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Bill C-74:

An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures

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

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Legislative Summary of Bill C-74
(Legislative Summary)

Publication No. 42-1-C74-E

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LEGISLATIVE SUMMARY OF BILL C-74: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON FEBRUARY 27, 2018 AND OTHER MEASURES*

1 BACKGROUND

Bill C-74, An Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures (short title: "Budget Implementation Act, 2018, No. 1"), was introduced and read for the first time in the House of Commons on 27 March 2018.

On 23 April 2018, the bill passed second reading and was referred to the House of Commons Standing Committee on Finance. The committee reported the bill with amendments on 28 May 2018, and the bill was passed by the House of Commons on 6 June 2018. The following day, it received first reading in the Senate; it passed second reading and was referred to the Standing Senate Committee on National Finance on 12 June 2018. The committee reported the bill without amendment on 14 June 2018, and the Senate passed the bill the same day. It received Royal Assent on 21 June 2018.

As its short and long titles suggest, the purpose of the bill is to implement the government's overall budget policy, introduced in the House of Commons on 27 February 2018. Bill C-74 is the first budget implementation bill of 2018. Consistent with established legislative practice, a second such bill may follow in the fall.

Bill C-74 is divided into six parts:

- Part 1 implements certain income tax measures, such as reducing the business limit for the small business deduction based on passive income and indexing the Canada Child Benefit as of July 2018 (clauses 2 to 46).
- Parts 2 and 3 implement certain excise measures on tobacco products (clauses 47 to 67) and cannabis products (clauses 68 to 119) respectively.
- Part 4 primarily concerns the pension and compensation framework for veterans and service members (clauses 120 to 185).
- Part 5 enacts the Greenhouse Gas Pollution Pricing Act and makes the Fuel Charge Regulations (clauses 186 to 198).
- Part 6, which itself is subdivided into 20 divisions, implements a range of measures, mainly by amending several Acts, including the *Federal–Provincial Fiscal Arrangements Act* (Division 3: fiscal equalization payments and other transfers), the *Employment Insurance Act* (Division 14: earnings by claimants while they are in receipt of benefits), the *Parliament of Canada Act* (Division 18: maternity and parental arrangements) and the *Criminal Code* (Division 20: remediation agreement regime for offences of an economic nature) (clauses 199 to 409).

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 2018 Budget

2.1.1 Tax Treatment of Amounts Received Under the *Veterans Well-being Act*

The *Veterans Well-being Act* (VWBA)[1] (the new title of the *Canadian Forces Members and Veterans Re-establishment and Compensation Act*) sets out the conditions under which members and veterans of the Canadian Forces are entitled to receive compensation. Clauses 2 to 4 of Bill C-74 amend sections 6(1)(f.1), 56(1)(a) and 60.03(1) of the *Income Tax Act* (ITA)[2] to ensure that certain income replacement benefits, supplementary retirement benefits and career impact allowances payable under Part 2 of the VWBA are amounts that are to be included in a taxpayer's taxable income.

Clause 5 amends section 81(1) of the ITA to remove from a taxpayer's taxable income certain sums received by the taxpayer, in particular, amounts received as pain and suffering compensation, additional pain and suffering compensation, and caregiver recognition benefits provided under the VWBA.

These measures come into force on 1 April 2019.

2.1.2 Exemption from Income of Amounts Received Under the Memorial Grant for First Responders

In recognition of first responders' service and sacrifice, the Memorial Grant Program for First Responders offers the families of first responders who have died as a result of their duties a one-time lump sum direct maximum payment of $300,000. Eligible positions are police officer, firefighter and paramedic.

Clause 5(3) of Bill C-74 amends section 81(1) of the ITA to add amounts received under the Memorial Grant Program for First Responders to a list of items that are exempt from income tax.

This tax-exempt status applies to amounts received after March 2018.

2.1.3 Reduction of the Small Business Tax Rate

The small business deduction reduces the federal corporate tax rate applied on Canadian-controlled private corporations (CCPCs) from 28.0% to 10.5% on the first $500,000 per year of qualifying active business income. Clause 20(1) amends section 125(1.1) of the ITA to increase the small business deduction rate – and

therefore reduce the small business tax rate – for the 2018 and subsequent taxation years. As a result of this amendment, the small business tax rate is reduced from 10.5% to 10% on 1 January 2018, and to 9% on 1 January 2019. The small business deduction rate is prorated for a taxation year of a corporation that overlaps the 2017 and 2018 calendar years.

Income earned by corporations is subject to corporate income tax and, upon its distribution to individuals in the form of dividends, personal income tax. The result is that dividends received by Canadian taxpayers are taxed at both the corporate and the personal levels. To offset this taxation, the dividend gross-up and dividend tax credit regime minimizes the double taxation of corporate income that occurs when dividends are distributed by the corporation to Canadian shareholders. This regime is generally meant to ensure that income earned by a corporation and paid out to an individual as a dividend will be subject to the same amount of tax as income earned directly by the individual.

Section 82(1) of the ITA requires an individual who receives eligible or non-eligible taxable dividends to include a gross-up amount in the individual's income. The calculation of this gross-up amount varies with the type of dividend involved and the year it is received.

Clause 6 amends section 82(1)(b) of the ITA to reduce the gross-up percentage for the 2018 taxation year from 17% to 16%, and to 15% for subsequent taxation years. This amendment is made in conjunction with clause 14, which amends section 121(a) of the ITA to adjust the corresponding dividend tax credit for non-eligible dividends, making the effective rate of the credit 10% beginning in 2018 and 9% in 2019 in order to mirror the reductions in the small business tax rate.

2.1.4 Reduction of the Business Limit for the Small Business Deduction and Restriction of Access to Dividend Refunds

As noted above, the small business deduction reduces the federal corporate tax rate applied on CCPCs from 28.0% to 10.5% on the first $500,000 per year of qualifying active business income. The $500,000 amount is referred to as the "business limit." Section 125(7) of the ITA defines the term "active business income" as income derived from business carried on by a CCPC other than a specified investment business or a personal services business; it can include investment income that is incidental to an active business.

Because corporate tax rates are generally lower than personal income tax rates, it may be financially advantageous for the owners of a private corporation to hold a personal investment portfolio inside the corporation rather than personally; this approach facilitates the accumulation of earnings that can be reinvested in the portfolio. Bill C-74 aims to remove this tax advantage from CCPC owners.

Clause 20(2) amends section 125(5.1) of the ITA to reduce the business limit for CCPCs to the extent that their "adjusted aggregate investment income" exceeds $50,000, up to $150,000, where the business limit becomes zero. Clause 20(3) amends section 125(7) to add the terms "adjusted aggregate investment income"

and “active asset” in order to define which sources of income will be included with respect to the reduction of the business limit, and which will be excluded from it, respectively.[3]

The reduction of the business limit will be calculated on a straight-line basis, and will generally be equal to five times the amount by which the CCPC’s adjusted aggregate investment income exceeds $50,000.[4] As a consequence of this reduction, for a CCPC with aggregate investment income above $50,000, the small business deduction will only apply to the active business income that is below the threshold of the reduced business limit.

Section 256 of the ITA provides for the circumstances in which two or more corporations are “associated” in order to prevent the multiplication of the small business deduction through the use of more than one corporation to carry on business activities. Where two or more CCPCs are associated in a taxation year, the business limit must be shared between them. Clause 20(2) creates new section 125(5.2) of the ITA to introduce tax avoidance measures that ensure that CCPCs are deemed to be associated in the event that transfers between them are deemed to be for the sole purpose of reducing the adjusted aggregate investment income of one or more of the CCPCs.

In addition to reducing a CCPC’s business limit, Bill C-74 makes amendments to the refundable dividend tax on hand (RDTOH) regime in order to prevent certain sources of passive income to qualify for this refund.

The RDTOH is a notional account that includes a percentage of a CCPC’s earnings from “aggregate investment income” and an amount equal to the tax that the CCPC pays on dividends received from unconnected corporations.[5] At the end of each tax year, a portion of the RDTOH is available as a refund if the corporation paid taxable dividends to its shareholders during that period. In order to be eligible for this refund, the corporation can issue “eligible dividends,” which are generally derived from the CCPC’s income that is subject to the general corporate tax rate and makes the shareholder eligible for the enhanced dividend tax credit, or “non-eligible dividends,” which are generally derived from income that is subject to the small business tax rate. Passive income can be distributed to shareholders through eligible dividends, resulting in the CCPC receiving a tax refund through its RDTOH, as well as its shareholders – who may also be CCPCs – receiving an enhanced dividend tax credit.[6] Bill C-74 amends the ITA to generally restrict the RDTOH to non-eligible dividends.

Bill C-74 splits a CCPC’s RDTOH account into two classes under section 129(4) of the ITA:

- the “eligible RDTOH,” which is the tax paid on eligible dividends received by a CCPC (the corporation will be able to receive a refund from its eligible RDTOH account if it pays any taxable dividend); and
- the “non-eligible RDTOH,” which consists of all refundable taxes paid on non-eligible dividends (the corporation will only be able to obtain a refund from its non-eligible RDTOH account to the extent that it pays non-eligible dividends).

“Connected corporations” are those that either own or are owned by a corporation receiving a dividend, or are both owned by the same owner. Bill C-74 ensures that when a connected corporation issues a dividend and receives the corresponding RDTOH refund, the recipient connected corporation will pay the income tax applicable to that a dividend, and that amount of tax paid will be added to the RDTOH account of the corporation that issued the dividend. Previously, that amount of tax paid would have been added to the RDTOH account of the corporation that received the dividend.

Clause 22 amends section 129 of the ITA to make these changes, create transitional provisions for the treatment of existing RDTOH accounts, and require a corporation that issues non-eligible dividends to receive a refund of all of its non-eligible RDTOH before it can claim a refund of its eligible RDTOH.

These measures generally apply to the 2019 and subsequent taxation years; however, if a corporation’s preceding taxation year is shorter than it otherwise would have been due to factors listed in new section 129(5), then these provisions will apply to a taxation year of a corporation that begins before 2019 and ends after 2018.

2.1.5 Prevention of Tax Avoidance Through Income Sprinkling

“Income sprinkling” is a tax planning strategy whereby a business owner provides shares of a privately owned business to family members in order to distribute the business’s after-tax profits to them in the form of dividends. If the personal income tax rates of these family members are lower than that of the business owner, then this distribution of the after-tax profits may result in a lower amount of personal income tax being collected from the family than would have been the case if those profits had instead been distributed solely to the business owner.

In 2000, the *Income Tax Amendments Act, 1999* created section 120.4 of the ITA in order to address income sprinkling practices by business owners to family members under the age of 18 (as of the taxation year). According to section 120.4, dividends that are distributed to a business owner’s family members who are under the age of 18 are taxed at the highest marginal tax rate; this is referred to as the “tax on split income” (TOSI). Section 120.4(1) includes the definition of an “excluded amount,” which excludes income from inherited property for the TOSI. Bill C-74 expands the TOSI in a number of areas.

Under section 120.4(1) of the ITA, a “specified individual” is a taxpayer who is subject to the TOSI. Clause 13 amends the definition of “specified individual” to require that the individual:

- is not a trust;
- must be a resident of Canada at the end of the taxation year; and
- if the individual has not attained the age of 17, must have a parent who is resident in Canada.

Section 120.4(1) of the ITA also defines “split income” to list the amounts that are subject to the TOSI. Clause 13 amends this definition to include income derived from one or more “related businesses” and the income from certain debts.[7] In addition, for dispositions of property after 2017, the taxable capital gains and income resulting from such dispositions and the taxable income from a trust or partnership will generally be included if they are derived from shares of a private corporation or the property is:

- an interest in a partnership;
- a beneficiary under certain trust arrangements; or
- a certain debt obligation.

In addition, the property must meet one of the following criteria: part of the income must be included in the individual’s split income for the year or an earlier taxation year; or part of the fair market value of the property derives from a share of a private corporation.

Clause 13 amends the definition of an “excluded amount” to also exclude:

- amounts received from a spouse or common-law partner who was separated and living apart pursuant to a decree, order or judgment of a competent tribunal or a written separation agreement;
- deemed dispositions of capital property owned by a taxpayer immediately before the taxpayer’s death; and
- certain taxable capital gains that arise from the disposition of “qualified farm or fishing property” or “qualified small business corporation shares.”[8]

If the taxpayer is above the age of 18, amounts received from a “related business” or “excluded business” are excluded amounts.[9] If the taxpayer is above the age of 18 but not yet 24, excluded amounts also include the reasonable return on capital contributed to the business up to a prescribed rate, and any “arm’s length capital,” which is inherited property, property earned or otherwise acquired by the individual – other than as salary – that is not acquired from a relative or from a related business.

