial impact of a proposal they wished to introduce. The amendment made by the House of Commons Standing Committee on Finance in its report to the House of Commons on 31 May 2017 appears to have the same scope as former section 79.2(d) of the *Parliament of Canada Act*.

New sections 79.2(1)(c) to 79.2(f) of the PCA are presented in a way that means that the PBO has no discretionary authority in the application of these provisions.[32]

New section 79.2(5) of the PCA stipulates that, if Parliament is dissolved, the PBO shall discontinue work on requests from a parliamentary committee or individual member for which a report or response has yet to be provided.

2.4.7.2.3 MANDATE: PARLIAMENT DISSOLVED

New section 79.21 of the PCA sets out the mandate of the PBO during a "general election" which, for the purpose of applying this provision, begins on the 120th day before the date fixed for the election.[33] New section 79.21(1) states that the PBO shall, at the request of "an authorized representative or a member," estimate the financial cost of any election campaign proposal that the authorized representative's party or the member is considering making.

For the purpose of this section, an authorized representative is "the leader of a recognized party in the House of Commons" or "a person authorized in writing by the leader for the purposes of this section." A member means "a person who is a member of the House of Commons" but who is not a member of a recognized party (new section 79.21(17)).

In undertaking this duty, the PBO may request the assistance of a department in estimating the financial cost of a proposed measure. The department's acquiescence to this request is at the minister's discretion (new section 79.21(5)). A minister who agrees that his or her department will provide assistance shall instruct the deputy to make any arrangements that the deputy considers necessary for the provision of the requested assistance, and the minister must abstain from any personal involvement in the provision of the assistance (new section 79.21(7)). The PBO shall not disclose to the department the identity of the party or member who requested the estimate (new section 79.21(8)).

Once the evaluation has been completed, the PBO shall provide a response to the party or member who made the request (new section 79.21(12)). Under new section 79.21(14), the PBO must wait for the policy proposal to have been publicly announced before publishing his or her report on the cost of the proposal. This provision suggests that, if the requester decides not to announce the policy proposal in question, the report of the PBO will remain confidential.

New section 79.5 of the PCA requires the PBO and his or her staff to ensure the confidentiality of information obtained from a department to complete an estimate of the cost of a policy proposal during an election campaign, unless the information has been made public or the consent of the department, institution or Crown corporation has been obtained.

2.4.7.2.4 Annual Report

Under new section 79.22 of the PCA, the PBO must submit to the Speaker of the Senate and the Speaker of the House of Commons an annual report on the activities related to his or her mandate. This report shall not be made available to the public before it has been tabled in the Senate and in the House of Commons.

2.4.7.2.5 Access to Information

New section 79.4, which replaces current section 79.3 of the PCA, stipulates that the PBO is entitled to free and timely access to "any information under the control of [a] department or parent Crown corporation," as these two entities are defined in new section 79.3 of the PCA. Current section 79.3 of the PCA specifies that such access applies to "financial or economic data" only. New section 79.4 also broadens the scope of the access to include more federal institutions than are specified in current section 79.3 of the PCA, which restricts the PBO's access to information under the control of departments as defined in the *Financial Administration Act*.

Under new section 79.4(2), the PBO's right to access information does not apply to the disclosure of:

- personal information (restricted under section 19 of the *Access to Information Act*[34]);
- information that is protected by professional secrecy;
- information the disclosure of which is restricted under any other Act of Parliament (Schedule II of the *Access to Information Act*); or
- information that is a confidence of the Queen's Privy Council as defined in section 39(2) of the *Canada Evidence Act*.[35]

The Finance Committee added section 79.41, which stipulates that, if a department refuses to provide access to information requested under section 79.4, it must provide written justification for the refusal. The committee also added section 79.42, pursuant to which the PBO may notify the Speaker of the Senate, the Speaker of the House of Commons or any appropriate committee of any refusal to provide access to information.

Under new section 79.5, discussed above, the requirement for the PBO and his or her staff to ensure the confidentiality of any information obtained from a department also applies to information obtained under new section 79.4.

The Finance Committee also added section 79.501, which stipulates that five years after the day on which the section comes into force, a parliamentary committee shall undertake a review of sections 79.01 to 79.5 of the *Parliament of Canada Act*.

2.4.7.3 Transitional Provisions

Clauses 131 to 156 of Bill C-44 are transitional provisions to ensure the continued employment of the current PBO and his staff following the creation of the new office

of the PBO. These provisions preserve the positions, collective agreements, arbitral awards and right to collective bargaining of individuals in that office. These provisions also impose conditions on the Public Service Labour Relations and Employment Board.

2.4.7.4 Consequential Amendments

Clauses 157 to 190 of the bill make consequential amendments to 16 federal laws of general application, including the *Federal Courts Act*, the *Parliamentary Employment and Staff Relations Act*, the *Official Languages Act* and the *Language Skills Act*, to include mention of the PBO.

Clause 159 amends section 2(2) of the *Federal Courts Act* to add the PBO to the list of institutions not included in the definition of "federal board," giving it the same status in this regard as the Senate and the House of Commons.

Consequently, the PBO could not, for example, use the power set out in section 18.3(1) of the *Federal Courts Act* to "refer any question or issue of law, of jurisdiction or of practice and procedure to the Federal Court for hearing and determination."

The Finance Committee added section 2(3) to the *Federal Courts Act* to clarify that, despite section 2(2), the PBO is deemed to be a "federal board" for the purpose of section 18.3(1), thus allowing him or her to refer a question or issue to the Federal Court.

2.4.7.5 Coming into Force

Clause 191 sets out that clauses 126 to 129 and 131 to 190 come into force on a day to be fixed by order of the Governor in Council.

2.4.8 Division 8: Amendments to the *Investment Canada Act*

The 2013 budget implementation Act and regulations published in 2015 gradually increased, from $600 million as of 25 April 2015 to $1 billion in 2019, the threshold amount at which a review must be conducted of a transaction to acquire control of a Canadian business by private investors from World Trade Organization member countries. Through an amendment to section 14.1(1) of the *Investment Canada Act*,[36] clause 192 accelerates the transition to the $1 billion threshold beginning once Bill C-44 is enacted until 31 December of the next year. For the subsequent years, the threshold would be indexed based on the growth rate of Canada's nominal gross domestic product, as currently stipulated in section 14.1(1)(e) of the Act.

Under the current Act, the Director of Investments (Innovation, Science and Economic Development Canada) must release a report on the administration of the provisions of the *Investment Canada Act*, except those concerning investments injurious to national security. Clause 193 amends section 38.1 of the Act to stipulate that this report cover the administration of all the provisions of the Act.

2.4.9 Division 9: Funding to Provinces for Home Care and Mental Health Services

Clause 195(1) requires the Minister of Finance to provide a province with a payment to support its provision of home care and mental health services for fiscal year 2017–2018 if the province, in the opinion of the Minister of Health, has, before 15 December 2017, accepted the federal government's 19 December 2016 proposal to strengthen health care for Canadians. That proposal offered 10 years of federal funding targeted to home care and mental health services beginning in fiscal year 2017–2018. To date, the federal government has reached bilateral health care agreements with all provinces and territories except Manitoba.

Clause 195(2) of the bill outlines how the amount to be paid to a province for home care services will be calculated. For fiscal year 2017–2018, a province will receive $200 million multiplied by the population of the province, divided by the total population of all provinces. The amount to be paid to a province for mental health services will be determined by the formula outlined in clause 195(3). For fiscal year 2017–2018, a province will receive $100 million multiplied by the population of the province, divided by the total population of all provinces. Population estimates for these calculations are based upon Statistics Canada's official estimate of the population of the province on 1 July 2016, published on 28 September 2016. Clause 195(4) provides that federal funding for home care and mental health services are paid from the Consolidated Revenue Fund.

2.4.10 Division 10: Amendments to the *Judges Act*

Division 10 of Part 4 of Bill C-44 amends the *Judges Act*[37] to implement the *Response of the Government of Canada to the Report of the 2015 Judicial Compensation and Benefits Commission* (Quadrennial Commission).[38] The Quadrennial Commission was created under the *Judges Act* to examine, at least every four years, the adequacy of the salaries and other amounts payable to federally appointed judges under the Act, and inquire into the adequacy of judges' benefits generally. In its response to the report, which was public, the Government of Canada accepted the Commission's recommendations.

Consequently, Division 10 provides for the annual adjustment of judges' salaries on the basis of increases in the Industrial Aggregate Index (the average weekly wages and salaries of the Industrial Aggregate in Canada as published by Statistics Canada), as provided for in section 25 of the *Judges Act*. The salaries of judicial officials of the Federal Court known as prothonotaries are increased from 76% to 80% of the salary of a Federal Court judge, other than the Chief Justice. In addition, prothonotaries are to be reimbursed for 95% of their representational costs incurred in appearing before the Quadrennial Commission and are to be granted an annual allowance of up to $3,000 for reasonable incidental expenditures that would not otherwise be reimbursed.

Division 10 also provides that the retirement annuity of a chief justice or senior judge who has stepped down to a different court as a puisne judge[39] is based on the salary of a chief justice. It further makes technical amendments to ensure the correct

division of annuities and enforcement of financial support orders, where necessary. Effective 1 April 2016, the Chief Justice of the Court Martial Appeal Court of Canada is provided compensation and allowances equal to those of other superior court chief justices.

Finally, Division 10 amends the *Judges Act* to increase the number of judges. The federal government appoints and remunerates the superior court judges in the provinces and territories. Sections 12 to 22 of the *Judges Act* set out the number of superior court judges in each jurisdiction whose salaries will be paid by the federal government. The bill increases the number of judges in two cases:

- The number of Court of Queen's Bench judges in Alberta increases from 57 to 68 (section 20(d) of the Act, amended by clause 208 of the bill).
- The number of Supreme Court of Yukon judges increases from one to two (section 22(1)(b) of the Act, amended by clause 210(1) of the bill).

In addition to the positions and salaries specifically assigned to the provinces and territories, section 24 of the *Judges Act* creates a judicial "pool," or a number of judicial salaries that may be paid by the Government of Canada but are not yet assigned to a particular jurisdiction. The number of salaries for appeal court judges is increased from 13 to 16, while the number of superior court judges' salaries increases from 50 to 62 (clause 211 of the bill).

2.4.11 Division 11: Support for Families – Benefits and Leaves

2.4.11.1 Amendments to the *Employment Insurance Act*: Family Benefits

Currently, section 2(1) of the *Employment Insurance Act* (EI Act)[40] defines the term "special benefits" as benefits paid for any reason mentioned in section 12(3), that is to say, pregnancy, caring for a newborn or newly adopted child, sickness, providing care or support for a family member who has a serious medical condition with a significant risk of death, or providing care or support for a critically ill child.

Clause 229 of Bill C-44 amends section 2(1) of the EI Act to add a reference to the benefits provided to eligible self-employed persons for any of the reasons outlined in section 152.14(1), which mirror those applying to employees in section 12(3). In turn, clauses 231(2) and 251(2) amend sections 12(3) and 152.14(1), respectively, to include an additional reason for the payment of benefits, namely, providing care or support to a critically ill adult.

2.4.11.1.1 Maternity Benefits

Section 22(2)(a)(i) of the EI Act currently provides that maternity benefits, or benefits offered to women who are pregnant or have recently given birth, may be paid starting as early as eight weeks before the expected week of birth. Clause 234 amends this section to allow maternity benefits to be paid as early as 12 weeks before the expected week of birth.

Clause 244(1) amends section 152.04(2)(a)(i) of the EI Act to provide for the same flexibility with regards to the start of the maternity benefits of self-employed women. Further, clause 244(2) adds section 152.04(3.1) to establish the presumption that, for self-employed women, the week immediately before the start of the maternity benefit period will be deemed to be the week during which the required waiting period was served.

2.4.11.1.2 Parental Benefits

Currently, sections 12(3)(b) and 12(4)(b) of the EI Act provide that parental benefits, or benefits offered to care for one or more newborn or newly adopted children, may be paid for a maximum of 35 weeks. Clauses 231(1) and 231(3) amend these sections of the EI Act to establish that parental benefits may be paid for 35 or 61 weeks, depending on the choice made by the claimant. Indeed, according to clause 235(1), which adds sections 23(1.1) to 23(1.3) to the Act, a parental benefits claimant can choose the length of his or her benefit period, that is to say, 35 or 61 weeks, as provided in new section 12(3)(b). This choice, however, becomes irrevocable once the benefits are paid. In addition, should two persons submit parental benefits claims for the same child or children, even if one of the claimants is self-employed, the choice made by the first claimant will be binding on both.