For taxpayers above the age of 24, clause 13 removes the existing exclusion of inherited property from the definition of “excluded amount,” and exempts the following amounts:

- taxable capital gain from the disposition of “excluded shares,” which are generally those of a corporation carrying on a non-services business if the individual owns 10% or more of the shares of that corporation’s capital stock;[10] and
- a “reasonable return,” defined generally as the portion of a return from a business that is reasonable, taking into consideration the contributions made to the business by the individual – either by work or capital – and persons related to the individual.

Further provisions are included to address the application of the TOSI on income and property derived from an inheritance. In particular, new section 120.4(1.1) deals with

taxpayers above the age of 18 and excludes amounts from the TOSI that are derived from an inheritance that would have been a "reasonable return" for the purposes of the definition of an "excluded amount"; it also allows the taxpayer's income on inherited property to qualify as an "excluded amount" to the extent that the amount would be derived from an "excluded business" for the purposes of the definition of an "excluded amount," and allows an individual who is between the ages of 18 and 24 to qualify for the "excluded shares" and "reasonable return" exclusions from the TOSI if the deceased would have qualified for such exclusions before his or her death. Other inherited amounts will be excluded from the TOSI if the amount would have been an "excluded amount" in the hands of the deceased person's cohabiting spouse or common-law partner aged 64 or older, or was already included in the deceased cohabiting spouse or common-law partner's income, irrespective of age.

Clause 13 amends section 120.4(3) of the ITA to ensure that the income tax payable is not less than the individual's split income for the year multiplied by the highest marginal tax rate; this amount may be reduced only by the dividend tax credit and the foreign tax credit. Notably, the TOSI does not reduce a taxpayer's eligibility for the disability tax credit.

These measures are effective for the 2018 and subsequent taxation years.

2.1.6 Tax Measures for Canadian Armed Forces Personnel and Police Officers Serving on International Missions

Section 110(1)(f)(v) of the ITA provides that, in computing taxable income, a deduction may be applied for employment income earned by members of the Canadian Forces or a police force serving in a deployed operational mission with a specified risk score. CAF members deployed on operations with a risk score at or above Level 3 automatically qualified for tax relief on income earned while deployed. As scores are rounded, missions with a risk score of 2.50 and higher automatically received tax relief. For those missions with a risk score between 2.00 and 2.49, tax relief was provided for periods when the mission was assessed as being at moderate risk, and as designated by the Minister of Finance.

Clause 9(1) amends section 110(1)(f)(v)(A) to grant this tax deduction to all Canadian Forces members and police officers participating in deployed international operational missions – as determined by the Minister of National Defence or that Minister's designate – and removes the requirement that a particular risk score be associated with the missions. It also amends section 110(1)(f)(v)(B) to increase the maximum amount that an individual may deduct in a taxation year from the highest level of pay earned by a non-commissioned member of the Canadian Forces to that of a Lieutenant-Colonel (General Service Officers) of the Canadian Forces.

Clause 9(3) states that these amendments apply to the 2017 and subsequent taxation years.

2.1.7 Introduction of the Canada Workers Benefit

The Working Income Tax Benefit is a refundable tax credit that supplements the employment income of low-income Canadians, and is generally available to

individuals 19 years of age and older who are not attending school full-time. This credit is made up of a basic amount that is available to taxpayers with income below certain thresholds, and a disability supplement that is available only to taxpayers who are eligible for the disability tax credit.

Bill C-74 amends the ITA to rename this benefit and increase the amount that a taxpayer can receive under this measure. In particular, clause 18 amends the heading of subdivision A.2 of Division E of Part I of the ITA to rename the “Working Income Tax Benefit” the “Canada Workers Benefit.”

Clause 19 amends section 122.7 of the ITA to increase the basic credit’s rate from 25% to 26% of each dollar of working income in excess of $3,000 up to a maximum credit amount. The maximum credit amount is increased from $ 1,192 to $1,355 for single individuals without dependants, and from $2,165 to $2,335 for families. This clause also decreases the rate at which the Canada Workers Benefit is reduced above certain adjusted net income thresholds from 15% to 12%, and increases those thresholds from $10,500 to $12,820 for single individuals without dependants and from $14,500 to $17,025 for families.

In addition, the disability supplement credit’s rate is increased from 25% to 26% of each dollar of working income in excess of $1,150 up to a maximum credit amount. The maximum credit amount is increased from $462.50 to $700. Clause 19 also decreases the rate at which the Canada Workers Benefit disability supplement is reduced above certain adjusted net income thresholds from 15% to 12% – or if the individual has a spouse or common-law partner who was eligible to claim a disability tax credit, from 7.5% to 6% – and increases those thresholds from $16,667 to $24,111 for single individuals without dependants and from $25,700 to $36,483 for families. These amendments apply to the 2019 and subsequent taxation years.

Clause 10 amends section 117.1(1) of the ITA to ensure that the new Canada Workers Benefit basic amount and disability supplement amounts are indexed to inflation after 2019.

2.1.8 Expansion of the Medical Expense Tax Credit for Service Animal Expenses

The Medical Expense Tax Credit provides a non-refundable tax credit for qualifying medical or disability-related expenses incurred by individuals on behalf of themselves, their spouse or a common-law partner, and their dependants. Section 118.2(2) of the ITA lists the expenses that are eligible for the tax credit, and it includes expenses related to animals specially trained to assist the patient in coping with an impairment.

Clause 12 amends section 118.2(2)(l) of the ITA to expand the eligibility of such animal-related expenses to include those that are incurred for the treatment of “severe mental impairment.” In order for the expenses to be eligible under such circumstances, the animal must be specially trained to perform tasks that assist the patient in coping with the impairment. The provision of emotional support is

specifically excluded from the definition of tasks that assist the patient in coping with the impairment.

This amendment applies to the 2018 and subsequent taxation years.

2.1.9 Indexation of the Canada Child Benefit

Introduced in 2016, the Canada Child Benefit (CCB) is a tax-free monthly payment made to eligible families with children under 18 years of age. The CCB replaced the previous child benefit system, which consisted of the Canada Child Tax Benefit, the National Child Benefit Supplement and the Universal Child Care Benefit.

Section 122.61(5) of the ITA provides for the indexing of the various amounts used in the calculation of the CCB. Under this section, the indexation of the benefit was scheduled to commence in 2019, and therefore apply to those CCB payments starting on 1 July 2020.

Clause 17 amends section 122.61(5) so that indexation of the CCB would commence in 2017, and so apply to the CCB payments starting on 1 July 2018.

2.1.10 Extension of the Mineral Exploration Tax Credit

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 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. This credit was first announced in the *Economic Statement and Budget Update* of 18 October 2000. It has since been extended several times.

Clause 21 amends paragraphs (a), (c) and (d) of the definition of “flow-through mining expenditure” in section 127(9) of the ITA 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 2018 and before 2020 under a flow-through share agreement entered into after March 2018 and before April 2019.

2.1.11 Extension of the Ability to Be the Plan Holder of a Registered Disability Savings Plan

A Registered Disability Savings Plan (RDSP) is a tax-assisted savings plan that may generally be established for the benefit of an individual under 60 years of age who is eligible for the Disability Tax Credit. Contributions to an RDSP are included in the taxpayer’s taxable income, while the plans’ earnings and distributions to the taxpayer are not.

If an adult beneficiary has the legal capacity to enter into contracts, the RDSP arrangement must be made directly between the issuer of the RDSP and the beneficiary. Where this legal capacity is in question, the ITA stipulates that the holder of the plan be the legal representative of the beneficiary. Because the process for establishing a legal guardian can take time, a temporary measure was provided for in section 146.4(1) of the ITA to allow the spouse, common-law partner, or parent of the individual – referred to as a "qualifying family member" – to establish and/or hold the RDSP on the beneficiary's behalf until a legal guardian or representative could be appointed. This measure was to expire at the end of the 2018 calendar year.

Clause 24 amends section 146.4(1) of the ITA to extend to the end of the 2023 calendar year this measure allowing qualifying family members to establish and/or hold the RDSP on behalf of a beneficiary.

2.1.12 Transfers from Charities to Municipalities as Expenditures for Reducing the Revocation Tax

When a charitable organization's registered status (charitable status) is revoked – either voluntarily or otherwise – the charity is subject to a "revocation tax," pursuant to section 188(1.1) of the ITA. The tax is generally equal to the fair market value of the assets held by the charity less the value of its debts. However, the tax can be reduced by deducting the difference between the fair market value of the assets that were transferred to an "eligible donee" and any payment or consideration in exchange for that transfer. In general, section 188(1.3) defines an eligible donee as another eligible registered charity, which has a majority of directors and/or trustees that are at arm's length from the directors and/or trustees of the revoked charity.

Clause 30 amends section 188(1.3) of the ITA to add Canadian municipalities that are approved by the Minister of National Revenue as eligible donees with respect to the revocation tax.

These amendments apply to transfers of property made after 26 February 2018.

2.1.13 Eligibility for the Canada Child Benefit and the Sharing of Related Information

Currently, section 241 of the ITA prohibits officials and other representatives of a government entity from using or communicating taxpayer information obtained under the ITA unless they are specifically authorized to do so in accordance with one of the exceptions listed therein. One such exception is for the disclosure of information related to the National Child Benefit supplement to an official or a designated person for the purpose of adjusting a provincial/territorial social assistance payment made on the basis of a means, needs or income test.

In response to the replacement of the National Child Benefit Supplement, clause 36 amends section 241(4) of the ITA to ensure that information related to the Canada Child Benefit (CCB) may also be disclosed solely for the same reasons to an official or a designated person.

This amendment comes into force on 1 July 2018.

The definition of “eligible individual” in section 122.6 of the ITA ensures that the CCB is made available to foreign-born status Indians (defined under section 2(1) of the *Indian Act*) who are not Canadian citizens or permanent residents of Canada, as long as all other eligibility requirements are met. Prior to 30 June 2016, these individuals were not eligible for the Canada Child Tax Benefit, the National Child Benefit Supplement or the Universal Child Care Benefit.

Clause 38 deems subparagraph (e)(v) of the definition of “eligible individual” in section 122.6 of the ITA to have come into force on 1 January 2005 in order to make these individuals retroactively eligible for the Canada Child Tax Benefit, the National Child Benefit Supplement and the Universal Child Care Benefit for the period between 1 January 2005 and 30 June 2016.

2.1.14 Extension of Eligibility of Properties for Class 43.2 Designation Under Schedule II of the *Income Tax Regulations*

Schedule II to the *Income Tax Regulations* (ITR)[11] lists the properties that can be included in each capital cost allowance (CCA) class. A portion of the capital cost of depreciable property is deductible as CCA each year. CCA rates for each type of property, identified by their CCA classes, are set out in section 1100 of the ITR.

Introduced in 2005, Class 43.2 in Schedule II generally includes property that would otherwise be included in Class 43.1, which provides an accelerated CCA rate of 30% per year for clean energy generation and energy conservation equipment, except in circumstances where this type of property has to meet stricter eligibility criteria. The CCA rate is 50% for property in Class 43.2.

Clause 45 amends Schedule II to extend the eligibility for Class 43.2 to property acquired before 2025 rather than 2020.

2.2 Part 2: Implementation of Certain Excise Measures Proposed in the 2018 Budget

The *Excise Act, 2001*[12] establishes the excise duty rates on tobacco products and provides for one automatic increase every five years to take account of inflation. The most recent inflationary adjustment was on 1 December 2014, and the next is slated for 1 December 2019. Clause 47 of Bill C-74 amends sections 43.1(1) and 43.1(2) of the *Excise Act, 2001* to make the adjustments annual after 1 April 2019 rather than every five years.

These amendments are deemed to have come into force on 28 February 2018.

Part 2 of Bill C-74 also increases the excise duty rates and fines related to tobacco products.

Clauses 48, 49, 50 and 51 amend sections 58.1, 58.2(2), 58.5(1)(b) and 58.6(1)(b) of the *Excise Act, 2001* respectively to impose a tax of $0.011468 per cigarette (subject

to certain exemptions) on stocks of cigarettes held by manufacturers, importers, wholesalers and retailers holding more than 30,000 cigarettes on 28 February 2018. Taxpayers have until 30 April 2018 to produce their return and pay the tax on their stocks.

Clause 52 and 59 amend sections 216(2)(a)(i) to 216(2)(a)(iv) and 216(3)(a)(i) to 216(3)(a)(iv) of the *Excise Act, 2001* in order to increase the fines for the illegal possession or sale of tobacco products. Clause 53 and 60 amend sections 240(a) to 240(c) to increase the fines imposed on tobacco licensees who illegally remove tobacco from their excise warehouse.

Clauses 54 to 58 of the bill amend Schedules 1 and 2 of the *Excise Act, 2001* to increase the excise duty rates paid on tobacco products. The rates applicable to various tobacco products are increased as follows:

- from $0.53900 to $0.59634 per five cigarettes;
- from $0.10780 to $0.11927 per tobacco stick;
- from $6.73750 to $7.45425 per 50 grams of manufactured tobacco; and
- from $23.46235 to $25.95832 per 1,000 cigars.

The amendments made to Schedule 2 increase the additional duty on cigars from the greater of $0.08434 per cigar and 84% of the sale price to $0.09331 and 88% of the sale price.

These amendments are deemed to have come into effect on 28 February 2018.

2.3 Part 3: Implementation of a New Federal Excise Duty Framework for Cannabis Products Proposed in the 2018 Budget

Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts,[13] removes cannabis as a controlled substance under the *Controlled Drugs and Substances Act*. As a result, certain activities in relation to cannabis are permitted (for example, an adult can possess up to 30 grams of dried cannabis) while other activities, such as selling cannabis to a young person, are prohibited. Bill C-45 also establishes a statutory basis on which the designated minister can issue licences and permits for authorized cannabis-related activities.

In response to the changes proposed in Bill C-45, Part 3 of Bill C-74 amends the *Excise Act, 2001*, the *Excise Tax Act* and a number of regulations. It also makes consequential amendments to the *Criminal Code* and the *Customs Act*.

The *Excise Act, 2001* provides the taxation framework for “spirits, wine and tobacco and the treatment of ships’ stores.” It is amended to include cannabis products.

Clause 69 of the bill amends section 2 of the *Excise Act, 2001* to include cannabis products in a number of existing definitions and adds some definitions specific to cannabis.

Clause 71 adds a new section 14(1.1) ("Cannabis licence") to permit the Minister of National Revenue to issue a cannabis licence for the purpose of the *Excise Act, 2001*.

Clause 73 adds a new Part 4.1 to the *Excise Act, 2001* entitled "Cannabis," which sets out requirements relating to cannabis production and stamping, as well as a number of related offences. Upon application from a cannabis licensee, the Minister of National Revenue can issue stamps indicating that cannabis duty has been paid by the cannabis licensee (new section 158.03(1)).

New section 158.02(1) prohibits the production of cannabis products without a cannabis licence issued under the *Excise Act, 2001* (production is also prohibited unless it is authorized by the Cannabis Act (clause 12(1) of Bill C-45)). New section 158.13 prohibits a cannabis licensee from placing a product on the duty-paid market unless it meets certain requirements.

New sections 158.19 to 158.34 describe how cannabis duty is imposed and paid. As Budget 2018 explains:

> excise duties will be imposed on federally licensed producers at the higher of a flat rate applied on the quantity of cannabis contained in a final product, or a percentage of the sale price of the product sold by a federal licensee.[14]

The duties to be paid on cannabis are set out in new sections 158.19(1) and 158.19(2).

Additional duty can also be imposed by specified provinces in accordance with the regulations (new section 158.2). Duty is also payable in relation to imported cannabis (new sections 158.21 and 158.22).

Clause 80 adds new section 218.1 to establish penalties for certain cannabis-related offences. Clause 84 adds a new section 233.1, which establishes the formula to determine the penalty associated with a licensee who puts a cannabis product on the duty-paid market without meeting packaging requirements. Similarly, clause 86 adds new section 234.1, which establishes the formula to determine the penalty associated with producing cannabis without a licence and other prohibitions.

Clause 91 amends the regulation-making authority of the Governor in Council contained in section 304(1) of the *Excise Act, 2001* to add references to cannabis products. Clause 92 adds a new section 304.1 to authorize the Governor in Council to make regulations in relation to the "coordinated cannabis duty system," which is the system "providing for the payment, collection and remittance of duty imposed under [certain sections and provisions]" (new section 304.1(1)).

Bill C-74 amends the *Excise Tax Act*[15] in part to include cannabis products in the definition of "excisable goods" (clause 95).

2.4 Part 4: Amendments to the *Veterans Well-being Act* and the *Pension Act*

Part 4 of the bill amends the benefits and services regime for Canadian Forces members and veterans. As specified in the coming into force provisions in clause 185, the changes provided in this section will take effect on 1 April 2019, with one exception concerning veterans released for medical reasons unrelated to their service, which will come into force on 1 April 2024.

2.4.1 *Veterans Well-being Act*

Clauses 123 to 177 of the bill amend the VWBA by making the following main changes:

- Veterans released for medical reasons unrelated to their service will no longer be eligible for rehabilitation services under Part 2 of the VWBA as of 1 April 2024.
- As of 1 April 2019, the new Income Replacement Benefit (IRB) will replace four benefits currently provided for by the VWBA: the Earnings Loss Benefit; the Career Impact Allowance (CIA) and the CIA supplement; the Supplementary Retirement Benefit; and the Retirement Income Security Benefit. Veterans released for medical reasons unrelated to their service will not be eligible for the new IRB unless they were receiving the Earnings Loss Benefit prior to 1 April 2019.
- As of 1 April 2019, the new pain and suffering compensation will replace the Disability Award and provide for a monthly payment for life.
- As of 1 April 2019, the new additional pain and suffering compensation, like the current CIA, will allow a veteran with one or more disabilities that create a permanent and severe impairment and a barrier to re-establishment in civilian life to receive a monthly benefit in an amount that varies with the extent of the impairment.

2.4.1.1 Rehabilitation and Vocational Assistance Services

Clauses 124, 125, 127 and 129 of the bill amend the VWBA in order to eliminate vocational assistance to veterans under Part 2 of the Act as of 1 April 2019. However, the spouse or common-law partner of a veteran with a health problem related to service that creates a barrier to re-establishment in civilian life and who is eligible for rehabilitation services, as well as the spouse or common-law partner (survivor) of a veteran whose death is attributable to service, continues to be eligible for vocational assistance. In fact, according to Veterans Affairs Canada,[16] vocational assistance is already offered primarily to the spouses, common-law partners and survivors of these veterans, while eligible veterans receive these services as part of their rehabilitation plan.

Clause 130 of the bill amends section 11(1)(a) of the VWBA so that, as of 1 April 2019, the spouse or common-law partner of a veteran will only have access to rehabilitation and vocational assistance services under section 11 of the VWBA if the following two conditions are met:

- in keeping with the requirement provided in section 8 of the VWBA for release for health reasons resulting primarily from service in the Canadian Forces, the veteran has had an application for rehabilitation services approved by the department; and
- the veteran would not benefit from vocational rehabilitation because of a diminished earning capacity.

Clause 165 of the bill provides that, if the veteran's application for rehabilitation services is approved before 1 April 2019, the spouse or common-law partner will be eligible under the current legislation.

Clauses 128, 129(2) and 129(4) of the bill provide that, as of 1 April 2024, veterans released for health reasons unrelated to their service will no longer be eligible for the rehabilitation services provided for in section 9 of the VWBA. Clauses 167 and 168 of the bill provide that veterans who submit an application after 1 April 2019 but before 1 April 2024 will be eligible under the provisions of the VWBA in force before that date.

2.4.1.2 Income Replacement Benefit

As mentioned above, clauses 131 to 137 of the bill amend the VWBA to create the new IRB, which replaces four benefits currently provided for under the VWBA:

- the Earnings Loss Benefit;
- the Career Impact Allowance and supplement;
- the Supplementary Retirement Benefit; and
- the Retirement Income Security Benefit.

The new IRB applies differently to different categories of beneficiaries:

- veterans under the age of 65;
- veterans aged 65 and over; and
- the surviving spouse or common-law partner (the survivor) and orphans of a veteran, depending on whether the deceased veteran, if still living, would have been under 65 or 65 or over and depending on whether the veteran's death was attributable to service.

2.4.1.2.1 Veterans Under the Age of 65

The IRB, like the current Earnings Loss Benefit, pays veterans under 65 years of age 90% of the income they were earning before their release, less certain prescribed deductions,[17] if they participate in a rehabilitation plan or have a diminished earning capacity due to a health problem (new sections 18 and 19 of the VWBA).

However, while the current Earnings Loss Benefit is available to all veterans eligible for a rehabilitation plan, clause 131 of the bill provides that, under new section 18(1) of the VWBA, the IRB is offered only to veterans whose health problem is primarily a result of their service in the Canadian Forces.

Clause 132 of the bill introduces the "periodic adjustment … in accordance with a career progression factor" for the calculation of the IRB for veterans with a diminished earning capacity (new sections 19(2) and 19(3) of the VWBA). According to Veterans Affairs Canada,[18] this measure is aimed at veterans who could not complete a full military career. They will obtain an annual adjustment of 1% of their income that is used to calculate the IRB, until they reach the age of 60 or have accumulated 20 years of service. This adjustment will be prescribed by regulation.

Clause 157 of the bill adds new section 99(3) to the VWBA, guaranteeing that veterans who received the Earnings Loss Benefit and Career Impact Allowance (CIA) supplement on 31 March 2019 will see the amount of their benefit protected.

New section 99(2) of the VWBA provides that veterans who currently receive the Earnings Loss Benefit for a health problem not primarily related to their service and do not receive the CIA supplement will be able to receive the IRB, but they will not be entitled to the adjustment factor.

2.4.1.2.2 Veterans Aged 65 and Over

Clause 133 of the bill adds new section 19.1 to the VWBA to provide that the IRB paid to a veteran aged 65 or over is set at 70% of the IRB that the veteran received or would have received before the age of 65. Since the IRB pays 90% of pre-release income, this section provides that 70% of the 90% amount, less certain prescribed deductions, will be paid to a recipient.

New section 99(4) of the VWBA guarantees that veterans who were receiving the Retirement Income Security Benefit on 31 March 2019 will see the amount of their benefit protected. However, those who submit an application after 31 March 2019:

- will not receive the 70% amount of the CIA and its supplement (abolished by clause 137 of the bill) currently paid under the existing Retirement Income Security Benefit;
- will be eligible for the new additional pain and suffering compensation introduced by clause 144 of the bill; and
- will benefit from the periodic adjustment to their IRB until they reach 60 years of age or accumulate 20 years of service, as introduced by clause 132 of the bill, which is reflected in the calculation of the IRB paid after the age of 65.

2.4.1.2.3 Survivors and Orphans

Clause 133 of the bill provides that the IRB may be paid to the survivor or orphan of a Canadian Forces member or veteran whose death is related to service and occurs before the age of 65 (new section 22 of the VWBA). Clause 134(1) of the bill provides that, until the deceased veteran would have reached the age of 65, the survivor or orphan receive 90% of the pre-release income (new section 23(1)(a) of the VWBA). This is equivalent to the current Earnings Loss Benefit paid to survivors or orphans in the same situation.

New section 23(1)(b) of the VWBA stipulates that, once the deceased veteran would have reached the age of 65, the survivor or orphan is entitled to 70% of the IRB paid

to veterans aged 65 or over. This represents roughly 44% of the veteran's pre-release income. This is an increase compared to the current Retirement Income Security Benefit, which is not available to orphans, and which, in the same situation, pays the survivor 50% of the benefit to which the veteran would have been entitled – roughly 32% of the veteran's pre-release income. Clause 135 of the bill provides that these same terms of payment of the IRB apply to the survivors and orphans of veterans who were 65 or over and eligible for the IRB at the time of death (new sections 26 and 26.1 of the VWBA).

Clauses 134(1) and 135 of the bill respectively amend section 23(2) and add section 26.1(2) to the VWBA to provide that, if the deceased veteran has a survivor and one or more orphans, 50% of the IRB is paid to the survivor and 50% to the orphans, divisible by the number of orphans. If there are no orphans, the full benefit is paid to the survivor, and, if there is no survivor, the full benefit is divided among the orphans.

Clauses 134(2) and 134(3) of the bill provide that, if the veteran dies before the age of 60 or before attaining the prescribed number of years of service in the Canadian Forces, the survivor and orphans are entitled to the annual income adjustment used to determine the amount of the IRB they receive (new sections 23(4) and 23(5) of the VWBA).

Clause 135 of the bill abolishes the current Supplementary Retirement Benefit[19] and adds new sections 24 and 25 to the VWBA, which allow for the payment of a lump sum to the survivors and orphans of a veteran who dies before the age of 65, whose death was not related to service and who was eligible for the IRB at the time of death. The lump sum will be 24 times the amount of the IRB to which the veteran would have been entitled for the month of death, with no prescribed deductions.

2.4.1.2.4 Other Changes Related to the Income Replacement Benefit

Clause 138(1) of the bill provides that the Governor in Council may make regulations respecting the manner of determining whether a veteran has a diminished earning capacity due to a physical or a mental health problem and respecting what constitutes a year of service in the Canadian Forces for the purposes of the new periodic adjustment of a veteran's monthly military salary, based on a career progression factor (amendments to section 41(b) of the VWBA).

2.4.1.3 Pain and Suffering Compensation

Clauses 141 and 142(1) of the bill replace the current Disability Award with the new pain and suffering compensation (PSC) in section 45 of the VWBA. Clauses 143 and 144 of the bill set out the details of the PSC in sections 46 to 56.5 of the VWBA.