The extension of the benefit period in relation to parental benefits is addressed in greater detail in clause 235(2), which amends section 23(3.2) of the EI Act and adds sections 23(3.21) and 23(3.22). Specifically, amended section 23(3.2) establishes that, where a claimant has received more than one type of special benefit during a benefit period, one of which is parental benefits, he or she will have his or her benefit period extended up to 35 or 61 weeks, depending on the claimant's original choice. The maximum total number of weeks established for these special benefits must be greater than 50.

New section 23(3.21) provides that the period during which parental benefits may be paid will be extended by 26 weeks, up to a maximum of 61 weeks, if the claimant did not receive any other type of special benefits during the benefit period and the applicable maximum number of weeks established for parental benefits was 61.

New section 23(3.22) allows for an extension of the benefit period up to a maximum of 26 weeks, where the claimant has received both parental and regular benefits (regular EI benefits are provided to individuals who lose their employment through no fault of their own and who, despite being available for and able to work, cannot find employment). In this case, the applicable maximum number of weeks established for parental benefits must have been 61, and benefits must have been paid for fewer than 50 weeks, calculated at a rate of 55%.

Further, clause 235(3) amends section 23(3.4) of the EI Act to provide that an extension for any of the reasons outlined under sections 10(10) to 10(13.02) (such as combining 61 weeks of parental benefits with other special benefits) must not result in the total benefits period being longer than 104 weeks. The text of new section 10(13.02) is similar to that of new section 23(3.22), described above.

With respect to the division of the benefit period for parental benefits, clause 235(4) amends sections 23(4) and 23(4.1) to provide that if two claimants, one of whom could be self-employed, make a claim for parental benefits with respect to the same child or children, the period during which benefits may be payable may be divided between the claimants up to a maximum of 35 or 61 weeks, depending on their original choice. If the claimants cannot agree on the division of the benefit period, the division will take place in accordance with the prescribed rules.

Finally, clause 232 amends section 14(1) of the EI Act to provide that the rate of weekly parental benefits, where the applicable maximum number of weeks established is 61, be calculated at 33% of the claimant's insurable earnings. Currently, the rate of weekly benefits payable to a claimant for a 35-week parental benefit period, as well as in relation to regular benefits and other special benefits, is 55% of the claimant's insurable earnings.

Further, clause 245 amends section 152.05 of the EI Act to provide for the extension of parental benefits in the same manner with respect to self-employed persons.

Additional amendments to the EI Act, including those in clauses 230, 231, 251 and 252, are consequential amendments following from changes to parental benefits provisions for employees as well as self-employed persons.

2.4.11.1.3 Compassionate Care Benefits

Current section 23.1(1) of the EI Act defines the term "family member" as used within the context of compassionate care benefits. These are benefits offered to claimants who must be away from work to care for or support a family member who has a serious medical condition with a significant risk of death. Clause 236(1) repeals section 23.1(1) of the EI Act and, along with it, the definition for the term "family member."

Similarly, the definition of "family member" as set out in the interpretation provision of Part VII.1 of the EI Act, which deals with benefits for self-employed persons, is repealed by clause 242.

Further, existing section 23.1(2) of the EI Act provides that compassionate care benefits are payable to a claimant subject to a medical doctor's issuing a certificate stating that a family member has a serious medical condition with a significant risk of death within 26 weeks and that the family member requires care or support by one or more other family members. Clause 236(2) adds the term "nurse practitioner" to section 23.1(2) so that either a medical doctor or a nurse practitioner can issue a certificate in this regard.

Similarly, clause 246 amends section 152.06 of the EI Act to add the term "nurse practitioner" to those provisions dealing with compassionate care benefits paid to claimants who are self-employed.

Additional amendments to the EI Act made for compassionate care benefits, including those in clauses 236(3) to 236(5), 239 and 240, are consequential amendments following from the changes outlined above.

2.4.11.1.4 BENEFITS: CRITICALLY ILL CHILD

Existing section 23.2(1) of the EI Act provides that benefits are payable to the "parent" of a critically ill child who has to leave work temporarily to care for or support that child if a "specialist medical doctor" has issued a certificate stating that the child is critically ill and requires the care or support of a parent for a stated period. Clause 237(1) amends section 23.2(1) of the EI Act to replace the term "parent" with "family member," to remove "specialist" from the term "specialist medical doctor," and to add the term "nurse practitioner," so that either a medical doctor or a nurse practitioner can issue a certificate in this regard.

Clause 237(4) repeals section 23.2(4) of the EI Act. Repealed section 23.2(4) established the benefit period in relation to "more than one child of the claimant [who] is critically ill as a result of the same event."

Clause 237(8) further amends section 23.2 of the EI Act by adding section 23.2(10.1) to provide that no benefits will be paid to a claimant (including a self-employed worker) in relation to a critically ill adult during the period of 52 weeks from the start of the benefit period for the care of the same person as a critically ill child.

Further, clause 247 amends section 152.061 of the EI Act, which deals with the benefits offered to self-employed claimants to provide care or support for a critically ill child, in a manner similar to that described above. For example, clause 247(4) repeals section 152.061(4) of the EI Act dealing with the weeks for which benefits may be paid in relation to children who are critically ill as a result of the same event.

Additional amendments to the EI Act, including those in clauses 230, 237(2), 237(3), 237(5) to 237(8) and 250, are consequential amendments following from the changes outlined above.

2.4.11.1.5 BENEFITS: CRITICALLY ILL ADULT

Clause 238 of the bill adds sections 23.3(1) to 23.3(9) to the EI Act to provide for the creation of a new benefit in relation to the care or support of a critically ill adult. Specifically, new sections 23.3(1) and 23.3(2) establish that benefits are payable to a claimant who is a family member of a critically ill adult, for whom a medical doctor or nurse practitioner has issued a certificate stating that the adult is critically ill and requires the care or support of a family member for a stated period.

In accordance with new section 23.3(3), these benefits may be paid starting on the first day of the week in which the first certificate is issued or, if the claim is made before a certificate has been issued, on the first day of the week when the adult was certified as critically ill. Payment may end on the last day of the week in which one of the following occurs:

- benefits related to the critically ill adult are exhausted;
- the adult dies; or
- the period of 52 weeks from the week when the certificate was issued or the adult was certified as critically ill ends.

The maximum number of weeks for which benefits may be paid to a claimant who is providing care or support for a critically ill adult is 15, in accordance with new section 12(3)(f), established by clause 231(2).

New section 23.3(4), however, provides that the option of having the benefit period commence from the week the adult is certified as critically ill will not apply in the following circumstances:

- At the time the certificate is filed with the Canada Employment Insurance Commission, all benefits that may otherwise have been payable in relation to this claim have been exhausted.
- The beginning of the benefit period has already been determined and the filing of the certificate with the Commission would have the effect of moving the beginning of this period to an earlier date.
- The claim is made in any other circumstances set out in the regulations.

New section 23.3(5) establishes that a claimant may have the waiting period in relation to the payment of benefits deferred if:

- another claimant has made a claim to care for the same critically ill adult and has served or is serving a waiting period;
- another claimant is making a claim concurrently and has elected to serve a waiting period; or
- the claimant or another claimant for the same adult meets the prescribed requirements.

New sections 23.3(6) and 23.3(7) provide that if more than one claimant, one of whom could be self-employed, make a claim for benefits to care for the same critically ill adult, any remaining weeks of benefits payable in this regard may be divided as agreed upon by those claimants up to a maximum of 15 weeks. If the claimants cannot agree, the division of the benefit period will be determined in accordance with the prescribed rules.

New sections 23.3(8) and 23.3(9) set out limitations with regards to the payment of benefits. Specifically, new section 23.3(8) indicates that compassionate care benefits are not payable during the benefit period established in relation to the care or support of a critically ill adult. In addition, benefits paid to a claimant to care for a critically ill adult will be reduced or eliminated if he or she receives any allowances, money or other benefits under a provincial law for the same or substantially the same reasons.

Further, clause 231(5) amends section 12(4.5) of the EI Act to replace the provision regarding the maximum number of weeks that may be payable in relation to a critically ill child with a similar provision concerning a “critically ill adult.” The provision with regards to the maximum number of weeks that may be payable in relation to a “critically ill child” (expressed in section 12(4.4) of the EI Act) remains unchanged. Amended section 12(4.5) provides that, where more than one claim has been made with respect to the same critically ill adult and where at least one of the claims is made under new section 23.3, the maximum number of weeks that may be payable

in respect of that adult is 15. These 15 weeks must be within the period of 52 weeks that begin on the week in which the first certificate is issued or, if the claim is made before a certificate has been issued, on the week when the adult was certified as critically ill.

Finally, clause 248 amends Part VII.1 of the EI Act by adding sections 152.062(1) to 152.062(9) to provide for the payment of benefits to self-employed persons who are family members of a critically ill adult and who provide care or support for that adult. The text of these provisions mirrors the text of clause 238.

Additional amendments to the EI Act made in this regard, including those in clauses 230, 233, 240, 241, 243 and 249 to 251, are consequential amendments following from the introduction of the new benefit for family members to care for or support a critically ill adult.

2.4.11.1.6 Transitional Provisions

Clause 254 of the bill stipulates that parental benefits provisions under the EI Act that were in place before clauses 235 and 245 come into force will continue to apply for claims relating to children who were born or placed in adoption before those clauses came into force.

Clause 255 indicates that provisions regarding benefits to care for or support a critically ill child that were in place before clauses 237 and 247 come into force will continue to apply with respect to claims whose benefit periods commenced before those clauses came into force.

Finally, clause 256 states that a claimant will be eligible to receive benefits to care for or support a critically ill adult during the benefit period that begins on or after the day clauses 238 and 248 come into force. A claimant will also be eligible to receive benefits in this regard for the portion of the benefit period that begins on or after clauses 238 and 248 come into force.

2.4.11.1.7 Coordinating Amendments

Clauses 257 and 258 refer to certain legislative provisions, other than those contained in Bill C-44, that amend the EI Act and are not yet in force. These include section 107(1) of the *Modernization of Benefits and Obligations Act*[41] and section 36(b) of the *Fairness for the Self-Employed Act*.[42] These provisions amend sections 23(1) and 23(2), as well as sections 152.05(1) and 152.05(2), of the EI Act to establish that parental benefits may also be paid to a claimant for "one or more children if the claimant meets the requirements set out in the regulations made under [section] 54(f.1)."

New section 54(f.1) provides that the Commission, with the approval of the Governor in Council and subject to consultation with provincial governments, may make regulations about the following requirements as they relate to the payment of parental benefits:

- the circumstances in which the claimant must be caring for the child or children;

- the criteria that the claimant must meet;
- the conditions that the claimant must fulfill; and
- any other matter that the Commission considers necessary in this regard.[43]

If clauses 235 and 245 of Bill C-44 regarding parental benefits come into force before these provisions from the other Acts, then the text set out in clauses 257 and 258 will apply. However, if the provisions from the other Acts and clauses 235 and 245 come into force on the same day, the provisions from the other Acts will be deemed to have come into force earlier.

2.4.11.2 Amendments to the *Canada Labour Code*: Family Care–Related Leave

2.4.11.2.1 Maternity Leave

Currently, section 206(1) of the *Canada Labour Code*[44] provides that an employee who has completed six consecutive months of continuous employment with an employer and provided her employer with a certificate attesting that she is pregnant is entitled to a leave of absence from employment that may begin 11 weeks prior to the expected week of birth.

Clause 259 amends section 206(1) of the Code to establish that an employee may instead begin her maternity leave 13 weeks prior to the expected week of birth. Clause 259 also adds section 206(1.1) to provide that, if the birth has not occurred during the 17 weeks of maternity leave, the leave will be extended until such time as the birth takes place.

2.4.11.2.2 Parental Leave

Existing section 206.1(1) of the Code provides that an employee who has completed six consecutive months of continuous employment with an employer is entitled to parental leave to care for a newborn or newly adopted child.

Clause 260 extends the periods related to parental leave that are outlined in sections 206.1(1) to 206.1(3) of the Code:

- The duration of parental leave entitlement increases from a maximum of 37 weeks to a maximum of 63 weeks.
- The period during which parental leave may be taken extends from 52 weeks to 78 weeks following the birth of the child or the child's coming into the care of the employee.
- The aggregate amount of parental leave that may be taken by two employees with respect to the same birth or adoption increases from 37 weeks to 63 weeks.