The current Disability Award is, by default, a lump sum, and one can ask to have it divided over a number of years in order to receive annual payments. Conversely, the new PSC is, by default, a monthly payment for life that one can ask to have replaced by a lump sum.

The amount of the lump sum is the same as for the Disability Award (a maximum of $365,400 calculated based on the extent of disability), but the PSC adds a monthly disability amount paid for life to each category of extent of disability in Schedule 3 of the VWBA. For comparison, the lump sum represents roughly 26 and a half years of monthly payments made under the PSC.

Clause 144 of the bill adds new section 50 to the VWBA, establishing the formula for calculating the amount of the monthly payment if a benefit has already been paid in the past.

The clause also creates new section 51 of the VWBA, which concerns the beginning of the payment of the PSC. It is payable on the later of the following:

- the first day of the month during which the application is made; and
- if the application was made more than three years before, retroactive to three years before the compensation was granted.

If administrative delays beyond the control of the Canadian Forces member or veteran have delayed the granting of the PSC, an additional payment may be paid to the Canadian Forces member or veteran in an amount no greater than two years' worth of the PSC.

Clause 144 also creates new section 53 of the VWBA, which allows the Canadian Forces member or veteran to opt for the payment of a lump sum in place of a monthly compensation payment. Once that choice is made, it is irrevocable. If the individual has already received monthly PSC payments, those payments are deducted from the lump sum amount associated with the extent of disability.

According to the transitional provisions in clause 157, under new section 132 of the VWBA, Canadian Forces members and veterans who will have received a Disability Award between 1 April 2006 and 31 March 2019 are entitled to an additional monthly benefit under the new PSC.

Clause 144 also creates new sections 54 to 56 of the VWBA, which specify that, if a Canadian Forces member or veteran dies, the survivors and orphans are not entitled to monthly payments for life, but instead receive a lump sum.

The clause also adds new section 56.1 to the VWBA, stipulating that the rules for dividing the compensation between the survivor and orphans do not change: if the deceased veteran has a survivor and one or more dependent children, 50% of the compensation is paid to the survivor and 50% to the children, divisible by the number of children. If there are no dependent children, the full compensation is paid to the survivor; if there is no survivor, the full compensation is divided among the children.

2.4.1.4 Additional Pain and Suffering Compensation

Clause 144 of the bill creates the new APSC in new sections 56.6 to 56.8 of the VWBA. This compensation is paid to a veteran who suffers from one or more

disabilities, for which the veteran receives compensation, that create a permanent and severe impairment and a barrier to re-establishment in civilian life.

The details of the eligibility criteria for the APSC will be known once the regulations are tabled. Clauses 152(1) and 146 of the bill indicate that, under sections 94 and 63 of the VWBA respectively, the Governor in Council may make regulations regarding what constitutes a barrier to re-establishment in civilian life and, among other things, what constitutes a permanent and severe impairment and the method for establishing the existence and gravity of a veteran's impairment.

This evaluation of the extent of the permanent and severe impairment determines the grade and amount of the APSC for which the veteran is eligible. Schedule 4 to the VWBA provides three possible grades of the APSC (1, 2 and 3) accompanied by non-taxable monthly amounts of $500, $1,000 and $1,500 respectively.

Clause 144 of the bill provides in section 56.6(6) of the VWBA that the APSC is payable on the later of the following dates:

- the first day of the month in which the application was made; or
- if the application was made more than a year earlier, retroactive to one year before the first day of the month in which the veteran is determined to be entitled to the APSC.

New section 56.6(7) of the VWBA states that when there is a change in the circumstances of a veteran to whom the APSC is payable, the Minister may re-assess the extent of the veteran's permanent and severe impairment, either at the veteran's request or on the Minister's own initiative. Under section 56.6(8) of the VWBA, if the re-assessment determines that the extent of the veteran's permanent and severe impairment has changed, the APSC is changed accordingly.

As is the case with the current CIA, new section 56.6(3) of the VWBA provides that a veteran who is receiving an exceptional incapacity allowance under the *Pension Act* is not eligible for the APSC.

The APSC has certain similarities to and differences from the CIA abolished by clause 137 of the bill. The three grades and monthly amounts of the APSC are roughly equivalent, on average, to those of the current CIA; the CIA provides for three grades with accompanying taxable monthly amounts of $609.56, $1,219.13 and $1,828.67,[20] while the new APSC provides for three grades accompanied by non-taxable amounts of $500, $1,000 and $1,500 a month.

However, the current CIA includes a supplement of $1,120 a month paid to veterans dealing with a diminished earning capacity.[21] This supplement has been abolished and replaced by the annual 1% adjustment of the IRB up to the age of 60 or until 20 years of service for veterans with a diminished earning capacity. This amounts to an average adjustment of $500 to $1,000 a year, depending on the salary earned at the time of release, compared to the current CIA supplement of $13,440 a year. Clause 157 of the bill guarantees veterans who were receiving the CIA supplement before 1 April 2019 that this amount will be protected.

2.4.1.5 Transitional Provisions

Clause 157 of the bill amends sections 98 to 117 of the VWBA and adds sections 118 to 129 in order to provide transitional rules relating to the IRB. Notably, information with regards to the treatment of applications made with respect to the Earnings Loss Benefit, the CIA, and the Retirement Income Security Benefit, before 1 April 2019, is included as part of these transitional rules.

Clause 157 also adds sections 130 to 132 to the VWBA to make transitional provisions with respect to the PSC, and it adds section 133 to make transitional provisions with respect to the APSC.

Clauses 158 and 159 are transitional provisions meant to reflect the repeal of the CIA provisions in relation to Schedule 2 of the VWBA.

Clause 160 of the bill replaces Schedule 3 of the VWBA, which currently sets out the amounts in relation to the Disability Award, with new Schedule 3 as set out under Schedule 2 of the bill. New Schedule 3 establishes the amounts in relation to the PSC.

Clause 161 of the bill adds Schedule 4 to the VWBA. New Schedule 4 is set out under Schedule 3 of the bill and provides for the amounts in relation to the APSC. Clauses 162 to 177 of the bill make transitional provisions in relation to rehabilitation services and vocational assistance, the Canadian Forces Income Support Benefit,[22] and the PSC.

2.4.2 *Pension Act*

Clause 122 of the bill amends the *Pension Act* by adding sections 80.1 and 80.2 in order to authorize the Minister of Veterans Affairs to waive the requirement that a person apply for compensation under the *Pension Act* if the Minister believes that, should the award be applied for, the person might be eligible to receive it. The section explains the steps in the process following such a waiver.

2.5 Part 5: Enactment of the Greenhouse Gas Pollution Pricing Act and the Making of the Fuel Charge Regulations

2.5.1 The Greenhouse Gas Pollution Pricing Act

Part 5 of the bill enacts An Act to mitigate climate change through the pan-Canadian application of pricing mechanisms to a broad set of greenhouse gas emission sources and to make consequential amendments to other Acts (short title: Greenhouse Gas Pollution Pricing Act (GGPPA)) and makes the Fuel Charge Regulations.

Essentially, the GGPPA and these regulations implement the federal carbon pricing scheme that will serve as the federal backstop provided in the *Canadian Framework on Clean Growth and Climate Change*[23] and the *Pan-Canadian Approach to Pricing Carbon Pollution*.[24] As stated in these documents, the federal backstop will apply in

provinces that will not be implementing an equivalent carbon pricing system. This backstop has two components: a fuel charge, and a pricing mechanism for industrial greenhouse gas emissions.

Clause 186 contains the text of the GGPPA, which has 270 clauses in four parts.

2.5.2 Charge on Fossil Fuels

Part 1 of the GGPPA (clauses 3 to 168) establishes the fuel charge. This levy is payable early in the supply chain of various liquid (e.g., gasoline and diesel), gas (e.g., natural gas) and solid (e.g., coal) fuels used in a federal backstop jurisdiction.[25] As provided in clauses 17 to 27 of the GGPPA, the levy is to be paid by producers, distributors or importers when:

- fuel is produced and delivered to a retailer or user in a backstop jurisdiction;
- fuel is produced in a non-backstop jurisdiction and delivered to a retailer or user in a federal backstop jurisdiction;
- fuel is imported into Canada in a federal backstop jurisdiction and is used or delivered in that jurisdiction; or
- fuel is imported into Canada in a non-backstop jurisdiction and delivered to a retailer or user in a backstop jurisdiction.

In the case of natural gas, the levy will generally be paid by retailers once it is delivered to a final user, for instance a residence, in a federal backstop jurisdiction (clause 14 of the GGPPA).[26]

In some cases, the levy is payable by the final users of a fuel. These users are the following commercial carriers, operating in both backstop and non-backstop jurisdictions (clauses 28 to 35 of the GGPPA):

- Rail and road carriers: The levy applies to any portion of a journey within a federal backstop jurisdiction. Therefore, the carriers must pay the levy for the fuel they use in a backstop jurisdiction that was purchased in a non-backstop jurisdiction, and they can receive a rebate of the levy already included in the price of fuel purchased in a backstop jurisdiction but used outside of that jurisdiction.
- Marine and air carriers: The levy applies only to travel between two points in a backstop jurisdiction. These carriers therefore pay a levy for the fuel they use for travel within a backstop jurisdiction and that was purchased outside of that jurisdiction, and they can obtain a rebate of the levy already included in the price of fuel purchased in a backstop jurisdiction but used for travel outside of that jurisdiction. In addition, if the fuel is purchased for international travel, this fuel may be sold by a distributor without having to pay the levy, or if the levy is paid, the carrier can obtain a rebate of the levy already included in the fuel price.

The GGPPA also provides for the following situations where no levy is payable:

- the fuel is used in a facility covered by the pricing mechanism for industrial greenhouse gas emissions (Part 2 of the GGPPA);
- the gasoline or diesel fuel is used in farming **or fishing** activities;
- the fuel is exported or removed from a federal backstop jurisdiction;
- the fuel is used as international ships' stores;
- the fuel is used as a raw material, diluent or solvent in a manufacturing or petrochemical process;
- the fuel is purchased by visiting military forces or diplomatic representatives;
- the fuel is in a sealed container of one litre or less; or
- a portion of biofuel is added to blended fuels.[27]

In these situations, the GGPPA provides that distributors or importers are not required to pay a levy for the fuel they deliver or, if the levy has already been paid, the levy will be rebated to the user.

Fuel levy rates are set out in Schedule 2 of the GGPPA. Each fuel is priced on a carbon dioxide (CO_2)–equivalent basis. The rates applicable to each fuel are set at $10 per CO_2-equivalent tonne for 2018 and will gradually increase to $50 per CO_2-equivalent tonne in 2022.[28]

The fuel charge is administered by the Canada Revenue Agency (CRA). The GGPPA requires that fuel distributors (including producers), importers and, in some cases, users operating in a federal backstop jurisdiction register with the CRA (clauses 55 to 67 of the GGPPA). Every month, they must report the levy payable for each backstop jurisdiction to the CRA and remit the levy to the Receiver General for Canada (clauses 68 to 77 of the GGPPA). Under the GGPPA, the federal government must provide the province, or a prescribed person, with the fuel levies collected (clause 165 of the GGPPA).

2.5.3 Pricing Industrial Greenhouse Gas Emissions

Part 2 of the GGPPA (clauses 169 to 261) sets out the mechanism for pricing industrial greenhouse gas emissions.

This mechanism applies to prescribed facilities located in a federal backstop jurisdiction (clauses 169 and 171). According to the Government of Canada, the relevant industrial facilities will be those that emit 50 kilotonnes or more of CO_2-equivalent greenhouse gases per year in the following industrial sectors: oil and gas, pulp and paper, chemicals, nitrogen fertilizers, lime, cement, base metal smelting and refining, potash, iron ore pelletizing, mining, iron and steel, and food processing.[29] Over time, other sectors could be included as well.

The GGPPA also provides industrial facilities not covered by the mechanism located in a federal backstop jurisdiction with the option to request that they be covered (clause 172). According to the Government of Canada, that should allow smaller facilities that emit less than 50 kilotonnes of CO_2 equivalent greenhouse gases per

year to choose to be exempt from the fuel charge and be covered by the mechanism for pricing industrial greenhouse gas emissions.[30]

There are two components to the mechanism for pricing industrial greenhouse gas emissions that is established by the GGPPA. The first provides for a levy to be paid for a facility's greenhouse gas emissions that exceed the annual prescribed threshold. The second issues emissions credits for the quantity below the annual prescribed emissions threshold of greenhouse gases not emitted by the facility, with these credits able to be transferred to other facilities or used in a subsequent year (clauses 173 to 187).

The levy rates for emissions over the annual prescribed threshold are set in Schedule 4 of the GGPPA. For each greenhouse gas, these rates are initially set at $10 per CO_2-equivalent tonne for 2018 and then gradually increase to $50 per CO^2-equivalent tonne in 2022. Under the GGPPA, the federal government must provide the province, or a prescribed person, with the fuel levies collected from industrial facilities located in the province or area (clause 188).