Clause 261 amends section 206.2 of the Code to provide that the aggregate amount of leave that may be taken by one or two employees for maternity and parental leaves for the same birth must not exceed 78 weeks. Currently, the aggregate amount of leave that may be taken in this regard is 52 weeks.

Existing sections 207(1) and 207(2) provide that employees intending to take maternity or parental leave must provide their employers with four weeks' notice of their leave of absence or of any change in the length of their leave, unless there is a valid reason not to do so. Clause 264 amends the text of sections 207(1) and 207(2), and adds section 207(1.1), to provide additional guidance with regards to the notification timelines. For example, new section 207(1.1) indicates that, where there is a valid reason not to provide the employer with four weeks' notice, employees must provide notice in writing as soon as possible.

Finally, clause 267(3) amends section 209.4(g) of the Code to provide that the Governor in Council may make regulations prescribing shorter periods of consecutive months of continuous employment in relation to maternity and parental leaves. This amendment is also made for the leave to provide care or support for a critically ill adult. Currently, this provision applies only to leave related to critical illness of a child and leave related to death or disappearance of a child.

2.4.11.2.3 Compassionate Care Leave

Section 206.3(1) of the Code is the interpretation provision with regards to compassionate care leave, currently providing definitions for the terms "common-law partner," "family member," "qualified medical practitioner" and "week." Clause 262(1) amends section 206.3(1) of the Code to remove most of these definitions and provide that, for the purposes of this section, the terms "care," "family member," "medical doctor," "nurse practitioner" and "support" have the same meaning as that given in the EI Regulations. The definition for the term "week," however, remains unchanged.

Currently, under section 206.3(2), the entitlement to compassionate care leave is dependent upon a "qualified medical practitioner" having issued a certificate stating that a family member of the employee has a serious medical condition with a significant risk of death. Clauses 262(2) and 262(3) amend this section of the Code to replace the term "qualified medical practitioner" with "medical doctor or nurse practitioner," and to provide a definition for the term "medical practitioner" under new section 206.3(2.1). Amendments introduced in clauses 262(4), 265 and 267 are consequential amendments meant to incorporate this change in the terminology.

Clause 262(5) further amends section 206.3 of the Code by adding section 206.3(7.1) in order to introduce a limitation. Specifically, new section 206.3(7.1) provides that an employee may not be able to take a leave related to the critical illness of a child or adult until the end of the compassionate care leave taken with respect to that same person.

In addition, clause 266 amends sections 207.3(3) and 207.3(5) of the Code to provide that, unless there is a valid reason not to do so, employers must be provided with four weeks' notice of any changes with regards to the length of a compassionate care leave that is more than four weeks. In addition, if the employee wishes to shorten the leave but fails to provide four weeks' notice to his or her employer, the employer may postpone the employee's return to work for up to four weeks from the day notice is given. This amendment is also made in relation to the leave to provide care or support for a critically ill adult. Currently, these provisions only apply with

respect to leave related to critical illness of a child or leave related to the death or disappearance of a child.

2.4.11.2.4 Leave Related to Critical Illness of a Child

Clause 263(1) amends section 206.4(1) of the Code, which is the interpretation provision with regards to leave related to critical illness, to add that the terms “care,” “critically ill adult,” “family member,” “nurse practitioner” and “support” have the same meaning as that attributed under the EI Regulations. In addition, the term “parent” is removed from this section, while the term “specialist medical doctor” is replaced with “medical doctor.”

Currently, section 206.4(2) provides that an employee who is a parent of a critically ill child is entitled to a leave of absence from employment in order to provide care or support for that child if a “specialist medical doctor” has issued a certificate indicating that the child is critically ill and requires the care or support of a parent for a stated period. Clause 263(2) amends this section to replace the term “parent” with “family member,” to remove “specialist” from the term “specialist medical doctor,” and to add the term “nurse practitioner” so that medical doctors are not the only professionals who can issue a certificate in this regard.

2.4.11.2.5 Leave Related to Critical Illness of an Adult

Clause 263(3) adds section 206.4(2.1) to the Code to provide for a new leave, one related to critical illness of an adult. Specifically, new section 206.4(2.1) establishes that an employee who has completed six consecutive months of employment with an employer and who is a family member of a critically ill adult, for whom a medical doctor or nurse practitioner has issued a certificate stating that the adult is critically ill and requires the care or support of a family member for a stated period, is entitled to a leave of absence of up to 17 weeks. Further amendments made by clause 263(3) are meant to accommodate the creation of this new leave of absence under the Code.

Clauses 263(4) and 263(5) amend sections 206.4(4)(a) and 206.4(4)(b)(i) to establish the period during which the leave related to critical illness of an adult may be taken. Similar to the leave related to critical illness of a child, leave related to a critically ill adult starts on the first day of the week when the first certificate is issued or, if the leave begins before the certificate has been issued, on the first day of the week when the medical doctor or nurse practitioner certified the adult as critically ill. The period of the leave related to critical illness of an adult ends when the adult dies.

Clause 263(6) replaces sections 206.4(5) and 206.4(6) of the Code and adds section 206.4(7). Amended section 206.4(5) provides that the aggregate amount of leave that may be taken in relation to the same critically ill adult is 17 weeks. It should be noted that replacing section 206.4(5) has the effect of removing the provision setting the leave period in relation to children who are critically ill as a result of the same event.

Amended section 206.4(6) and new section 206.4(7) establish limitations on the leaves related to critical illness. Specifically, amended section 206.4(6) provides that an employee may not be able to take a leave in relation to a critically ill adult until the

end of the leave taken in relation to a critically ill child, if these leaves refer to the same person. In addition, new section 206.4(7) establishes that an employee may not be able to take a compassionate care leave until the end of the leave taken in relation to a critically ill child or adult, if these leaves refer to the same person.

Amendments introduced in clause 267 are consequential to the new leave related to critically ill adults under the Code.

2.4.11.2.6 Coordinating Amendments

The coordinating amendments found in clause 268 deal with other legislative provisions amending the Code that are not yet in force. These include provisions dealing with parental leave entitlements in the *Modernization of Benefits and Obligations Act*, the *Budget Implementation Act, 2000* and the *Helping Families in Need Act*.[45]

Once clause 260 of Bill C-44 comes into force, some of the provisions in these Acts will be amended to extend the duration of parental leave to a maximum of 63 weeks, the period during which parental leave may be taken to 78 weeks, and the aggregate amount of parental leave that can be taken by two employees to 63 weeks.

In addition, if some of the provisions in these Acts are enacted, they will amend sections 206.1(1) and 206.1(2) of the Code to allow for parental leave to also be taken by an employee who meets the requirements of proposed section 23(1)(c) of the EI Act (see section 2.4.11.1.7 of this Legislative Summary).

2.4.11.3 Coming into Force

Clause 269 provides that Division 11 of Bill C-44, other than the provisions dealing with the coordinating amendments in relation to the EI Act and the Code, comes into force on a day to be fixed by order of the Governor in Council. This date may not be earlier than 10 July 2017.

2.4.12 Division 12: Amendments to the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, the *Pension Act* and the *Department of Veterans Affairs Act*

Division 12 of Bill C-44 is identical to Bill C-42,[46] introduced at first reading in the House of Commons on 24 March 2017. It makes the following changes:

- six significant changes to the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*,[47] which came into force on 1 April 2006 and is known as the “New Veterans Charter”;
- one amendment to the *Pension Act*;[48]
- one amendment to the *Department of Veterans Affairs Act*;[49] and
- consequential amendments.

2.4.12.1 Career Transition Services

Clause 272 of Bill C-44 amends the eligibility criteria for career transition services provided for in section 3 of the New Veterans Charter. These criteria were previously defined by regulation. The principal amendments are as follows:

- Members who have completed basic training are now eligible.
- The time limit for application of two years following the date of release from the Canadian Forces is eliminated for members, veterans and survivors but continues to apply to spouses or common-law partners of veterans.
- The distinction between veterans of the regular force and those of the reserve force is eliminated with regard to eligibility for services.
- The stipulation in the Veteran Affairs Canada Career Transition Services policy that veterans released for misconduct or unsatisfactory service are ineligible for career transition services[50] is not reflected in this clause of Bill C-44.
- Members, veterans, spouses or common-law partners, and survivors must now reside in Canada to be eligible for services.
- To be eligible, veterans, spouses or common-law partners, and survivors must not be receiving rehabilitation services or vocational assistance under Part 2 of the Charter.

Clause 273, regarding the assessment of the needs of an applicant for career transition services, specifies the wording of section 4(1) of the Charter and replaces “career counselling, job-search training and job-finding assistance” with “the career transition services that may be provided to them under this Part.”

Clause 274 states in amended section 5 that the minister may, when permitted under the regulations, suspend or cancel the provision of career transition services. Under new section 5.1, the Governor in Council may make regulations respecting the services themselves and the criteria for residence in Canada.

2.4.12.2 Creation of an Education and Training Benefit

Clause 274 introduces an education and training benefit by creating Part 1.1 to the New Veterans Charter. To be eligible for this new benefit, veterans are required to:

- have served for a total of at least six years in the regular force, in the reserve force or in both (new section 5.2(1)(a)); and
- have been honourably released from the Canadian Forces on or after 1 April 2006 (new section 5.2(1)(b)).

The maximum cumulative amount of the benefit is $40,000 but can be as high as $80,000 if the veteran served for a total of at least 12 years (new section 5.2(2)). The benefit covers the following:

- education or training received from an educational institution as part of a course of study leading to the completion of a degree, diploma, certification or designation (new section 5.3(1)(a)); and
- any expenses, including living expenses, that may be incurred by the veteran while enrolled at the institution (new section 5.3(1)(b)).

In addition to proof of acceptance, enrolment or registration, the minister can request more information to determine the amount of the benefit payment, the period of study to which the payment is to be allocated and the day on which payment is to be made (new sections 5.3(2), 5.3(3) and 5.3(4)). New section 5.3(5) also stipulates that payment must be made no earlier than the 60th day before the period of study begins or before the day on which fees for the education or training are due.

New section 5.4 establishes an education and training completion bonus payable in the amount prescribed by regulation to veterans who have earned a degree, diploma, certification or designation for which they received an education and training benefit.

Pursuant to new section 5.5, if the approved education or training does not meet the criteria for an educational institution as set out in new section 5.3(1)(a), the amount of the education and training benefit paid to a veteran will be prescribed by regulation. New sections 5.5(3) to 5.5(5) stipulate that the minister's decision on the amount and date of payment will be based on information concerning education and training, and on any other information prescribed by regulation. The minister can also request additional information, if needed.

According to new sections 5.6 and 5.7, serving members are not eligible for this benefit, nor are veterans who are receiving rehabilitation services or vocational assistance, or who are entitled to a Canadian Forces income support benefit under Part 2 of the Charter.

New section 5.8 places limitations on the amount of the benefit if veterans are incarcerated and not responsible for their living expenses.

New section 5.9 stipulates that, except in prescribed circumstances, veterans must receive the benefit within 10 years of the date of their release from the Canadian Forces, but the education or training for which they receive the benefit can end following payment. Veterans who were released before Division 12 of the bill comes into force have until 1 April 2028 to receive payment.

New section 5.91 stipulates that veterans cannot receive an education and training benefit payment once they have received payments totalling the maximum amount to which they are entitled, even if the maximum allowable amounts are adjusted after veterans receive their last payment.

New section 5.92 allows for payment of an education and training benefit to be cancelled or suspended under the circumstances prescribed by regulation.

New section 5.93 states that the Governor in Council may make regulations to:

- prescribe how length of service in the reserve is to be determined;
- define what constitutes honourable release;
- provide for the periodic adjustment of the maximum cumulative amount of the benefit;
- define an "educational institution";
- prescribe the education or training offered by providers other than the educational institutions that may or may not be approved by the Minister; and
- define what constitutes incarceration for the purposes of limiting the maximum amount of the benefit.

2.4.12.3 Caregiver Recognition Benefit

Clause 278 replaces the heading for Part 3.1 of the New Veterans Charter – "Family Caregiver Relief Benefit" – with "Caregiver Recognition Benefit," thereby renaming the benefit. Clause 279 stipulates that the caregiver recognition benefit is to be paid to the person designated by the veteran (new section 65.1(1)).