The mechanism for pricing industrial greenhouse gas emissions is administered by Environment and Climate Change Canada. Once a province becomes a federal backstop jurisdiction, the department must establish and maintain a system that tracks emission credits, transfers, retirement and cancellation of credits and levy payments for excess greenhouse gas emissions for each covered industrial facility (clauses 185 and 186).

2.5.4 Authority for the Application of Provincial Laws on Greenhouse Gas Emissions

Part 3 of the GGPPA (clauses 262 to 269) authorizes the Governor in Council to provide that the laws of a province concerning greenhouse gas emission control or pricing apply to federal works and undertakings within the province or lands (including Indigenous land) under federal jurisdiction in that province or waters within the province or adjacent provinces.

2.5.5 Annual Report

Part 4 of the GGPPA (clause 270) provides that the Minister of the Environment is to table a report on the administration of the GGPPA in each House of Parliament two years after this provision comes into force and every following year.

2.5.6 Coming into Force

The GGPPA came into force on the date that Bill C-74 received Royal Assent. However, each component of the federal backstop will apply to a province only if that province is added by the Governor in Council to Schedule 1 of the GGPPA. **The stringency of the provincial pricing mechanism is the primary factor that the Governor in Council must take into consideration when deciding whether to add a province to the Schedule.** According to the Government of Canada, the

carbon levy could apply in 2018 and the output-based pricing system no earlier than 2019.[31]

2.6 Part 6: Implementation of Various Measures

2.6.1 Division 1: Amendments to the *Financial Administration Act*

Division 1 of Part 6 amends the *Financial Administration Act* (FAA)[32] to establish the office of the Chief Information Officer of Canada and to ensure that Crown corporations with no borrowing authority are able to continue to enter into leases.

The Chief Information Officer Branch supports the Treasury Board by developing strategy, setting government-wide policy for information technology and cybersecurity, and providing implementation guidance. Clause 199 amends section 6 of the FAA to allow the Governor in Council to appoint the Chief Information Officer of Canada, with the rank and power of a deputy head of department. It also provides the Treasury Board with the authority to delegate the powers and functions that it is authorized to exercise under any Act of Parliament or by any order made by the Governor in Council, including those in relation to information technology, to the Chief Information Officer of Canada. Clause 199 also makes the President of the Treasury Board responsible and accountable for the coordination of the activities of the Chief Information Officer of Canada.

In January 2019, new International Financial Reporting Standards will come into effect that will have an impact on how a variety of leases are reported. Clauses 200 and 201 of Bill C-74 amend sections 101 and 127 of the FAA to clarify that leases are not considered transactions to borrow money for Crown corporations with no borrowing authority, allowing Crown corporations to continue to enter into leases.

2.6.2 Division 2: Amendments to the *Canada Deposit Insurance Corporation Act*

During the 2016 consultations on Canada's deposit insurance framework, an issue was identified with respect to brokered deposits. A deposit broker is an individual who receives funds from an investor and, acting as an intermediary, conveys these funds to a deposit-taking institution for investment. Deposit brokers can either deposit funds as agents, with the account in their client's name, or in their own name in a trust for their client. In the trust form, the client is a beneficiary, and coverage is dependent on the provision of accurate beneficiary information by the broker to the financial institution in a timely manner. However, brokers may be reluctant to provide client information to financial institutions that are potential competitors.[33]

Division 2 of Part 6 amends the *Canada Deposit Insurance Corporation Act* (CDICA)[34] to ensure that the Canadian insurance framework continues to meet its objectives, including that of supporting financial stability. Clause 202 adds the definition of a "nominee broker," a "nominee broker deposit" and a "professional trustee" to section 2 of the CDICA. Clause 207 amends section 45.2 of the CDICA to allow the Canada Deposit Insurance Corporation to disclose to any body that regulates or supervises nominee brokers information with respect to a nominee

broker's non-compliance with the information requirements specified in section 7 of the schedule of the CDICA.

Another issue identified in the consultations was the growing number of households and businesses with foreign currency accounts. Clauses 203 to 206 amend sections of the CDICA to allow the Canada Deposit Insurance Corporation to also insure deposits denominated in foreign currency (amended section 12(a)), specify how to calculate the exchange rates in the event that a payment is required (amended section 14), and make consequential amendments (new section 25.3 and amended section 26.01(2)).

Clauses 208 to 212 make changes to the schedule of the CDICA to:

- define what is included and excluded for deposits;
- stipulate repayment rules with respect to jointly held accounts;
- clarify that deposits in respect of registered retirement savings plans, registered retirement income funds, tax-free savings accounts, registered education savings plans, and registered disability savings plans are considered deposits for the benefit of the individual; and
- specify disclosure regulations and conditions with respect to nominee broker deposits and professional trustee accounts.

Clause 213 stipulates that Division 2 comes into force by order of the Governor in Council.

2.6.3 Division 3: Amendments to the *Federal-Provincial Fiscal Arrangements Act*

Division 3 of Part 6 amends the *Federal-Provincial Fiscal Arrangements Act* (FPFAA)[35] to renew fiscal equalization payments to the provinces and territorial formula financing payments to the territories, which were set to expire on 31 March 2019. It also authorizes annual transition payments to Yukon and Northwest Territories to offset the projected negative impacts of the changes to the territorial formula financing payments.

Clauses 215 and 216 amend sections 3 and 4.1(1) of the FPFAA to extend to 31 March 2024 fiscal equalization payments to the provinces and territorial formula financing payments to the territories respectively.

Clause 217 adds new section 4.12 to the FPFAA to provide for the payments of $1,270,000 to Yukon and $1,744,000 to Northwest Territories for each fiscal year between 1 April 2019 and 31 March 2024.

Clauses 218 and 219, respectively, amend section 25 of and add new section 25.01 to the FPFAA to allow for the reimbursement of Canada Health Transfer deductions to provinces and territories, provided that these jurisdictions take certain steps to eliminate extra billing and user fees in the delivery of public health care.

Clause 214 clarifies that while the definition of “Minister” in section 2(1) of the FPFAA refers to the Minister of Finance in most of the FPFAA, it refers to the Minister of Employment and Social Development in sections 25 to 25.5, which deal with the Canada Health Transfer and the Canada Social Transfer.

2.6.4 Division 4: Amendments to the *Bank of Canada Act* (Securities Issued or Guaranteed by Foreign Governments)

Clause 220 amends section 18(d) of the *Bank of Canada Act* (BCA)[36] to add the United Kingdom to the list of governments whose securities the Bank of Canada can buy and sell. This guarantees that the Bank of Canada can continue to buy and sell securities issued or guaranteed by the United Kingdom in the event that it ceases to be a member state of the European Union.

Clause 221 states that this amendment comes into force on a day to be fixed by order of the Governor in Council, which may not be earlier than the day – if ever – on which the United Kingdom ceases to be a member state of the European Union.

2.6.5 Division 5: Amendments to the *Currency Act*

Clause 222 amends the long title of the *Currency Act*[37] from “An Act respecting currency” to “An Act respecting currency and the Exchange Fund Account.”

Clause 223 amends section 17 of the *Currency Act* to expand the current objectives of the Exchange Fund Account from aiding “in the control and protection of the external value of the monetary unit of Canada” to include providing “a source of liquidity for the Government of Canada.”

Clause 224 amends section 19 to authorize the payment of funds from the Exchange Fund Account into the Consolidated Revenue Fund. Previously, only advances to the Exchange Fund Account from the Consolidated Revenue Fund were permitted.

2.6.6 Division 6: Amendments to the *Bank of Canada Act* and the *Currency Act* (Bank Notes)

Clause 226 amends section 25(2) of the BCA to require the Bank of Canada to make arrangements for the removal from circulation in Canada of its bank notes that are worn, mutilated or that are no longer current, such as $1,000, $500, $25, $2 and $1 notes. The Bank of Canada will continue to exchange these notes at their face value.

Clauses 227 to 230 amend the *Currency Act* to add provisions on current bills. The Governor in Council may, by order, call in certain bank notes (new section 9(1)(b)), and bank notes that are called in by order are not current (amended section 9(2)).

2.6.7 Division 7: Amendments to the *Payment Clearing and Settlement Act*

2.6.7.1 Subdivision A – Resolution

A financial market infrastructure (FMI) is “a system that facilitates the clearing, settling or recording of payments, securities, derivatives or other financial transactions among participating entities.”[38] FMIs enable consumers and businesses to purchase goods and services, make financial investments and transfer funds. Systemically important FMIs, which have the potential to pose significant risks to the financial system, are subject to the Bank of Canada’s oversight for risk management.

In keeping with international guidance from the Financial Stability Board,[39] the 2017 federal budget indicated the federal government’s intentions to implement legislative changes that would expand and enhance the oversight powers of the Bank of Canada with respect to designated FMIs and to implement an FMI resolution framework.[40] Bill C-63, A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures, which received Royal Assent on 14 December 2017, enacted some changes with respect to the Bank of Canada’s powers.[41] Division 7 of Part 6 of Bill C-74 further amends the *Payment Clearing and Settlement Act* (PCSA)[42] to implement a framework for the resolution of designated FMIs and to protect information related to oversight by the Bank of Canada of those FMIs.

Clause 232 adds the definitions of “bridge clearing house,” “receiver” and “share” to the PCSA.

Clause 234 adds Part I.1, “Clearing and Settlement System Resolution,” to the PCSA. New sections 11.01 and 11.03 designate the Bank of Canada as the resolution authority for FMIs which can:

- acquire assets from the FMI;
- make or guarantee loans or advances;
- assume liabilities of the FMI;
- act as receiver of the FMI;
- acquire shares and property of the FMI; and
- incorporate a corporation for the purpose of designating the corporation a bridge clearing house.

New section 11.03 sets out the powers of the resolution authority. New section 11.04 establishes a committee consisting of the Governor of the Bank of Canada, the Superintendent of Financial Institutions, the Chief Executive Officer of the Canada Deposit Insurance Corporation and the Deputy Minister of Finance to facilitate consultations and exchange confidential information related to the resolution of FMIs. New section 11.05 states that the Bank of Canada consults the committee when developing a resolution plan for a designated FMI.

New section 11.06 contains provisions to do the following:

- establish the conditions under which the Governor of the Bank of Canada may declare an FMI non-viable;
- list the entities that require notification upon declaration of non-viability; and
- clarify that non-viability does not constitute a bankruptcy of the FMI.

New section 11.07 stipulates that a declaration of non-viability shall have the effect of a stay period during which contracts cannot be terminated, legal actions cannot be commenced or continued, and no creditor has any remedy against the FMI. New section 11.08 clarifies that certain actions are allowed with respect to “eligible financial contracts” as defined in section 39.15(9) of the CDICA.

New section 11.09 stipulates that the Governor of the Bank of Canada may appoint the Bank of Canada as receiver of the non-viable FMI or vest the shares of the FMI in the Bank of Canada. New section 11.11 sets out the powers of the receiver, which is responsible, among other things, for:

- transferring the rights and powers of shareholders of the FMI and members of the Canadian Payments Association to the Governor of the Bank of Canada;
- appointing or removing directors of the FMI and giving directions to the board of directors;
- requiring any participant to make a cash contribution to the FMI;
- transferring or terminating contracts; and
- writing down the equity of the shareholders.

New sections 11.12 to 11.18 outline a number of provisions, including those dealing with the conditions under which the Bank of Canada may establish a bridge clearing house, certain legislative provisions that may not apply during a resolution period, and the ability of the Bank of Canada to recover the costs related to acting as a receiver.

New section 11.2 requires the Bank of Canada to develop an exit plan for the FMI to end resolution by stipulating the requirements of the exit plan. New section 11.26 gives the Bank of Canada the authority to determine the amount of compensation, if any, to be paid to a prescribed person or entity and requires the Bank of Canada to make those payments. Under new section 11.28, regulations will prescribe circumstances under which an assessor could review payment decisions made by the Bank of Canada.

Clause 235 adds section 12.01 to allow the Bank of Canada to cooperate with a foreign resolution authority.

Clause 237 allows the Governor in Council to make various regulations with respect to different sections of new Part I.1 of the PCSA.

2.6.7.2 Subdivision B – Oversight Information

Clause 240 amends section 2 of the PCSA to allow the definition of oversight information to be determined in the regulations.

Clause 241 adds new sections 18.1 and 18.2 to the PCSA to:

- prohibit a clearing house from disclosing oversight information;
- clarify that oversight information should not be used as evidence in any civil proceedings and that such information is privileged; and
- to clarify that no person shall by an order of any court, tribunal or other body be required in any civil proceedings to give oral testimony or to produce any document relating to any oversight information.