Clause 279(3) states that veterans receiving benefits under the *Pension Act* cannot receive the caregiver recognition benefit. This stipulation invalidates section 65.1(4) of the Charter. This section concerned the ineligibility of veterans receiving an attendance allowance or certain benefits pursuant to regulations made under the *Pension Act* regarding the Rivière-Bleue conflict (War Veterans Allowance Board decision regarding Témiscouata, dated 29 February 1984).

Clause 280 amends sections 65.2 and 65.3 of the Charter and adds five new sections:

- Section 65.2 is amended to specify that the benefit is payable monthly, rather than annually.
- New section 65.21 stipulates that the veteran can designate only one person at a time to receive the benefit.
- New section 65.22 establishes the date when the benefit starts to be payable to the person designated in the original application or in an application to change the designated person.
- New section 65.23 establishes the date on which the benefit stops being paid once the eligibility requirements are no longer met.
- New section 65.24 stipulates the obligation of the veteran or the designated person to inform the minister of a change in circumstances that could affect benefit eligibility.
- Amendments to section 65.3 replace terminology concerning the former benefit with terminology concerning the new benefit.
- New section 65.31 stipulates that the circumstances in which the minister can suspend or cancel the benefit will be prescribed by regulation.

According to clause 287, the amount of the benefit is $1,000 per month. As noted in section 2.1.3 of this Legislative Summary, clause 6 makes the caregiver recognition benefit non-taxable by adding it to the list of benefits to Canadian Forces members and veterans that are excluded from the calculation of income under the ITA.

2.4.12.4 Short Title for the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*

Clause 270 of the bill amends section 1 of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* by establishing the "Veterans Well-being Act" as the short title for the Act.

In conjunction with clause 270, clause 2 replaces the reference to the *Canadian Forces Members and Veterans Re-establishment and Compensation Act* in section 6(1)(f.1) of the ITA with the new short title.

2.4.12.5 Consequential Amendments

Clause 271 of the bill adds the education and training benefit, the education and training completion bonus and the caregiver recognition benefit to the definition of "compensation" in section 2(1) of the New Veterans Charter.

Clauses 275 and 277 repeal sections 40.5 and 44.3 of the Charter. These sections stipulated that the requirement to apply for benefits under the Charter may be waived for veterans under certain circumstances. The repealed provisions are transferred to new section 78.1 of the Charter, established by clause 281.

Clause 276 removes the reference to section 44.3 found in section 42 of the Charter. Section 44.3 is repealed by clause 277.

Clause 282 extends to parts 1 and 1.1 of the Act the minister's authority to review a decision. This authority was previously limited to parts 2 and 3.1 of the Charter.

Clause 283 establishes section 87.1, which stipulates that, if a person dies before receiving an amount payable under the Charter, the amount is to be paid to the person's spouse or common-law partner or to the estate if the person has no survivor.

Clause 284 makes some terminology changes and stipulates that, if the education and training benefit has been paid in error for at least three years, the benefit can continue to be paid if its cancellation or reduction would cause undue hardship.

Clauses 285 and 286 change some of the terminology in the Charter.

Clauses 288, 289, 292, 297 and 298 make consequential amendments to the *Pension Act* and other legislation.

Clauses 290 and 291 remove the reference to hospitals under the minister's jurisdiction in the *Pension Act* and the *Department of Veterans Affairs Act*, because no such hospitals exist, as the last veterans' hospital, Sainte-Anne-de-Bellevue, was transferred to the Province of Quebec in 2016.

2.4.12.6 Transitional Provisions

Clauses 293, 294 and 295 set out transitional provisions regarding the payment of fees or benefits and the provision of services under the Charter.

Clause 296 states that the provision giving the Governor in Council the authority to make regulations "prescribing the way in which anything that is required or authorized by this Act to be prescribed is to be determined" is deemed to have come into force on 1 April 2006, the date on which the first version of the Act came into force.

2.4.12.7 Coming into Force

Clause 299 states that, aside from sections 290, 291 and 296, the provisions of Division 12 of Bill C-44 come into force on 1 April 2018.

2.4.13 Division 13: Amendments to the *Immigration and Refugee Protection Act*

Division 13 of Part 4 of Bill C-44 amends the *Immigration and Refugee Protection Act* (IRPA)[51] in two ways. Clauses 300 to 303 amend "Express Entry," the two-step application management system for key economic immigration programs. Clauses 304 and 305 relate to fees under IRPA.

Since its implementation in January 2015, Express Entry has been adjusted several times in order to ensure the delivery of expected outcomes. One measure that has changed is the Comprehensive Ranking System (CRS), which is used to score individuals in a pool and rank them relative to each other. Through ministerial instructions issued regularly, expressions of interest of top-ranking candidates are pulled from the pool and these candidates are invited to complete an immigration application. The economic immigration programs covered by Express Entry include the Canadian Experience Class, the Federal Skilled Worker Program, the Federal Skilled Trades Program and a portion of the Provincial Nominee Program (PNP).

A provincial nomination is worth a significant number of points in a candidate's CRS score. To participate in Express Entry, the provincial nominee not only has to satisfy the province's or territory's criteria in the Express Entry PNP stream, but also the requirements of one of the federal immigration programs covered by Express Entry. Clause 300(1) specifies that, even when the candidate is eligible for these federal programs, an invitation to apply for permanent residence sent to provincial nominees must be in the PNP category (new section 10.1(1.1) of IRPA).

Clause 300(2) provides that if a candidate receives an invitation to apply for permanent residence but declines it, the expression of interest, valid for one year, is placed back into the pool to be considered in future rounds of invitations (new section 10.1(7) of IRPA).

Clause 301(2) amends section 10.3(1)(i) of IRPA to add that the ministerial instructions, which are the basis for the rounds of invitations, indicate the necessary minimum score or rank.

Clause 301(3) modifies section 10.3(3) of IRPA to ensure that criteria established by ministerial instruction for the purpose of a round of invitations apply to the expressions of interest that are in the pool.

Clause 302 allows personal information that is collected from the candidate or a third party or that is created by the department through Express Entry to be disclosed for the selection of economic class immigrants or temporary residents (new section 10.4 of IRPA).

Clause 303(2) amends section 11.2 of IRPA to create two exceptions that allow permanent resident visas to be issued under Express Entry for candidates who have received an invitation to apply after their circumstances have changed, and who would otherwise have lost eligibility under new section 11.2(1). A candidate who has aged and lost points, or lost a qualification, but overall has maintained a score that is equal to the minimum required rank in the round for which he or she had received an invitation may still be issued a visa or other document under new section 11.2(2).

Clauses 304 and 305 relate to fees under IRPA, identifying which services will not be subject to the new Service Fees Act that replaces the *User Fees Act* (see section 2.4.21 of this Legislative Summary). In addition to services already exempt from the *User Fees Act* – processing applications for a temporary resident visa, a work permit, a study permit and an extension of an authorization to remain in Canada as a temporary resident – fees related to the processing of permanent resident visas, as well as landing fees, are exempt under Bill C-44. Other services that are now exempt include the following:

- processing applications based on humanitarian and compassionate considerations, including applications made under public policy;
- obtaining travel documents for permanent residents, including permanent resident cards; and
- processing applications to sponsor a member of the family class.

Division 13 will come into force when Bill C-44 receives Royal Assent.

2.4.14 Division 14: Amendments to the *Employment Insurance Act*

Currently, section 58 of the EI Act defines the term “insured participant” as an insured person who, when requesting assistance, is an unemployed person for whom a benefit period is established or whose benefit period has ended during the previous 60 months. This definition is established for the purpose of Part II of the EI Act, which deals with employment benefits and support measures. Clause 306 of Bill C-44 amends section 58 to expand the definition of “insured participant” to include an unemployed person who paid employee premiums for at least five of the last 10 years, but was not entitled to a refund of these premiums because his or her insurable earnings exceeded $2,000 per year.

Existing section 60(4)(a) of the EI Act provides that the Canada Employment Insurance Commission may establish support measures for organizations that provide employment assistance services to unemployed persons. Clause 307(1)

amends section 60(4)(a) to remove the reference regarding unemployed persons, so that the Commission may support any organization that provides employment assistance services.

Further, existing section 60(4)(b) provides that the Commission may establish support measures for employers, employee or employer associations, community groups and communities to develop and implement strategies for dealing with labour force adjustments and meet human resource requirements. These support measures are subject to limitations under section 60(5). For example, under section 60(5)(a), assistance will not be provided for employed persons unless they are facing loss of their employment. Clause 307(2) amends section 60(5)(a) so that support measures may also be provided in relation to employed persons who need assistance to maintain their employment.

Finally, clauses 308 and 309 repeal sections 63(2) and 63.1 of the EI Act. These provisions deal with agreements that may be entered into by the Commission with a government to provide for the payment of contributions for the costs of benefits for insured participants, as defined in section 58 as it read immediately before 23 June 2015. The relevant definition is currently set out in Schedule III to the EI Act. Schedule III is repealed by clause 310.

Pursuant to clause 311, Division 14 comes into force on 1 April 2018.

2.4.15 Division 15: Authorization for the Minister of Transport to Enter into Certain Agreements

Division 15 of Part 4 of the bill amends the *Aeronautics Act*, the *Navigation Protection Act*, the *Railway Safety Act* and the *Canada Shipping Act, 2001* to authorize the Minister of Transport to enter into agreements with any person or organization to use facilities or services – in particular regulatory and certification services[52] – provided by the minister under these Acts. These agreements will take precedence over any regulations that impose fees or duties to use the facilities or services. The bill also authorizes the minister to spend the amounts received under an agreement either during the fiscal year during which they were collected or during the following fiscal year.

2.4.16 Division 16: Amendments to the *Food and Drugs Act* with Respect to User Fees

Division 16 of Part 4 of Bill C-44 amends the *Food and Drugs Act* (FDA)[53] by adding, after section 30.6, several new provisions regarding fees.

Clause 317 adds new section 30.61(1) to the FDA, authorizing the Minister of Health to fix by order the fees to be charged under the FDA in relation to a drug, device, food or cosmetic for the following:

- services or the use of a facility;
- regulatory processes or approvals; and
- products, rights and privileges.

Sections 30.61(2) and 30.61(3) specify that the fees for services and regulatory processes and approvals cannot exceed the cost incurred for providing them. Section 30.62 requires the minister to consult interested parties before fixing any fees. Section 30.63 allows the minister to:

- remit all or part of any fee or interest on a fee collected under section 30.61(1);
- put conditions on any granted remission; and
- cancel any conditional remission for which the conditions were not fulfilled.

If a person fails to pay the applicable fee, section 30.64 allows the minister to withdraw or withhold the use of the relevant facility, service, regulatory process or approval, products, rights or privileges. This division also allows the minister to prescribe rules to adjust fixed fees by the amount and over the period of time specified in the order establishing the fees.

Finally, section 30.66 specifies that the new Service Fees Act (which replaces the *User Fees Act*; see section 2.4.21 of this Legislative Summary) does not apply to a fee fixed under the FDA.

2.4.17 Division 17: Labour and Employment Laws

2.4.17.1 Amendments to the *Canada Labour Code*

Division 17 of Part 4 of Bill C-44 makes amendments to all three parts of the *Canada Labour Code*, and it introduces a new part (Part IV – Administrative Monetary Penalties). Part I of the Code deals with industrial relations, Part II deals with occupational health and safety, and Part III pertains to standard hours, wages, vacations and holidays.

2.4.17.1.1 Powers, Duties and Functions of the Canada Industrial Relations Board

The bill makes several amendments to the Code by transferring the powers, duties and functions that currently lie with appeals officers, adjudicators and referees to the Canada Industrial Relations Board. These are the main amendments:

- The bill repeals the definition of “appeals officer” and any reference to appeals officer and adjudicators. The powers of appeals officers regarding occupational health and safety matters, and the powers of adjudicators regarding complaints for unjust dismissal, are transferred to the Board.
- The bill provides that the consideration of appeals related to a direction issued by the Minister of Labour regarding occupational health and safety, which is currently within the authority of the appeals officer, is now transferred to the Board.

- At present, the Code provides that when an appeal is referred to the minister, the minister appoints a referee to hear and adjudicate the appeal (section 251.12). Clause 365 of the bill amends the Code by replacing section 215.12 with new sections 251.111 and 251.12. This amendment transfers the referee's powers, duties and functions to the Board. References to referees are consequently removed and replaced with references to the Board.
- The bill provides that an appeal of the minister's decision to confirm, rescind or vary an inspector's payment order (for unpaid wages) is to be considered by the Board rather than by the minister.
- The bill limits the civil and criminal liability of Board members for any action or omission done in good faith in the exercise of their power, duty or function (clause 324).
- The Code is consequently amended to provide that a person in charge of a workplace is required to assist any Board member in the exercise of his or her functions and duties.
- The bill specifies that the Board's decisions regarding industrial relations (Part I) and occupational health and safety (Part II) are final and may be filed in the Federal Court or in a provincial superior court. Amendments to the Code also provide for enforcement and registration in the Federal Court of the Board's orders when the Board determines that an employer has contravened the Code regarding disciplinary actions.

The bill introduces several new requirements regarding procedure for appeals that are referred to the Board.

- The Board is required to inform the minister when an appeal is brought and to provide the minister with a copy of the request (new sections 146.01(1) and 251.111(1)).
- The minister is required to provide the Board, upon request, with a copy of any document that the minister relied on when making or issuing the direction being appealed (new sections 146.01(2) and 251.111(2)).
- The Board is required to provide the minister, upon request, with a copy of any document filed (new sections 146.01(3) and 251.111(4)).
- The minister is permitted to present evidence and make representations to the Board (new sections 146.01(4) and 251.111(5)).
- For a request for ministerial review that the minister considers would be best treated as an appeal, the inspector is to provide the Board with a copy of any document that the inspector relied on when issuing the order or notice being appealed (new section 251.111(3)).

2.4.17.1.1.1 Composition Of The Board, Quorum And Residency Requirement

Bill C-44 allows any full-time members, as is currently the case for part-time members, to assist the Board in carrying out its functions (section 9(2)3(e)). The bill allows the Governor in Council to exempt Board members from the requirement that they reside in the National Capital Region (new section 10.1(2)).

The bill provides that the determination of a matter may also be made by an appointed member alone, along with the current provision allowing the chairperson or a vice-chairperson to determine matters alone (section 14(3.1). The bill also amends the Code to provide different quorum requirements, depending on whether the Board meets to make regulations regarding industrial relations (Part I of the Code) or other matters.

2.4.17.1.1.2 New Provisions for the Appointment of and Powers, Duties and Functions of External Adjudicators

Bill C-44 introduces new provisions for the appointment of external adjudicators by the Board, and sets out their powers, duties and functions, and remuneration (new section 12.001). It also provides that external adjudicators, along with any Board members and any person who assisted them in carrying out their duties, are not required to give evidence in any civil action or other proceedings regarding information obtained while exercising their duties (new section 119(1.1)). The bill amends the Code by specifying that the decisions of external adjudicators are deemed to be decisions issued by the Board. The Code is consequently amended to provide that a person in charge of a workplace is required to assist the external adjudicator in carrying out his or her duties and functions.

2.4.17.1.2 Complaint Mechanism for Employer Reprisals

The bill introduces a new division (Division XIV.1) after section 246 in Part III of the Code to provide a complaint mechanism for employees who believe that their employer has taken a reprisal measure against them.

New section 246.1(1) of the Code provides that employees may make a written complaint to the Board for different kinds of reprisals, such as an imposed leave of absence, dismissal, suspension, lay-off, demotion or discipline for reasons currently prohibited in the Code.

The complaint mechanism is also available to employees who have been subject to reprisal for the following actions:

- having complained of unjust dismissal;
- having provided information or testified in a proceeding; or
- having exercised employee rights under Part III of the Code.

Employees who have been dismissed may not use the complaint mechanism for reprisals if they have already made and not withdrawn a complaint for unjust dismissal under section 240(1) (new section 246.1(2)).

An employee has 90 days to initiate a complaint (new section 246.1(3)).

When a complaint of reprisal is made, the responsibility for proving that it has not taken place lies with the party who alleges that there was no reprisal (new section 246.1(4)).

Complaints to the Board may be disposed of by a single person (the chairperson, a vice-chairperson or an appointed Board member), in accordance with new section 14(3.1) of the Code.

The Board has the power to suspend the consideration of a complaint and to request that the employee take certain measures before the Board can consider the complaint (new section 246.2(1)). In such a case, the Board is required to notify the employee of the measures to be taken and the time allowed to fulfill the measures (new section 246.2(2)), and to notify the employee when a suspension comes to an end (new section 246.2(3)).

New section 246.3(1) stipulates that the Board has the power to reject a complaint in specified circumstances, such as if the Board is satisfied that:

- the measures specified in the notice of suspension of a complaint have not been taken within the prescribed period;
- the complaint is not within its jurisdiction;
- the complaint is frivolous, vexatious or not made in good faith;
- there are other means available to resolve the matter; or
- a collective agreement exists that covers the subject matter of the complaint and that provides a third party dispute resolution process.

The Board is required to notify the employee of a rejection (new section 246.3(2)).

If the Board finds that a complaint is justified, it has the power to issue an order requiring the employer to cease engaging in or to rescind the reprisal and, if applicable, to make a remedial order in favour of the employee, including reinstatement and compensation (new section 246.4).

The Board's decision is final and not subject to judicial review (section 246.5(1)) or to review by way of injunction, certiorari, prohibition, *quo warranto* or otherwise (new section 246.5(2).

The Board's order can be registered and enforced in the Federal Court (new sections 246.6(1) and 246.6(2)).

2.4.17.1.3 Compliance with Part III of the *Canada Labour Code*

Clause 358 introduces new provisions in Part III of the Code, "Standard Hours, Wages, Vacations and Holidays," that allow the minister to order an employer:

- to conduct an internal audit to determine whether the employer is in compliance with Part III or with the regulations; and
- to provide a report on the results of the audit (new section 251.001(1)).

Under new sections 251.001(2) and 251.001(3) of the Code, the minister's order must specify:

- the industrial establishment and class of employees to which the internal audit applies;
- the period of time the internal audit is to cover;
- the provisions of the Code or the regulations for which the internal audit was ordered;
- the date by which the corresponding report is to be provided;
- the form of the corresponding report; and
- specified information to be included, if needed.

The minister's order must be served personally, by registered mail or by other prescribed means (new section 251.001(4)).

If the employer finds that it had not complied with any provisions in the minister's order, the employer must set out in the report the nature of the non-compliance and the steps taken or that will be taken to comply with the provisions (new section 251.001(6)).

Where wages or other payments are owed to the employee, the employer must state in the report the name of the employee, the amount owed, the method used to determine it, and any payment subsequently made to the employee (new section 251.001(7)).

The issuance of an order for internal audit does not preclude an inspector from inspecting or the Board from dealing with a complaint (new section 251.001(8)).

The bill also amends the Code to specify that the *Statutory Instruments Act*[54] does not apply to internal audits (clauses 372 and 373).

2.4.17.1.4 Order to Cease Contravention of Part III of the *Canada Labour Code*

Bill C-44 amends the Code to permit an inspector, in exercising the powers given by the minister to inspect any employer record, to make any finding necessary to determine whether an employee is entitled to wages or any other amounts. It also provides that the inspector may rely on any other available evidence when the employer fails to make or keep any record (new sections 251(1.1) and 251(1.2)).

The Code currently provides, under section 251.01(1), that any employee may make a complaint to an inspector if he or she believes that the employer has contravened any order or provision of Part III of the Code. Under section 251.01(4), an employee who has been dismissed is not permitted to make a complaint of unjust dismissal to an inspector. The bill amends section 251.01(4) of the Code to add that an employee who has been dismissed may file a complaint if it relates only to wages or other amounts to which the employee is entitled.

2.4.17.1.4.1 Inspector's Orders

Clause 360 provides a new power permitting inspectors to issue a compliance order requiring an employer to stop contravening a provision of Part III of the Code within a specified time (new section 251.06(1)). The inspector cannot issue a compliance order for unjust dismissal under new section 242(4) or regarding the new complaint mechanism for reprisals under new section 246.4. Neither can the inspector issue a compliance order requiring an employer to pay wages or other amounts to which an employee is entitled (new section 251.06(2)).

Through clause 373, the bill also amends the Code to provide that compliance orders are not subject to the *Statutory Instruments Act* (new section 251.17).

2.4.17.1.4.2 Notice of Voluntary Compliance Issued by the Inspector

Clause 361 adds new section 251.1(2.1) to require an inspector to notify the employee when the employer has voluntarily paid all wages and other amounts owing for the period of 24 months immediately before the day that the complaint was made (including any extension granted by the minister). The notice of voluntary compliance must be issued to the employee before the inspector issues a payment order or a notice of unfounded complaint.

The bill consequently amends the Code by providing that the *Statutory Instruments Act* does not apply with respect to notices of voluntary compliance (clauses 371 to 373, amending section 251.17).

2.4.17.1.4.3 Review and Appeal of Inspector's Orders

The bill amends the Code by providing that a person affected by a notice of voluntary compliance may send a request for review to the minister within 15 days after the day on which the notice was received (amended section 251.101(1)). Upon receipt of the request to review, the minister may either confirm or rescind the notice of voluntary compliance (amended section 251.101(3)(b)). Notice of the minister's decision must be served by personal service, registered mail or any other prescribed means (amended section 251.101(4)).

The bill also amends the Code by providing that when the minister considers that a request to review a notice of voluntary compliance would be best treated as an appeal, such an appeal is to be considered by the Board and no longer by the minister (amended section 251.101(7)).

With respect to compliance orders, the bill specifies that only an employer to whom such an order has been issued may appeal the minister's decision with respect to that order (new section 251.11(1.1)). Appeals are limited to questions of law or jurisdiction, except in the case of compliance orders (new section 251.11(1.2)).

2.4.17.1.5 Period During Which a Payment Order May Be Issued

Currently, the Code provides that a payment order must relate to wages or other amounts that existed up to 12 months before the day the complaint was made, the date of termination, or the day that the inspection began. The bill extends the current

12-month period considered for unpaid wages and other amounts to a period of 24 months, including any time extension that may have been granted by the minister (new section 251.1(1.1)(a.1) and amended section 251.1(1.1)(b)). The bill provides the same extension from 12 to 24 months for payment orders that are issued following an internal audit report and in any other finding made by an inspector.

2.4.17.1.6 Administrative Fees for Employers

The bill requires the employer to pay an administrative fee in addition to the amount indicated in any payment order. New sections 251.131(1) to 251.131(3) specify that a payment order made to an employer must indicate the amount of the administrative fee. That amount is calculated as the greater of:

- $200; or
- 15% of the amount indicated in the payment order.

Consequently, section 251.13(1) is amended to provide that the minister can request that an administrative fee be paid by a person who is or is about to become indebted to an employer, along with any amount owing to the employer (clause 366). New section 251.13(1.1) provides for the issuance of orders to a person who is or is about to become indebted to a director of a corporation. Clause 368(2) also amends section 251.15(2) to provide that debtors of directors of corporations, along with debtors of employers, are subject to the enforcement of orders. The bill further amends the Code to specify that the *Statutory Instruments Act* does not apply to orders to debtors (clauses 371 to 373).

The bill also provides that the minister may allow an employer or a director of a corporation to provide security equivalent to all or part of the payment order amount or administrative fee (new sections 251.101(2.1) and 251.11(3.1)). Clause 366 provides for returns of security by the minister to the employer after a final decision has been made (new section 251.132).

2.4.17.1.7 Administrative Monetary Penalty Scheme

Clause 377 of the bill creates new sections 268 to 295, “Administrative Monetary Penalties,” in Part IV of the Code. These new sections establish a system of administrative monetary penalties for contraventions of certain provisions of the Code, of directions issued under the Code, or of orders or classes of orders made or issued under the Code. The administrative monetary penalties are similar to fines imposed by the courts, but are imposed in accordance with a simplified administrative procedure. The main features of the new system established by the bill are discussed below.

The Governor in Council is empowered to designate the provisions of the Code or its regulations, as well as the directions, orders or conditions, that will be subject to the system of administrative monetary penalties, and to establish penalty amounts, or the method of determining those amounts. Penalties may not exceed $250,000 per violation (new sections 270 and 273 of the Code).

The minister (or anyone else to whom this power has been delegated) may designate persons who are authorized to issue notices of violation and impose administrative monetary penalties (new sections 271 and 272 of the Code).