New sections 18.2(3) and 18.2(4) provide some exceptions to these rules. New section 18.2(3) states that, subject to regulations, the Minister, the Governor of the Bank of Canada or the Attorney General may use such information as evidence in proceedings; and a clearing house may use such information as evidence in certain proceedings involving the administration or enforcement of the PCSA, the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act* or the *Winding-up and Restructuring Act*. New section 18.2(4) states that a court may require the Minister, the Governor of the Bank of Canada, the Bank of Canada or a clearing house to produce such information for civil proceedings in relation to the administration or enforcement of the PCSA that are commenced by the Minister, the Governor of the Bank of Canada, the Bank of Canada or the Attorney General of Canada.

Clause 242 amends section 24 of the PCSA – which allows the Governor in Council to make regulations prescribing collateral for the purpose of the definition of "financial collateral" in section 13(2)(e) – to also allow it to make regulations respecting what constitutes oversight information for the purposes of sections 18.1 and 18.2, the disclosure of oversight information for the purposes of section 18.1, and the circumstances in which oversight information may be used as evidence for the purposes of section 18.2(3).

Clauses 239 and 244 provide for the coming into force of all the measures in Division 7 by order of the Governor in Council.

2.6.8 Division 8: Amendments to the *Canadian International Trade Tribunal Act*

Under the *Canadian International Trade Tribunal Act* (CITTA),[43] the Canadian International Trade Tribunal is authorized to adjudicate on trade remedy cases and complaints concerning federal procurement. At the request of the Government of Canada, the Tribunal also undertakes inquiries into tariff, trade and economic issues.

Clause 245 of the bill amends section 3 of the CITTA. In particular, clause 245(1) amends section 3(1) to create the position of vice-chairperson as one of the permanent members of the Tribunal, which has up to seven permanent members.

Clause 245(2) amends section 3(5) to add a reference to a former permanent member so that a permanent or former permanent member can be reappointed as a permanent member for an additional five-year term and can serve in the same or another capacity; the maximum term of office for a permanent member is 10 years.

Clause 246 amends section 8 of the CITTA to provide for the interim replacement of the Tribunal's chairperson or vice-chairperson. In the absence of the chairperson, the vice-chairperson acts as chairperson, and if the vice-chairperson is absent or the office of the vice-chairperson is vacant, the Minister of Finance may authorize another of the Tribunal's permanent members to act as chairperson. When the vice-chairperson is unable to perform the duties of the office, the Minister may authorize another permanent member to act as vice-chairperson. The maximum period for which the Minister can authorize any permanent member to act as chairperson or vice-chairperson without the approval of the Governor in Council is 60 days.

Section 8(2) of the CITTA allows the Governor in Council to appoint a substitute member if a temporary or permanent member of the Tribunal, other than the chairperson, is absent or incapacitated. Clause 246 amends this section to make reference to the vice-chairperson.

2.6.9 Division 9: Amendments to the *Canadian High Arctic Research Station Act*

Division 9 of Part 6 of the bill amends the *Canadian High Arctic Research Station Act*[44] so that the Canadian High Arctic Research Station is considered a Crown corporation agent for the purpose of a transfer of the administration of a federal immovable. These amendments are to facilitate the transfer of the station campus to Polar Knowledge Canada, a federal organization established in 2015 to conduct research in the Canadian Arctic.[45]

In addition, clause 249 deems the Order entitled *Game Declared in Danger of Becoming Extinct*[46] to have continued in force and apply in Nunavut after its repeal on 1 April 2014. The Order was repealed by the *Northwest Territories Devolution Act*, which had the unintended effect of depriving the Government of Nunavut of the legal tools necessary to manage wildlife pertaining to Indigenous harvesting for game food.[47]

2.6.10 Division 10: Amendments to the *Canadian Institutes of Health Research Act*

Division 10 of Part 6 amends the *Canadian Institutes of Health Research Act* (CIHRA).[48]

Amendments to sections 7 to 9 of the CIHRA separate the roles of the president of the Canadian Institutes of Health Research (CIHR) and the chairperson of its governing council.

Clause 250 replaces sections 7(1) to 7(3) of the CIHRA, which establish CIHR's governing council and stipulate the appointment, reappointment, tenure and removal of its members. Amended section 7(1) retains the maximum number of members of the governing council at 18 people, but stipulates that the council includes the chairperson, rather than the president, of the CIHR. Amended section 7(2) stipulates that the appointment and tenure of members is subject to the provisions of new section 8. Section 7(3) is amended to add that the terms of removal and reappointment of council members do not apply to the chairperson. New section 7(3.1) establishes that the chairperson is appointed by the Governor in Council, serves at pleasure for a term of not more than five years and may be reappointed, while new section 7(3.2) specifies that the president of CIHR is not eligible to be appointed as the chairperson.

Clause 251 replaces sections 8 and 9 of the CIHRA. Amended section 8 specifies that, like the Deputy Minister of Health, the president of CIHR is a non-voting, *ex-officio* member of the governing council. Current section 9(1) specifies that the president of the CIHR is the governing council's chairperson; the replacement section requires that the governing council elect a vice-chairperson from its members, other than the president and Deputy Minister of Health. New section 9(2), using the words of current section 9(3), transfers the powers and duties of the chairperson to the vice-chairperson in the event of the chairperson's absence, incapacity or vacancy.

Clause 253 amends section 14, which lists the responsibilities of the governing council, to remove the restrictions on the areas in which the governing council can make policies.

Clause 254 amends section 15, the delegation of powers provision, by separating the section into subsections (1) and (2) to deal with delegation and limits on delegation respectively. As well, the amendment limits the delegation authority to members of the governing council and its committees or to the CIHR's president and removes references to "a Health Research Institute, an Advisory Board or a Scientific Director" from the section.

Clause 255 amends section 20(1)(a) of the CIHRA to specify that the governing council of the CIHR will establish, maintain and terminate Health Research Institutes, instead of referring to "divisions of the CIHR, to be called Health Research Institutes."

2.6.11 Division 11: Amendments to the *Red Tape Reduction Act*

In 2015, Parliament adopted the *Red Tape Reduction Act* (RTRA),[49] which seeks to control the administrative cost to businesses of complying with federal regulations by establishing rules for the amendment or introduction of regulations. More specifically, the RTRA legislated the "one-for-one rule" that had been implemented through a Cabinet directive on regulatory management since 2012.

According to section 5(1) of the RTRA, if a regulation is made that imposes a new administrative burden on a business, one or more existing regulations must be amended or repealed to offset the cost of the new burden. Section 5(2) adds that

where a new regulation does not simply amend an existing regulation, an existing regulation must be repealed, unless a regulation has already been repealed in accordance with section 5(1).

Division 11 of Part 6 of the bill amends the RTRA to permit the administrative burden imposed by a new regulation to be offset by the reduction of another administrative burden imposed by a regulatory instrument in another jurisdiction, if the reduction is the result of regulatory cooperation agreements.

Clause 257(2) adds to the preamble to the RTRA the notion that the one-for-one rule should take into account regulatory cooperation between the Government of Canada and other jurisdictions.

Clause 258(1) clarifies that the definition of "administrative burden" in section 2 of the RTRA includes anything that is necessary to show compliance with a regulatory instrument.

Clause 258(2) adds to section 2 of the RTRA a definition for a new term, "other jurisdiction," which includes:

- a province;
- a municipality in Canada or a municipal or other public body performing a function of government in Canada;
- a foreign state or a subdivision of a foreign state; and
- an international organization or association of states.

The clause also defines a "regulatory instrument" as an instrument issued in the exercise of legislative power by any other jurisdiction.

Clause 261 adds section 5.1 to the RTRA, allowing the cost of all or a portion of a new administrative burden to be offset against the cost of all or a portion of an existing administrative burden imposed by a regulatory instrument if:

- the administrative burden is reduced or eliminated as a result of the making, amendment or repeal of the regulatory instrument; and
- the making, amendment or repeal of the regulatory instrument is the result of an agreement between the Government of Canada or any of its institutions and the other jurisdiction relating to the promotion of cooperation in the design, monitoring, enforcement or review of regulations.

Clause 264 stipulates that the amendments come into force on a day to be fixed by order of the Governor in Council.

2.6.12 Division 12: Transfer of Employees and Disclosure of Information to the Communications Security Establishment

As part of Budget 2018, the government announced a total of $507.7 million in funding over five years to improve cybersecurity. This investment has three objectives:

- supporting Canada's new National Cyber Security Strategy ($236.5 million);
- creating the National Cybercrime Coordination Unit, led by the Royal Canadian Mounted Police ($116 million); and
- creating the Canadian Centre for Cyber Security ($155.2 million).

The new Canadian Centre for Cyber Security will be part of the Communications Security Establishment (CSE).

Clause 265 provides for the transfer to the CSE of federal government employees currently responsible for cybersecurity (that is, employees of the Canadian Cyber Incident Response Centre of the Department of Public Safety and Emergency Preparedness and of Shared Services Canada's Security Operations Centre). The bill specifies that this transfer does not change the terms and conditions of employment of these employees.

Clause 266 provides that the Minister of Public Safety and Emergency Preparedness and the Minister designated for the purposes of the *Shared Services Canada Act* may disclose to the CSE the cybersecurity information they possess.

Clause 267 provides that Division 12 will come into force by order of the Governor in Council.

2.6.13 Division 13: Amendments to the *Department of Employment and Social Development Act*

Division 13 of Part 6 amends the definitions that apply to the *Department of Employment and Social Development Act* (DESDA)[50] and provides the Minister of Employment and Social Development with legislative authority in relation to service delivery to the public.

Clause 268 of the bill amends the interpretation provision of DESDA by adding to section 2 a definition of "partner entity," which is defined as

- a department, body or parent Crown corporation as referred to in the FAA;
- a provincial government, a public body created by provincial law, or a municipality;
- a council, government or other entity authorized to act on behalf of an Indian band, a First Nation, or an Aboriginal people or an Aboriginal organization that is a party to a land claim agreement (or any other treaty, self-government agreement or settlement agreement); and

- a non-profit corporation performing a function for any of the above-mentioned entities.

Clause 269 adds new section 5.1 to introduce new powers, duties and functions for the Minister of Employment and Social Development that cover the delivery and administration of services and programs with a view to "better serving the needs of Canadians." Specifically, the new section gives the Minister the following powers, among others:

- to provide services and facilities to any partner entity for delivery of programs and services;
- to administer the Government of Canada website; and
- to provide information services relating to programs and services.

Clauses 272, 273 and 274 of the bill add new sections 8, 19.01 and 24.1 to the DESDA to permit the Minister of Employment and Social Development, the Minister of Labour and the Canada Employment Insurance Commission (CEIC), respectively, to collect any business number as defined in section 248(1) of the ITA and use it as an identifier for the administration and enforcement of any Act, program and activity under their responsibilities.

Clause 275 amends DESDA by adding new section 28.5 to enforce section 28.4, which prohibits certain actions with respect to social insurance numbers. New section 28.5 gives the Minister of Employment and Social Development and the CEIC the power to designate an investigator in order to enforce section 28.4. New section 28.5 also provides that an information or a complaint about an offence under Part 3 of DESDA may be heard, tried and determined by any provincial court judge (within the territorial jurisdiction in which the accused is resident, carries on business, or is found, apprehended or in custody), and states that such proceedings must take place within five years of the alleged offence.

Clause 276 adds a definition of "service delivery program" to section 30(1) in Part 4 of DESDA. Clause 277 adds section 34.1 to extend the disclosure of personal information, as defined under section 3 of the *Privacy Act*, to information related to service delivery programs.

Clause 279 replaces section 70.1 in Part 6 of DESDA – which deals with electronic administration and enforcement – to specify that this part applies to any Act, program or activity under the responsibility of the Minister of Employment and Social Development, the Minister of Labour and the CEIC, rather than to specific Acts, programs and activities. Clauses 280 to 282 make amendments related to the changes in section 70.1.

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

Division 14 of part 6 of the bill amends the *Employment Insurance* Act (EIA).[51] The purpose of these amendments is to modify the treatment of earnings received by claimants while they are in receipt of benefits. The amendments will also allow

employment insurance claimants receiving sickness and maternity benefits to keep some employment earnings.

In 2005, a pilot program called "Working While on Claim" allowed some Employment Insurance (EI) claimants to keep more of their weekly benefit despite earning some limited employment income. The program was extended nationally in 2012 and has been renewed.[52] Eligible EI claimants may keep some of their weekly benefit according to either the "default rule" or the "optional rule."

The default rule allows an individual to keep $0.50 of EI benefits for every dollar the individual earns in wages, up to a maximum of 90% of the weekly insurable earnings used to determine the EI benefit. The optional rule allows the individual to keep the equivalent of up to one day's work (defined as $75 or 40% of the individual's EI benefit rate, whichever is greater) without any deduction from weekly EI benefits. Above these limits, earnings are deducted dollar for dollar from the EI benefit.

Clause 285 amends section 19(2) of the EIA to establish the Working While on Claim default rule in the legislation.

Section 13 of the EIA sets out a waiting period of one week before claimants may start to receive EI benefits. Clause 284 adds section 13.1 to the EIA to stipulate that the Working While on Claim default rule does not apply to the one-week waiting period after which claimants may start to receive EI benefits. This new section also provides that during this waiting period a claimant cannot have earnings of more than $50 if the weekly benefit is less than $200 or earnings of greater than 25% of weekly benefits if the weekly benefit is more than $200.

Clauses 286 to 289 amend sections 21(3), 22(5), 152.03(3) and 152.04(4) of the EIA to reflect the expanded eligibility for the Working While on Claim arrangement. The amendments delete the wording in those sections that specifies that the Working While on Claim provisions do not apply to claimants in receipt of maternity and sickness benefits.

Clauses 290 and 291 extend the same Working While on Claim provisions to self-employed persons who are participating in the EI program. New section 152.151(1) specifies that during the one-week waiting period a claimant cannot have earnings of more than $50 if the weekly benefit is less than $200 or earnings greater than 25% of weekly benefits if the weekly benefit is more than $200.

Section 152.18(2) is amended to provide that self-employed beneficiaries, outside of the one-week waiting period, may keep $0.50 of EI benefits for every dollar the individual earns in wages, up to a maximum of 90% of the weekly insurable earnings used to determine the EI benefit. Above this limit any earnings are deducted dollar for dollar.

Clauses 292 to 295 set out transitional provisions that allow some claimants to continue their election of the optional rule until August 2021. Specifically, clause 293 provides that EI benefit claimants eligible to make an election for the optional rule who did not do so before 12 August 2018 may still do so after 11 August 2018 in certain situations. Clause 294 provides that the optional rule continues to apply until

14 August 2021 for those claimants who made such an election before 12 August 2018.

Clause 296 provides that this division comes into force on 12 August 2018. EI regulations governing the Working While on Claim pilot end on 11 August 2018.

2.6.15 Division 15: Amendments to the *Judges Act*

Division 15 of Part 6 of Bill C-74 amends the *Judges Act*[53] to increase the number of federally appointed judges. The amendments are in the same vein as the creation of new judicial positions through the adoption of the *Budget Implementation Act, 2017, No. 1*.[54]

Under sections 9 to 22 of the *Judges Act*, the federal government appoints and remunerates superior court judges in the provinces and territories, as well as judges of the Federal Courts, the Court Martial Appeal Court of Canada, the Tax Court of Canada and the Supreme Court of Canada. Bill C-74:

- creates the position of Associate Chief Justice of the Federal Court (clause 297, amending section 10(c));
- raises the number of judges of the Superior Court of Justice in and for the Province of Ontario from 192 to 198 (clause 298, amending section 12(d)); and
- raises the number of judges of the Court of Appeal for Saskatchewan from six to seven (clause 299, amending section 19(b)).

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. Section 24(4) also provides for the payment of specific additional salaries to allow judges to exercise the jurisdiction of a family court in provinces with unified family courts. Currently, such courts are in Manitoba, New Brunswick, Nova Scotia and Ontario.[55] Clause 300 amends section 24(4) to increase from 36 to 75 the number of additional salaries that may be paid. According to Budget 2018,[56] these 39 positions will support the expansion of the unified family courts of Alberta, Ontario, Nova Scotia, and Newfoundland and Labrador. Clause 309 provides that this amendment will come into force on 1 April 2019.

Clauses 304 to 307 make consequential amendments to the *Federal Courts Act*.[57]

2.6.16 Division 16: Amendments to Certain Acts Governing Federal Financial Institutions and Related Acts

2.6.16.1 Subdivision A – Financial Technology Activities

Subdivision A of Division 16 of Part 6 makes amendments to the *Trust and Loan Companies Act* (TLCA),[58] the *Bank Act*,[59] and the *Insurance Companies Act* (ICA)[60] in order to expand the types of financial technology-related activities in which federally regulated financial institutions can participate.

Clauses 310, 316, 324 and 329 amend section 410 of the TLCA, sections 410 and 539 of the *Bank Act* and section 441 of the ICA, respectively, to allow financial institutions to be involved in and deal with technology-related activities, including activities involving financial services provided by another entity, such as a fintech company, as well as to be able to provide identification, authentication or verification services.

Clauses 311, 314, 317, 320, 325, 330, 333 and 334 amend sections 411 and 483 of the TLCA, sections 411, 495 and 543 of the *Bank Act*, and sections 442, 528 and 542 of the ICA respectively to permit financial institutions to act – subject to the terms, conditions and restrictions set out in regulations – as agents for any persons involved in the provision of financial services. As well, financial institutions can make referrals to or enter into an arrangement with any person with respect to the provision of financial services.

Clauses 312, 318, 321, 326, 331 and 337 amend section 453 of the TLCA, sections 468, 522.08 and 930 of the *Bank Act* and sections 495 and 971 of the ICA, respectively, to allow financial institutions to acquire control of, or acquire or increase a substantial investment in, an entity if the majority of the entity's business consists of financial service activities. These investments are subject to the terms and conditions set out in new regulations. As well, clauses 313, 319, 322, 327, 332, 336 and 338 add similar new provisions to the TLCA, the *Bank Act* and the ICA to give the Governor in Council the power to make new regulations with respect to these investments. For example, clause 322 adds section 522.081 to the *Bank Act* to allow the Governor in Council to make regulations indicating when a foreign bank or an entity associated with a foreign bank can acquire or hold control of, or acquire or hold a substantial investment in, a Canadian entity that engages in financial services activities.

Lastly, clause 341 states that the provisions of this subdivision come into force on days to be fixed by order of the Governor in Council. The exceptions are the provisions in sections 310(2), 316(2), 324(2), 329(2) and 340(1), which came into force when the bill received Royal Assent.

2.6.16.2 Subdivision B – Life Insurance Companies (Infrastructure Investment)

The *Insurance Companies Act* (ICA) restricts the types of investments that federally regulated life insurance companies, insurance holding companies and fraternal benefit societies can hold. Subdivision B of Division 16 of Part 6 allows these entities to have substantial investments in infrastructure assets.

Clause 342 amends section 2 of the ICA to add the terms "infrastructure asset," which is described as a physical asset that supports the delivery of public services, and "permitted infrastructure entity," which is an entity that, in accordance with prescribed conditions, only makes investments in infrastructure assets or engages in any other activity prescribed by regulation. Clause 343 adds section 2.2 to the ICA, allowing the Governor in Council to make regulations prescribing the types of physical assets that meet the definition of "infrastructure asset," the activities in which

a permitted infrastructure entity can engage and the conditions for investments and activities carried out by permitted infrastructure entities.

Clauses 344, 346 and 347 make similar amendments to sections 495, 554 and 971 of the ICA respectively, so that life insurance companies, fraternal benefit societies and insurance holding companies can acquire control of, or acquire or increase a substantial investment in, a permitted infrastructure entity, subject to terms and conditions. Clauses 345, 346(5) and 348 amend sections 501, 554(9) and 997 of the ICA to give the Governor in Council the power to make regulations regarding these terms and conditions.

Clauses 344(4) and 347(4) amend sections 495(9) and 971(7) of the ICA to clarify that life insurance and insurance holding companies do not require the Superintendent of Financial Institution's approval when acquiring control of or acquiring or increasing a substantial investment in an entity whose activities are limited to acquiring or holding shares of permitted infrastructure entities. Similarly, clause 346(4) amends section 554(5) of the ICA so that fraternal benefit societies do not require the Minister of Finance's approval when acquiring control of, or acquiring or increasing a substantial investment in, an entity whose activities are limited to acquiring or holding shares of permitted infrastructure entities.

Clause 349 sets out coordinating amendments that will take effect when the provisions of subdivisions A and B of Division 16 come into force, because some of the clauses in the two subdivisions amend the same provisions in the ICA.

Lastly, clause 350 states that sections 342 to 348 come into force on a day to be fixed by order of the Governor in Council.

2.6.16.3 Subdivision C – Bank Terminology

Section 983 of the *Bank Act* restricts entities that are not banks from using the words "bank," "banker," and "banking" for naming purposes and to describe a business or services. The Office of the Superintendent of Financial Institutions (OSFI) is responsible for enforcing this provision. In general, Subdivision C of Division 16 of Part 6 amends various parts of section 983 to clarify when the terms "bank," "banker," and "banking" can be used and by what types of entities.

Clause 351 adds section 37.01 to the *Office of the Superintendent of Financial Institutions Act*[61] so that upon conclusion of any proceedings involving the violation of section 983 of the *Bank Act*, OSFI must publish the nature of the violation, the name of the person who committed the violation and the amount of penalty imposed by OSFI.

Clause 352(1) amends section 983(2) of the *Bank Act* to add that not only are entities that are not banks not permitted to use "bank," "banker," and "banking" in their names, but they also may not use those terms in a "domain name or an identifying mark." As well, clause 352(2) amends section 983(2.1) to clarify that "bank," "banker," and "banking" cannot be used to describe "products or services or the means by which any of those products or services may be obtained," and adds

section 983(2.11) to provide that a person who causes or authorizes another person to use the words “bank,” “banker,” and “banking” without being in compliance with the *Bank Act* is guilty of an offence.

Clause 352(3) adds sections 983(4.2) and 983(4.3) to the *Bank Act* to expand the list of entities that are permitted to use “bank,” “banker,” and “banking” to include entities incorporated under the TLCA or similar provincial legislation, cooperative credit societies, Alberta Treasury Branches (ATB) Financial and any prescribed entity. Such an entity must meet the requirements set out in section 983(4.3), which include disclosures about the type of entity it is, the jurisdiction under which it is primarily regulated, whether it participates in a deposit insurance system in Canada and any other prescribed information.

Clause 353 adds sections 989.1 to 989.3 to the *Bank Act*, so that OSFI can direct an entity to provide documents to prove it is meeting the requirements set out in section 983(4.3), cease acting in a manner that is prohibited by section 983 and perform any acts necessary to remedy the situation. However, a direction cannot be issued by OSFI without allowing the entity a reasonable opportunity to make representations. Nevertheless, OSFI can issue a temporary direction effective for up to 15 days, which under certain circumstances can be extended, if OSFI is concerned that the time required for the entity to make representations might be prejudicial to the public interest. Lastly, OSFI can apply for a court order if an entity refuses to comply with a direction. The order can be appealed by the entity.

2.6.16.4 Subdivision D – Sunset Provisions

The TLCA, the *Bank Act*, the ICA and the *Cooperative Credit Associations Act*[62] contain a statutory sunset date, after which these statutes are no longer in effect. For this reason, the federal government typically reviews the legislation governing federally regulated financial institutions every five years. The *Budget Implementation Act, 2016, No. 1* extended the sunset provision dates in these Acts from 29 March 2017 to 29 March 2019.[63]

Clauses 354, 355, 356, 357 and 358 of Subdivision D of Division 16 of Part 6 amend section 20 of the TLCA, sections 21 and 670 of the *Bank Act*, and sections 21 and 707 of the ICA respectively to extend the sunset date provisions to “the fifth anniversary of the day on which the Budget Implementation Act, 2018, No. 1 receives royal assent,” which would be in 2023. The sunset clause in the *Cooperative Credit Associations Act* is not amended and consequently, this statute will no longer be in effect after 29 March 2019.

2.6.17 Division 17: Amendments to the *Western Economic Diversification Act*

Clause 359 of Bill C-74 amends section 6(1)(f) of the *Western Economic Diversification Act*[64] to remove the requirement that the minister responsible for Western Economic Development Canada (currently, the Minister for Innovation, Science and Economic Development) obtain Governor in Council approval before entering into agreements with provinces or their agencies.

2.6.18 Division 18: Amendments to the *Parliament of Canada Act*

Section 57(1) of the *Parliament of Canada Act* (PCA)[65] states that a member of either House of Parliament who is absent from the Chamber for more than 21 sitting days per session will see the following pay cuts:

- for senators (as provided by regulations under the Act): $250 a day; and
- for members of Parliament: $120 a day.

Absences due to public or official business, illness or service in the armed forces are not counted towards total absences. Section 59 of the PCA allows the Senate or the House of Commons to make regulations to make the attendance provisions more stringent.

There is currently no mention of pregnancy or parental leave as a reason for being absent. In November 2017, the report of the House of Commons Standing Committee on Procedure and House Affairs entitled *Support for Members of Parliament with Young Children* recommended that the PCA be amended so that maternity and parental leave count as being in attendance when calculating a member's total absences.[66]

Clause 360 of Bill C-74 adds section 59.1 to the PCA to allow the Senate and the House of Commons to make regulations relating to the attendance of members, and to resulting pay deductions, where members are absent due to pregnancy or parental leave. New regulations could provide the conditions, including rates of pay, for parliamentarians to take maternity or parental leave.