In the event of contravention of a provision, direction, order or condition designated by regulations made under new section 270, the following are liable to a penalty (new sections 273 and 274 of the Code):

- the person or department that commits the violation;
- the officers, directors, agents or mandataries of the corporation, and any other persons in the corporation exercising managerial or supervisory functions, who directed, authorized, assented to, acquiesced in or participated in the commission of the violation;
- the senior officials, and any other persons exercising managerial or supervisory functions in the department, who directed, authorized, assented to, acquiesced in or participated in the commission of the violation.

Under new sections 276 and 280 of the Code, when a designated person has grounds to believe that a violation has been committed, that person must issue, no more than two years after the commission of the violation, a notice to the person or department believed to have committed the violation, providing the following:

- a description of the allegations;
- the penalty being imposed;
- the manner of paying the penalty; and
- the procedure for contesting the facts of the alleged violation and/or the penalty by way of review and appeal.

Furthermore, the employer must provide the notice of violation of a provision of Part II of the Code (occupational health and safety) to the workplace health and safety committee.

With regard to a violation:

- the alleged offender does not have a defence by reason that they exercised due diligence to prevent the violation or reasonably and honestly believed in the existence of facts that would exonerate them (new section 277(1) of the Code);
- the justifications or excuses that could be invoked by the alleged offender in the context of penal proceedings may also be invoked with regard to an administrative monetary penalty (new section 277(2) of the Code);
- if the facts of a violation are reviewed or appealed, the person who issued the notice of violation must establish, on a balance of probabilities, that the alleged offender committed the violation (new section 294 of the Code);
- each day on which the same violation is committed constitutes a separate violation (new section 278 of the Code);

- a violation may not be the subject of both an administrative monetary penalty and a penal proceeding under the Code, and it is not a criminal offence pursuant to section 126 of the *Criminal Code* (disobeying a statute) (new section 279 of the Code); and
- the minister may make public the name of an employer who committed a violation, the nature of the violation, the amount of the penalty imposed and any other information prescribed by regulation (new section 295 of the Code).

Under new sections 289 and 290 of the Code, an offender who pays the penalty set out in the notice of violation, or who fails to pay the penalty without requesting a review or appeal of the decision of the designated person within the specified time, is considered to have committed the violation.

A designated person may cancel or correct a notice of violation, as long as a request for its review has not yet come before the minister (new section 282 of the Code).

Pursuant to new section 281 of the Code, the alleged offender may, within 30 days after the day on which a notice is served, or within any longer period that the minister allows, make a request to the minister for a review of the penalty and/or the facts of the alleged violation. The minister may treat the request as an appeal and refer it to the Board, or issue a written and reasoned decision determining whether the alleged offender committed the violation, or correcting the amount of the penalty imposed if it was not determined in accordance with the regulations. The alleged offender must then pay the penalty determined by the minister, or appeal to the Board (new sections 283 and 284 of the Code).

The alleged offender may appeal a decision to the Board within 15 days. The Board may, in a written and reasoned decision, determine whether the alleged offender committed the violation, or correct the amount of the penalty imposed if it was not determined in accordance with the regulations. The decision rendered by the Board is final and may not be questioned or reviewed in any court (new sections 285 to 287 of the Code).

2.4.17.2 Amendments to the Wage Earner Protection Program Act

Clauses 378 to 381 of Bill C-44 amend various provisions of the *Wage Earner Protection Program Act* (WEPPA)[55] to allow appeals on questions of law or jurisdiction of decisions by the minister responsible for the Act to be heard by the Board rather than by an adjudicator. They also authorize the Board to make regulations respecting appeal procedures, removing this power from the Governor in Council (new section 14(2) and amended section 41(g) of the WEPPA).

Among other things, these amendments to the WEPPA provide that the chairperson of the Board should assign an appeal that comes before the Board to one of the vice-chairpersons or an external adjudicator (new section 13.1 and new section 14.1(1) of the WEPPA). The vice-chairperson or adjudicator assigned to hear the appeal must then confirm, vary or rescind the decision of the minister that is being appealed, and provide the minister and the parties with reasons for the decision (amended sections 17 and 18 of the WEPPA). To render a decision, the

vice-chairperson or adjudicator may request that the minister provide a copy of any documents that the minister relied on for the purpose of making the decision being appealed. In addition, the minister may make representations in writing to the vice-chairperson or adjudicator (amended section 15 of the WEPPA).

2.4.17.2.1 Miscellaneous Amendments

Clauses 350 and 376 of Bill C-44 add sections 154.1 and 259.2 to the *Canada Labour Code* to provide the minister with the discretion to make public the name of an employer who has been convicted of an occupational health and safety offence under Part II of the Code or an offence regarding hours, wages, vacations and holidays under Part III of the Code, the nature of the offence, the punishment imposed and any other prescribed information.

Clause 352 adds section 157(1)(a.2) to provide the Governor in Council with the power to make regulations prescribing the method for calculating and determining the regular rate of wages which the employer must pay the employee for time spent at an appeal proceeding before the Board.

Clause 374 clarifies the service method and proof of service when the minister issues a notice requiring a person to provide information. The bill provides that the *Statutory Instruments Act* does not apply to such notices.

The bill further amends various sections of the Code to clarify the language or structure of existing provisions (clauses 326, 329(1), 330, 331, 338(2), 363(5) and 374(1)) and to amend the French version of two provisions (clauses 345(1) and 345(3)).

2.4.17.2.2 Coming into Force and Coordinating Amendments

Division 17 of Part 4 of the bill, except for clauses 321, 324(1) and 398 to 401, comes into force on a day to be fixed by order of the Governor in Council following the priority order established in clauses 402(1) to 402(7). In addition, where different provisions come into force on the same day, there is a presumption that the previous clauses have come into force before the subsequent clauses, according to the priority order established in clauses 398(1) to 398(7).

2.4.18 Division 18: Enactment of the Canada Infrastructure Bank Act

Division 18 of Part 4 of Bill C-44 enacts the Canada Infrastructure Bank Act, which establishes the Canada Infrastructure Bank as a federal Crown corporation and sets out its powers, governance framework, and its financial management and control. The Bank's headquarters will be in Canada, at a place designated by the Governor in Council (section 5(2) of the Act).

The Bank's mission will be to invest in and attract private-sector and institutional investors for infrastructure projects in Canada or partly in Canada (section 6 of the Act). Section 18 of the Act authorizes the Bank in particular to:

- invest in a company or make a loan;
- extend credit or provide liquidity to any person;
- acquire, hold, surrender and realize securities and security interests; and
- enter into agreements with federal or provincial departments or agencies for the provision of services or programs.

In addition, the Bank may provide loan guarantees with the approval of its designated minister and of the Minister of Finance (section 19 of the Act). The Bank also has the power to collect and disseminate data on the state of infrastructure in Canada and to provide advice to all orders of government on infrastructure projects (sections 7(1)(f) and 7(1)(g)).

The Bank is directed by a board of directors composed of the chairperson, appointed by the Governor in Council for a term deemed appropriate, along with eight to 11 directors, appointed by the Governor in Council for renewable four-year terms (section 8 of the Act). The chief executive officer is appointed by the Board subject to approval by the Governor in Council (section 9 of the Act), except for the first chief executive officer, who is appointed by the Governor in Council (section 34 of the Act). Every year, a corporate plan must be approved by the Governor in Council (section 16 of the Act), and an operating budget and a capital budget must be approved annually by the Treasury Board (section 17 of the Act).

The Act authorizes the Minister of Finance to pay up to $35 billion to the Bank (section 23 of the Act) and make loans to the Bank from the Consolidated Revenue Fund (section 24 of the Act). It also authorizes the Minister of Finance to make loans or provide loan guarantees for infrastructure projects that the Bank is involved in, on the recommendation of the Bank and its designated minister (section 22 of the Act).

The Bank is subject to the reporting requirements incumbent on parent Crown corporations by Part X of the *Financial Administration Act* (clause 405 of the bill). In addition, the Auditor General of Canada and an auditor appointed annually by the Governor in Council will be responsible for auditing the Bank’s financial statements and accounting information (section 30 of the Act). The Bank is also subject to the provisions of the *Access to Information Act*, but it cannot disclose the information gathered about infrastructure project developers and private-sector and institutional investors, except as stipulated in the Act (section 28 of the Act).

Every five years, the designated minister for the Bank must review the provisions and operation of the Act and report on the review to each House of Parliament. The report may be reviewed by a committee of the Senate or of the House of Commons, or by a joint parliamentary committee (section 27 of the Act).

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

Division 19 of Part 4 of the Bill C-44 amends the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA)[56] in the following ways:

- It adds trusts not regulated by a provincial Act to the list of entities required to report to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).
- It adds the Department of National Defence and the Canadian Forces as entities to which FINTRAC can disclose information.
- It allows FINTRAC to disclose information relating to the beneficial ownership of legal entities.
- It makes various technical amendments to the PCMLTFA.

Clause 408(1) adds section 5(e.1) to the PCMLTFA to add "trust companies incorporated or formed by or under a provincial Act that are not regulated by a provincial Act" to the list of entities that must report to FINTRAC. Clause 415 amends section 9.4 to add unregulated trusts to the provisions concerning correspondent banking. Clause 417 adds section 9.61, which sets out special obligations in the regulations for unregulated trusts and requires these trusts to provide FINTRAC with the name and address of a person resident in Canada who is authorized to accept correspondence with FINTRAC.

As well, clause 423 amends section 11.42 so that the Minister of Finance may issue a written directive that requires reporting entities to take certain measures with respect to a financial transaction that originated from, or is bound for, an unregulated trust. Similarly, clause 425 amends section 11.49 to allow the Governor in Council to make regulations that limit or prohibit any person or entity from entering into a financial transaction that originates from, or is bound for, an unregulated trust.

Clause 430 amends section 55.1(1) to add the Department of National Defence and the Canadian Forces as entities to which FINTRAC can disclose information, provided that the information is relevant to a threat relating to either of them.

Regarding threats to the security of Canada, clause 430 amends section 55.1(3) to expand the definition of "designated information," which is the types of information that FINTRAC can disclose, to include:

- beneficial ownership information, such as the name and contact information for every trustee, beneficiary and settlor of a trust involved in a financial transaction;
- the name and contact information for every person that owns or controls – directly or indirectly – 25% or more of an entity other than a trust; and
- information regarding the ownership, control and structure of an entity involved in a financial transaction.

Similarly, clauses 429 and 432 amend sections 55(7) and 56.1(5), respectively, to apply the expanded definition of "designated information" to the information that FINTRAC can disclose to law enforcement agencies, federal and provincial/territorial departments and agencies, and foreign financial intelligence units.

Several clauses make technical amendments to the PCMLTFA. These are some examples:

- Clause 407(3) amends section 2 to add a definition for "foreign state."
- Clauses 418, 420, 422, 424 and 426 make consequential amendments to sections 9.7(1) and 9.7(4), 11.11(1), 11.41, 11.44, and 11.6, respectively.
- Clauses 428 and 431 amend sections 53.3(1)(c) and 56(1), respectively, to clarify that when FINTRAC considers information provided by international organizations and when the Minister of Finance enters into agreements with international organizations, the term "international organizations" does not need to refer to organizations established by governments of foreign states.

A number of clauses update and clarify the PCMLTFA's language as it pertains to the regulations. In particular, clauses 407(3), 408(2), 410, 411, 413, 415, 416, 419 and 434 amend sections 2(2), 5(i) and 5(j), 7, 7.1, 9(1), 9.4(1), 9.6(3), 11.1, and 73(1), respectively.

Clause 408(3) amends section 5(l), which states that agents of the Crown that accept deposit liabilities are reporting entitles under the PCMLTFA, to allow such agents to issue and redeem money orders, in addition to their current ability to sell them. Clause 421 makes a similar amendment to section 11.12(1) with respect to agents of the Crown that must register with FINTRAC.

Clause 409 amends sections 6 and 6.1 of the PCMLTFA to remove the word "retain" from the phrase "keep and retain" when referring to reporting entities' record-keeping obligations. Clause 433 makes a similar amendment to section 65.1(1), which addresses FINTRAC's entering into agreements with foreign financial intelligence units.

Clause 420 amends section 11.11(1) to add the following to the list of entities that are ineligible to register with FINTRAC as money services businesses:

- a person or entity that is subject to sanctions associated with terrorist activity or a prohibition relating to financial services under the *United Nations Act*; and
- a person or entity that is subject to a prohibition on financial or related services under the *Special Economic Measures Act*.

Division 19 also amends certain provisions contained in the *Economic Action Plan 2014 Act, No. 1* that are not yet in force. Clause 438 amends section 258 of that Act to include unregulated trusts as reporting entities that are restricted in their financial interactions with unregistered money services businesses, while clauses 436 and 437 make minor technical amendments to sections 256 and 258 respectively.

Clauses 439 and 440 establish the order in which amendments in Bill C-44, *Economic Action Plan 2014 Act, No. 1* and *Economic Action Plan 2014, No. 2* that affect the same sections of the PCMLTFA will come into force.

While most of the clauses in Division 19 will come into force upon Royal Assent of Bill C-44, clause 441 provides that those provisions that pertain to unregulated trusts – clauses 408(1), 415(2) to 415(3), 417, 423(1), 423(3), 425 and 438 – will come into force on a day to be determined by the Governor in Council, but that day cannot be earlier than the day after the day on which section 258 of the *Economic Action Plan 2014 Act, No. 1* comes into force. Clause 434, which amends the provision that sets out the power to make regulations, will come into force on the earlier of the day after the day on which section 258 of the *Economic Action Plan 2014 Act, No. 1* comes into force or the day on which Bill C-44 receives Royal Assent.

2.4.20 Division 20: Enactment of the Invest in Canada Act

Clause 442 of Bill C-44 enacts An Act to establish the Invest in Canada Hub (short title: Invest in Canada Act). This statute, which contains 23 sections, creates the corporation called the Invest in Canada Hub and makes consequential and related amendments to other Acts.

Sections 1 and 2 of the new Act provide the statute's title and relevant definitions, while section 3 allows the Governor in Council to designate a member of the Queen's Privy Council as the minister responsible for the Invest in Canada Hub, which is created by section 4. Section 11 outlines the minister's responsibility for – and powers with respect to – the Hub. In carrying out its mandate, the Hub must comply with any direction given by the responsible minister and, on request, must provide him or her with any information under its control; as well, the responsible minister may require the Hub to provide him or her with a report on its activities.

Sections 4 through 8 establish the Hub's location, mandate, operations and authorities. Section 4 designates the Hub as an agent of the Crown, and indicates that its head office is to be situated in Canada at a location determined by the responsible minister. Section 5 sets out the Hub's mandate, which is to support economic prosperity and stimulate innovation in Canada through promoting and facilitating foreign direct investment in Canada, including by coordinating the efforts of such stakeholders as the government and the private sector. Section 6 stipulates that the Hub should do the following in carrying out its mandate:

- develop and implement a national strategy to attract foreign direct investment to Canada;
- create and maintain partnerships with other stakeholders – including government entities and the private sector – to optimize the benefits of any programs, resources or services offered in relation to foreign direct investment;
- plan and implement events and programs to promote Canada as an investment destination;
- collect and disseminate information to support the decisions of foreign investors with respect to investment in Canada; and

- provide other services to foreign investors in relation to their actual or potential investments in Canada.

Section 7 permits the Hub to:

- enter into contracts with stakeholders, including government entities and the private sector, in the name of the Crown or in its own name;
- own property and other goods, either in its own name or in the name of the Crown; and
- do anything else that it considers necessary to achieve its mandate.

Section 8 gives the Hub authority over all matters relating to its policies in the following areas:

- contracts, communications, travel, hospitality, conferences and events, and other general administrative policies;
- its organization;
- management of its human resources; and
- internal auditing.

Section 8(2) specifies that the Hub is only subject to the regulations made under the *Financial Administration Act* (FAA) in relation to financial management or to the extent provided by order of the Governor in Council on the recommendation of the President of the Treasury Board.

Pursuant to section 9, the Hub can procure goods or services from outside the federal public administration. The exception is legal services, for which procurement from outside the federal public administration requires the approval of the Attorney General of Canada.

Section 10 specifies that legal proceedings regarding any right or obligation acquired or incurred by the Hub, whether in its own name or in the name of the Crown, may be brought or taken by or against the Hub in its name.

Sections 12 through 14 govern the Hub's board of directors. The board is to have no more than 11 directors and includes a chairperson and a vice-chairperson, as well as the deputy minister of the responsible minister's department. Except for the deputy minister, all board members are to be appointed by the Governor in Council and hold office on a part-time basis for a term not exceeding three years, with the possibility of reappointment; they can be removed at the Governor in Council's discretion. With the exception of the deputy minister, the directors are to be paid the remuneration that is fixed by the Governor in Council, as well as reasonable travel and living expenses.

The responsibilities of the board of directors, as set out in section 13(1), are to supervise and manage the Hub's affairs; and to advise the responsible minister, as well as the Hub's chief executive officer, on matters relating to the Hub's mandate. Sections 13(2) and 13(3) establish the board's ability to make by-laws and its quorum, respectively.

According to section 14, the chairperson of the board of directors is to preside over meetings of the board, and to perform other duties prescribed by the responsible minister.

Sections 15, 16 and 22 deal with the Hub's chief executive officer. Under section 15, that person is to be appointed by the Governor in Council and hold office during pleasure for up to five years, with an opportunity for reappointment. He or she is to be paid the remuneration that is fixed by the Governor in Council, as well as reasonable travel and living expenses.

Section 16 states that the Hub's chief executive officer is responsible for day-to-day operations, has the rank and powers of a deputy head of a department, and must submit an annual business plan – and report on the Hub's operations and performance during the preceding fiscal year – to the board of directors for its approval. If the chief executive officer is absent, the responsible minister may appoint another person to act in this role for a period of up to 90 days, or for more than 90 days with the approval of the Governor in Council.

According to section 22, unless otherwise stated by the Governor in Council, the Hub's chief executive officer and its senior vice-presidents are not deemed to be employed in the public service for the purpose of the *Public Service Superannuation Act*. However, section 23 deems that the Hub's directors and its chief executive officer are employees for the purpose of the *Government Employees Compensation Act*, and are employed in the federal public administration for the purpose of the regulations made under section 9 of the *Aeronautics Act*.

Clause 443 of the bill, which is a transitional provision, allows the Hub's chief executive officer to exercise any power, duty or function of the Hub until the first meeting of its board of directors. It also specifies that money appropriated to defray expenditures by the Department of Foreign Affairs, Trade and Development in relation to the Hub that has not been spent by the time that clause 442 comes into effect is deemed to be an amount appropriated to defray the Hub's expenditures.

In addition to sections 22 and 23, discussed above, sections 17 to 21 set out the Hub's human resources management powers. Section 17 indicates that the Hub may:

- determine its requirements with respect to human resources, training and development;
- provide for the classification of its employees;
- in consultation with the President of the Treasury Board, determine and regulate pay, hours of work and leave for its employees;
- provide for performance-based awards for its employees;
- establish standards of discipline;
- provide for the termination and demotion of employees; and
- provide for any other matters relating to human resources management.

Pursuant to section 18, the Hub has the power to appoint any employees, including senior vice-presidents and account executives, while section 19 allows the Hub to establish – or to enter into a contract to acquire – group insurance or benefit programs for its employees. Section 19(2) specifies that the FAA does not apply to any contributions made, or premiums paid, by the Hub or by the members of any such program; as well, the Act does not apply to the benefits received by these members from such programs.

Section 20 requires the Hub to develop a staffing program, and provides that matters governed by this program are not to be covered by a collective agreement, while section 21 requires the Hub to have its negotiating mandate approved by the Treasury Board of Canada before it enters into collective bargaining.

Clauses 444 to 449 make consequential and related amendments to the *Access to Information Act*, the FAA, the *Privacy Act* and the *Public Service Superannuation Act*.

Clause 450 specifies that Division 20 comes into force on a day or days to be fixed by order of the Governor in Council.

2.4.21 Division 21: Enactment of the Service Fees Act

Clause 451 enacts An Act respecting certain government fees, charges and levies (short title: Service Fees Act), the name of which is set out in section 1 of that Act, to replace the *User Fees Act* (2004).[57]

Section 2(1) of the new Act defines a “federal entity” as:

- a department named in Schedule I to the *Financial Administration Act* (FAA);
- a division or branch of the federal public administration set out in column I of Schedule I.1 of the FAA; or
- a corporation named in Schedule II of the FAA.

Section 2(1) also defines a “fee” as an amount payable – called a fee, charge, levy or other name – that is fixed by the Governor in Council, the Treasury Board, a minister or a federal entity under a statutory power or other capacity to contract for:

> (a) the provision of a service;
> (b) the provision of the use of a facility;
> (c) the conferral, by means of a licence, permit or other authorization, of a right or privilege;
> (d) the provision of a product; or
> (e) the recovery, in whole or in part, of costs that are incurred in relation to a regulatory scheme.

Lastly, this section defines a “fiscal year” as the period beginning on 1 April in one year and ending on 31 March in the following year, and a “responsible authority” as the appropriate minister as defined in section 2 of the FAA with respect to a fee.

Section 2(2) allows the appropriate minister to designate, in writing, the federal entity's chief executive officer or deputy head as the responsible authority with respect to any fees fixed in relation to that entity.

Sections 3 to 8 deal with performance standards. Section 3(1) stipulates that sections 4 to 7 apply in respect of a fee referred to in any of sections 2(1)(a) to 2(1)(c) of the definition of a fee. However, according to section 3(2), those sections do not apply if:

- the fee is fixed by contract;
- the person or body that fixes the fee does so by fixing a manner for determining the amount of the fee over which that person or body has no control, such as an auction or referring to a market rate;
- it is fixed under the *Access to Information Act* or the *Privacy Act*; or
- it is paid only by or on behalf of a minister or federal entity.

Section 4 requires that the responsible authority with respect to a fee must ensure that a performance standard is established in respect of the fee, in accordance with Treasury Board policies or directives, if any.

Section 5 requires that, before a performance standard established in respect of a fee that is fixed after this section comes into force is amended, the responsible authority with respect to the fee must consult interested persons and organizations.

Section 6 requires the responsible authority to ensure that the performance standard established in respect of a fee, or any amended standard, is accessible to the public.

If the responsible authority considers that a performance standard has not been met in a fiscal year, section 7(1) requires the responsible authority to remit, before 1 July of the following fiscal year, the portion of the fee that he or she considers appropriate to any affected person who paid the fee. Section 7(2) clarifies that the assessment of a fee's performance standard and the remission must be made in accordance with Treasury Board policies or directives. Section 8 clarifies that a performance standard is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

Sections 9 to 15 deal with consultation and parliamentary review. Section 9(1) stipulates that sections 10 to 15 apply in respect of a fee referred to in any of sections 2(1)(a) to 2(1)(d) of the definition of "fee." However, section 9(2) clarifies that those sections do not apply if:

- the fee is fixed by contract;
- the person or body that fixes the fee does so by fixing a manner for determining the amount of the fee over which that person or body has no control, such as an auction or referring to a market rate;
- it is fixed under the *Access to Information Act* or the *Privacy Act*;
- it is fixed by a regulation, as defined in section 2(1) of the *Statutory Instruments Act*, that is published in Part I of the *Canada Gazette* before it is made;

- an Act of Parliament other than this Act requires consultation before the fee is fixed; or
- it is paid only by or on behalf of a minister or federal entity.

Section 10(1) specifies that the requirements of sections 11 to 15 must be met before a fee is fixed. Section 10(2) clarifies that those sections do not apply when a fee is adjusted annually by operation of section 17 or periodically by operation of another Act or regulation.

Section 11 requires the responsible authority to develop a fee proposal that includes the following information:

- the amount of the fee or the manner for determining its amount;
- the circumstances in which the fee will be payable;
- the rationale for the fee;
- the factors taken into account in determining the amount of the fee or the manner for determining its amount; and
- any performance standard that will apply in respect of the fee.

Section 12 requires the responsible authority to consult interested persons and organizations on the fee proposal by:

- making the fee proposal accessible to the public;
- inviting interested persons and organizations to make representations on it, specifying a deadline for making those representations, providing information on the requirement that the responsible authority reply to those representations, and specifying the time limit for submitting any complaint under section 13(1); and
- replying to any representations made by interested persons and organizations within 30 days after the deadline specified under the previous point, above.

Section 13(1) allows any interested person or organization, within 10 days of receiving the responsible authority's response, to submit to the responsible authority a complaint in writing regarding the response. Section 13(2) requires the responsible authority to establish a panel to review all complaints submitted under that section within 30 days.

Section 13(3) requires the panel established to review complaints to be composed of the following members:

- one person selected by the responsible authority;
- one person elected by all the interested persons and organizations that submitted complaints; and
- one person selected by the two persons previously selected.

If any panel member's selection is not made within the applicable time limit, section 13(4) stipulates that the responsible authority must select a member as soon as is feasible.

Section 13(5) makes the responsible authority responsible for the costs of the panel, including the remuneration and expenses that are payable to the panel members.

Section 13(6) requires the panel to issue a report on the complaints within 90 days of the panel's establishment. It also specifies that recommendations made in the report are not binding on the responsible authority. Section 13(7) allows the responsible authority, at the request of the panel, to extend the time limit for reporting by a maximum of 30 days.

Section 14 requires the responsible authority to cause the following to be tabled in both Houses of Parliament:

- the fee proposal;
- a summary of the consultations on the fee proposal; and
- if a review panel was established, its report and a summary of any actions taken by the responsible authority as a result of the report.

Section 15(1) provides that the tabled materials stand permanently referred to the committee of each House of Parliament that is designated or established to review matters relating to the activities of the federal entity in question.

Section 15(2) permits the committee to review the materials and submit to the Senate or the House of Commons a report containing recommendations with respect to the fee proposal. If the committee does not submit a report within 20 sitting days of the materials being tabled, the committee is deemed to have submitted a report recommending the approval of the fee proposal under section 15(3).

Sections 16 to 18 comprise the "Annual Adjustment" section of the new Act.

Section 16 specifies that sections 17 and 18 do not apply in respect to a fee if:

- the fee is fixed by contract;
- the person or body that fixes the fee does so by fixing a manner for determining the amount of the fee over which that person or body has no control, such as an auction or referring to a market rate;
- it is fixed under the *Access to Information Act* or the *Privacy Act*;
- it is adjusted periodically by operation of an Act of Parliament other than this Act, or by operation of an instrument made under such an Act; or
- it is paid only by or on behalf of a minister or federal entity.

Section 17(1) provides that a fee is adjusted once in each fiscal year by the percentage change over 12 months in the April All-items Consumer Price Index for Canada for the previous fiscal year. However, section 17(2) specifies that a fee is not

adjusted by operation of section 17(1) in a particular fiscal year if the fee is fixed before the adjustment date in that fiscal year. Section 18 clarifies that section 17 does not limit any power conferred under an Act of Parliament to fix a fee.

Sections 19 to 21 deal with reporting. Section 19 specifies that sections 20 and 21 do not apply in respect of a fee if it is paid only by or on behalf of a minister or federal entity.

Section 20(1) requires the responsible authority to report annually, in accordance with the Treasury Board policies or directives, if any, on:

- the fees within the jurisdiction of the responsible authority that were payable in the previous fiscal year;
- the authorities under which those fees were fixed;
- the revenue received from those fees;
- any costs incurred in relation to the things for which those fees were paid;
- the degree of compliance with any performance standards established in respect to those fees;
- any remissions made under section 7 in respect of those fees;
- the fees that will be adjusted in accordance with the Consumer Price Index, along with the adjustment date and the adjusted amount or adjusted manner for determining the amount; and
- any other information required by the Treasury Board.

Under section 20(2), the responsible authority's report stands permanently referred to the appropriate committee of each House of Parliament.

Section 21 requires the President of the Treasury Board, no later than 31 March of a fiscal year in which a responsible authority's report is tabled, to make a summary of the report accessible to the public.

Section 22(1) stipulates that, subject to regulations, sections 3 to 18 of the new Act do not apply to a low materiality fee. Section 22(2) specifies that the Treasury Board may make regulations respecting low-materiality fees, including regulations that:

- list the fees that the Treasury Board considers to be low-materiality fees or set out criteria for determining whether fees are low-materiality fees and when low-materiality fees cease to be low-materiality fees; and
- set out when sections 3 to 18 cease to apply in respect of low-materiality fees and when those sections apply to fees that have ceased to be low-materiality fees.

Clause 452 of the bill governs fees payable during the transitional period. Clause 452(1) specifies that, in this section, "fee" and "responsible authority" have the same meaning as in section 2 of the Service Fees Act, as enacted by clause 451. Clause 452(2) clarifies that a fee that is payable when this section comes into force is subject to section 4 of the Service Fees Act. If a performance standard has not yet

been established in respect of the fee, the responsible authority must ensure that a performance standard is established within one year. Under clause 452(3), sections 5 to 8 of the Service Fees Act apply in respect of the fee as soon as the performance standard is established.

Clause 453 makes related amendments to the *Economic Action Plan 2014 Act, No. 1*.

Clause 454 replaces references to the *User Fees Act* with Service Fees Act in a number of Acts of Parliament.

Clause 455 makes coordinating amendments to the *Canada–European Union Comprehensive Economic and Trade Agreement Implementation Act* (which received Royal Assent on 16 May 2017).[58]

Clause 456 repeals the *User Fees Act*.

Clause 457 stipulates that sections 16 to 18 and section 20(1)(g) of the Service Fees Act, as enacted by clause 451, come into force on 1 April 2018, while section 22 comes into force on a day fixed by order of the Governor in Council.

NOTES

* This Legislative Summary was prepared by the following authors:

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- Elizabeth Cahill — Section 2.4.6
- Brett Capstick — Sections 2.1.5 and 2.1.14
- June Dewetering — Sections 2.1.1, 2.1.6, 2.1.8–2.1.10, 2.1.12 and 2.2.1
- Sylvain Fleury — Sections 2.1.2, 2.1.4, 2.2.2 and 2.2.3
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- Alexandre Lavoie — Sections 2.4.15 and 2.4.18
- Olivier Leblanc-Laurendeau — Sections 2.4.2 and 2.4.4
- André Léonard — Section 2.4.8
- Francis Lord — Sections 2.1.3, 2.1.7, 2.1.11 and 2.1.15
- Robin MacKay — Section 2.4.10
- Sonya Norris — Sections 2.4.5 and 2.4.16
- Jean-Rodrigue Paré — Section 2.4.12
- Mayra Perez-Leclerc — Sections 2.4.11 and 2.4.14
- Karin Phillips — Section 2.4.9

- Florian Richard — Section 2.4.3
- Dominique Valiquet — “Background”
- Adriane Yong — Sections 2.1.13, 2.3.1, 2.3.2 and 2.4.19

1. Bill C-44, An Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures, 1st Session, 42nd Parliament.
2. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Suppl.).
3. Clauses 23(1) to 23(7), as well as clauses 23(10) to 23(19), relate to the elimination of the investment tax credit for child care spaces. Clauses 23(8), 23(9) and 23(20) amend section 127(9) of the *Income Tax Act* to extend the mineral exploration tax credit.
4. *Income Tax Regulations*, C.R.C., c. 945.
5. Department of Finance Canada, *Tax Measures: Supplementary Information*, 2017, p. 10.
6. Ibid., p. 9.
7. Government of Canada, *List of Certified Institutions*.
8. Through a flow-through share, an investor enters into an agreement with a corporation to purchase shares; the corporation then uses the proceeds from the share offering to incur eligible exploration expenses, and these expenses are “renounced” or transferred to the investor. In this context, “renouncing” means that the corporation transfers to the investor the right to apply eligible exploration expenses against income, which reduces his or her tax payable in a given year.
9. Expenses eligible for the mineral exploration tax credit are specified surface grassroots exploration expenses (i.e., seeking new resources away from an existing mine site) for a mineral resource in Canada, other than a coal deposit or an oil sands deposit.
10. Clause 23 also amends section 127(9) of the *Income Tax Act* in relation to the investment tax credit for child care spaces. In particular, clauses 23(1) to 23(7), as well as 23(10) to 23(19), relate to the elimination of the investment tax credit for child care spaces; clauses 23(8), 23(9) and 23(20) relate to the extension of the mineral exploration tax credit.
11. *Budget Implementation Act, 2016, No. 1*, S.C. 2016, c. 7.
12. Department of Finance Canada (2017), p. 13.
13. *Excise Tax Act*, R.S.C. 1985, c. E-15.
14. Zero-rated goods and services are GST/HST-exempt.
15. *Excise Act, 2001*, S.C. 2002, c. 22.
16. *Excise Act*, R.S.C. 1985, c. E-14.
17. *Special Import Measures Act*, R.S.C. 1985, c. S-15.
18. *Financial Administration Act*, R.S.C. 1985, c. F-11.
19. *Hibernia Development Project Act*, S.C. 1990, c. 41.
20. *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c. C-3.
21. *Bank Act*, S.C. 1991, c. 46.
22. *Shared Services Canada Act*, S.C. 2012, c. 19, s. 711.
23. *Canada Student Financial Assistance Act*, S.C. 1994, c. 28.
24. *Canada Education Savings Act*, S.C. 2004, c. 26.

25. *Parliament of Canada Act*, R.S.C. 1985, c. P-1.

26. The meaning of "leader of every caucus and of every recognized group in the Senate" in this context is unclear. The *Rules of the Senate* define what constitutes a "recognized party" in the Senate; however, the Rules provide no definition for "caucus" or "*groupes parlementaires*." The *Fifth Report* of the Special Senate Committee on Senate Modernization (1st Session, 42nd Parliament) recommended that the Senate adopt a definition of "caucus." If the Senate adopts this report, it will have to adopt an order of reference to refer the matter to the Senate Committee on Rules, Procedures and the Rights of Parliament.

27. In order to be "recognized" in the House of Commons, a political party must have at least 12 sitting members. See Parliament of Canada, "Canadian Parliamentary Institutions: Responsible government and ministerial responsibility – Political parties," *House of Commons Procedure and Practice*, 2nd ed., 2009.

28. House of Commons, Standing Committee on Finance, *Seventeenth Report*, 1st Session, 42nd Parliament.

29. Pursuant to new section 79.14(1)(b), the Parliamentary Budget Officer [PBO] shall prepare this list after consultation with the Speaker of the Senate and the Speaker of the House of Commons.

30. Parliament is dissolved by a proclamation issued by the Governor General on the advice of the Prime Minister. See House of Commons, "Dissolution of Parliament," *Compendium of Procedure*.

31. Some of these duties are similar to the duties of the PBO set out in current section 79.2 of the *Parliament of Canada Act*.

32. See Ruth Sullivan, *Construction of Statutes*, 5th ed., LexisNexis, 2012, p. 74.

33. The date for fixed-date elections is set out in sections 56.1 and 56.2 of the *Canada Elections Act*. If Parliament is dissolved before the 120th day, the period begins on the day of dissolution.

34. *Access to Information Act*, R.S.C. 1985, c. A-1.

35. *Canada Evidence Act*, R.S.C. 1985, c. C-5.

36. *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.).

37. *Judges Act*, R.S.C. 1985, c. J-1.

38. Department of Justice, *Response of the Government of Canada to the Report of the 2015 Judicial Compensation and Benefits Commission*.

39. A "puisne judge" is a judge of a Canadian court who is not the Chief Justice or Associate Chief Justice. See Federal Court of Appeal, *Frequently Asked Questions (FAQs)*.

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

41. *Modernization of Benefits and Obligations Act*, S.C. 2000, c. 12.

42. *Fairness for the Self-Employed Act*, S.C. 2009, c. 33.

43. See Bill C-23, An Act to modernize the Statutes of Canada in relation to benefits and obligations, 2nd Session, 36th Parliament (S.C. 2000, c. 12), s. 109.

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

45. *Helping Families in Need Act*, S.C. 2012, c. 27.

46. Bill C-42, An Act to amend the Canadian Forces Members and Veterans Re-establishment and Compensation Act, the Pension Act and the Department of Veterans Affairs Act and to make consequential amendments to other Acts, 1st Session, 42nd Parliament.
47. *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2005, c. 21.
48. *Pension Act*, R.S.C. 1985, c. P-6.
49. *Department of Veterans Affairs Act*, R.S.C. 1985, c. V-1.
50. See Veterans Affairs Canada, *Career Transition Services*, 1 July 2015, art. 7.
51. *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.
52. Government of Canada, *Building a Strong Middle Class*, Budget 2017, 22 March 2017, p. 140.
53. *Food and Drugs Act*, R.S.C. 1985, c. F-27.
54. *Statutory Instruments Act*, R.S.C., 1985, c. S-22.
55. *Wage Earner Protection Program Act*, S.C. 2005, c. 47, s. 1.
56. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.
57. *User Fees Act*, S.C. 2004, c. 6.
58. Bill C-30, An Act to implement the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States and to provide for certain other measures, 1st Session, 42nd Parliament (S.C. 2017, c. 6).