2.6.19 Division 19: Amendments to the *Canada Pension Plan*

Division 19 of Part 6 amends the *Canada Pension Plan*[67] in order to eliminate age-based restrictions on the survivor's pension, fix the amount of the death benefit at $2,500, create a post-retirement disability benefit, change the rules for calculating additional Canada Pension Plan (CPP) retirement benefits for individuals who are disabled or parents with lower earnings during child-rearing years, maintain portability between the CPP and the Québec Pension Plan (QPP) and authorize the making of regulations regarding adjustments to additional CPP contributions rates and benefits. According to the Department of Finance Canada, these changes do not require increases to contribution rates.[68]

2.6.19.1 Eliminating Age-Based Restrictions on the Survivor's Pension

The CPP's monthly survivor benefit is paid to the surviving spouse or common-law partner of a deceased contributor. The amount of the survivor benefit is reduced by 1/120 for each month – or 10% per year – that the survivor is under age 45, meaning that no benefit is paid if the survivor is under age 35, unless the survivor is disabled or has dependent children.

Current section 44(1)(d) of the *Canada Pension Plan* sets out eligibility requirements for the survivor benefit. Clause 372(1) of Bill C-74 amends that section to remove

age-based requirements after 2018. Under the amended section, a survivor of a deceased contributor is eligible for the survivor benefit if the contributor has made base contributions for at least the minimum qualifying period.

Current section 58 of the *Canada Pension Plan* provides the rules for calculating the amount of the survivor benefit. Clause 383 adds section 58(1)(a.1), which provides for the calculation of a survivor benefit payable after December 2018. Under this new section, a survivor benefit is not reduced if the survivor is under age 45.

Clause 392 amends section 72 of the *Canada Pension Plan*, which contains rules regarding when a survivor benefit begins to be paid, to account for the removal of the age-based restrictions for survivor benefits paid after December 2018.

2.6.19.2 Fixing the Amount of the Death Benefit at $2,500

The CPP's death benefit is a lump sum amount paid to the estate of a deceased contributor. The amount is equal to six times the amount of the contributor's monthly retirement pension, up to a maximum of $2,500, as provided by current section 57 of the *Canada Pension Plan*. Clause 382 amends section 57 so that the amount of a death benefit payable to the estate of an eligible contributor who died after December 2018 is $2,500, regardless of the amount of the contributor's monthly retirement pension.

2.6.19.3 Providing a Benefit to Disabled Retirement Pension Beneficiaries Under the Age of 65

Clause 372(4) adds section 44(1)(h), which provides for the payment of a new post-retirement disability benefit to a beneficiary of a retirement pension who is under age 65, disabled, and who has made base contributions for at least the minimum qualifying period, or is a contributor to whom a post-retirement disability benefit would have been payable at the time the beneficiary was deemed to have become disabled under certain circumstances.

Clause 372(7) adds section 44(4), which provides for the calculation of the minimum qualifying period. The new section states that a contributor must have made base contributions on earnings that are greater than the basic exception, which is $3,500 in 2018:

- during at least four of the last six years;
- for at least 25 years, of which three are in the last six years; or
- for each year after the month the contributor's previous disability pension or post-retirement disability benefit ceased to be paid.

Clause 385 adds section 59.2, which provides for the calculation of the amount of the post-retirement disability benefit. The new section states that the post-retirement disability benefit in 2019 will be a monthly amount of $485.20 multiplied by the ratio of the Pension Index for 2019 to the Pension Index of 2018, which are based on the

Consumer Price Index (CPI); for subsequent years, the monthly amount is adjusted to variations in the CPI in the same manner.

Clause 389 adds sections 70.01 and 70.02, which contain rules regarding when a post-retirement disability benefit begins and ceases to be payable. These new provisions largely reflect existing provisions applicable to the disability pension.

Current section 70.1 of the *Canada Pension Plan* sets out rules for the reinstatement of the disability pension and the disabled contributor's child benefit in certain situations. Clause 390 amends that section so that the reinstatement rules also apply to the post-retirement disability benefit.

Clause 383(4) amends section 58 to provide for the calculation of the amount of the survivor benefit when a survivor receives a post-retirement disability benefit.

2.6.19.4 Calculating Additional Canada Pension Plan Benefits for Individuals Who Are Disabled

Current section 51 of the *Canada Pension Plan* provides the rules for calculating the amount of first and second additional pensionable earnings for a month, which are used to calculate the amounts of first additional monthly pensionable earnings and second additional monthly pensionable earnings. The additional CPP retirement benefits are calculated as 8.33% of first additional monthly pensionable earnings and 33% second additional monthly pensionable earnings.

Clause 373 amends section 51(1) so that the amounts of first and second additional pensionable earnings for the months during which the contributor is considered to be disabled are calculated in a certain manner. Clause 374 adds formulas in new sections 51.1 and 51.2 for calculating a value used under section 51(1) to determine first and second additional pensionable earnings during months where a person is considered to be disabled.

Generally, the result of these changes is that the amounts of first and second additional pensionable earnings for the months during which a contributor is considered to be disabled are equal to 70% of the average of the contributor's first and second additional pensionable earnings over the six-year period preceding the onset of the disability. This increases the amount of additional CPP retirement benefits paid to disabled contributors.[69]

2.6.19.5 Calculating Additional Canada Pension Plan Benefits for Parents with Lower Earnings During Child-Rearing Years

Current sections 53.1(1) and 53.2(1) of the *Canada Pension Plan* contain the rules for calculating the amount of first and second additional unadjusted pensionable earnings, which are used to calculate the amount of first and second additional pensionable earnings under current section 51.

Clauses 378 and 379 amend sections 53.1(1) and 53.2(1), and clause 380 adds sections 53.3 to 53.6 so that for a year in which a contributor receives the Canada

Child Benefit for a child under age seven, an amount of first additional unadjusted pensionable earnings and an amount of second additional unadjusted pensionable earnings are calculated in accordance with formulas contained in new sections 53.3 and 53.4 and attributed to the contributor. These amounts replace the amounts calculated under sections 53.1(1) and 53.2(1) if they are greater than those amounts and greater than the basic exemption.

Generally, the result of these changes is that the amounts of first and second additional unadjusted pensionable earnings for the years during which a contributor receives the Canada Child Benefit for a child under age seven are equal to the average of such earnings during the five-year period preceding the birth or adoption of the child to the extent that they are greater than the actual amounts of the first and second additional unadjusted pensionable earnings during the five-year period. These changes increase the amounts of additional CPP retirement benefits paid to parents who stop working or reduce work hours to take care of their children.[70]

2.6.19.6 Maintaining Portability Between the *Canada Pension Plan* and the *Act respecting the Québec Pension Plan*

On 22 February 2018, Quebec's Bill 149, An Act to enhance the Québec Pension Plan and to amend various retirement-related legislative provisions, came into force.[71] This legislation made changes to the QPP that are similar to those that were made to the CPP by *An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act*.[72] Clauses 362 to 364, 366 to 370, 375 to 381, 383, 384 and 395 to 398 of Bill C-74 amend various provisions of the *Canada Pension Plan*, apparently in order to maintain portability between the CPP and QPP following the adoption of Bill 149.

2.6.19.7 Changing the Rules Regarding Adjustments to Additional Canada Pension Plan Contributions Rates and Benefits

Current sections 113.1(11.141) to 113.1(11.145) of the *Canada Pension Plan* set out the rules regarding adjustments to additional CPP contribution rates and benefits if either of the following values are not within a range set out in regulations to the *Canada Pension Plan* (such regulations have not yet been put in place):

- the difference between the first additional contribution rate calculated in the most recent report of the Chief Actuary and the first additional contribution rate for self-employed persons in a prescribed year; and
- the difference between the second additional contribution rate calculated in the most recent report of the Chief Actuary and the second additional contribution rate for self-employed persons in a prescribed year.

Clause 401 amends section 113.1(11.141) to change the conditions under which adjustments to additional CPP contribution rates and benefits are required. For example, one of the new conditions is that the difference between the first additional contribution rate calculated in the most recent report of the Chief Actuary and the first additional contribution rate for self-employed persons in a given year must be within a range set out in regulations to the *Canada Pension Plan*.

Clause 401 also adds section 113.1(11.146), which requires that the regulations related to the calculation of first and second additional contribution rates under section 113.1(11.141) and in the report of the Chief Actuary are to be part of the first triennial review of the CPP after 2027 and every third review that follows. The new section also allows federal and provincial finance ministers to make recommendations as to whether any of those regulations should be amended, as part of any such review.

2.6.19.8 Coming into Force

Clause 402 states that current section 114(2) of the *Canada Pension Plan*, which relates to the effective date of major amendments, does not apply for Division 19 and that this division comes into force on a day to be fixed by order of the Governor in Council, with the exception of clauses 361(1), 361(2), 365, 371, 372(3), 372(5), 372(6), 392(1), 399(2) and 401(3). These clauses came into force when the bill received Royal Assent.

2.6.20 Division 20: *Criminal Code* Remediation Agreements

Division 20 of Part 6 adds Part XXII.1 to the *Criminal Code*[73] to provide for a remediation agreement – also known as a “deferred prosecution agreement” – for organizations accused of certain economic offences under the *Criminal Code*. These offences are set out in Schedule 6 of Bill C-74. They include possession of stolen property, **laundering proceeds of crime,** fraud, insider trading and bribery of a foreign public official.

A remediation agreement is an agreement between an “organization” (defined in new section 715.3 of the Code) accused of having committed an offence and a prosecutor, through which criminal charges are suspended if the organization complies with the terms of the agreement. New section 715.4(2) of the Code states that if the organization complies with those terms, the charges are dropped and no other prosecution may be initiated against the organization for the same offence.

At present, extrajudicial measures mainly apply to first-time, non-violent offences committed by individuals.[74] As provided in new section 715.31 of the Code, remediation agreements are intended only for organizations and have a number of purposes, including the following:

- making it easier to impose penalties (fines, forfeitures and restitution to victims) on an organization accused of economic crime;
- encouraging voluntary disclosure of wrongdoing by executives or employees of the organization;
- spurring a culture change in the organization; and
- reducing the collateral damage that a criminal prosecution (and potential bankruptcy) would cause to innocent third parties (employees, pensioners, shareholders, investors, etc.).

These are the same reasons that deferred prosecution agreements were introduced in the United States in the 1990s. The number of such agreements increased

considerably with the financial scandals of the 2000s, particularly after the loss of 75,000 jobs in the wake of the Enron affair. However, unlike in the United States, where these agreements are the product of directives from the Attorney General, in Canada, provision for similar remediation agreements is expressly included in legislation.

Under new section 715.32(1) of the Code, a remediation agreement may be considered only if it is in the public interest to enter into such an agreement. Moreover, the Attorney General must have consented to the agreement, and there must be a reasonable prospect of convicting the organization.

The factors to consider in assessing the public interest are provided in new section 715.32(2). In short, the issue is the degree of culpability and cooperation exhibited by the organization. New section 715.32(3) provides that, except in the case of a charge of corrupting a foreign public official, the prosecutor may consider the national economic interest in deciding whether to enter into a remediation agreement with the accused organization.

During a federal government consultation in the fall of 2017, opponents of this new regime said that they feared that remediation agreements could be perceived as a way of favouring large companies and would undermine public confidence (the "too big to jail" argument).[75] Others pointed out that the new regime would alter the primary role of the prosecutor, which is to bring criminal cases to trial, especially where remediation agreements provide for corrective corporate measures (the "prosecutors in the boardroom" argument).

To minimize these effects, the bill includes two important measures: the possibility of the appointment of an independent monitor (new section 715.34(3)(c)) and the requirement of court approval of the remediation agreement (new section 715.37).

As stated in new section 715.34(3)(c) of the Code, the independent monitor is appointed with the prosecutor's approval, and under new section 715.43(1), the monitor must possess the technical expertise necessary to verify that the organization is adhering to the compliance measures imposed by the remediation agreement. Note that the appointment and compensation of the independent monitor were key concerns in the United States. New section 715.43(1) provides that the selection process for monitors will be established by regulation.

As for the issue of the role of the courts, Bill C-74 draws mainly from the United Kingdom model, where deferred prosecution agreements and their terms must be approved by a judge.[76] In the United States, no formal role was granted to the courts, for fear of slowing the system and creating uncertainty about the validity of the agreements.

In Canada, under new section 715.37(3) of the Code the court must, for example, consider restitution to victims, and under new section 715.37(6)(c), it must ensure that the terms of the remediation agreement are proportionate to the gravity of the offence. The negotiated penalty must therefore be a deterrent in order to prevent remediation agreements from becoming simply a "cost of doing business."

For the purposes of transparency and general deterrence, new section 715.42 of the Code also provides that the court must in most cases publish the text of the remediation agreement.

Pursuant to new section 715.39 of the Code, if the court is satisfied that the organization has breached the remediation agreement, it must terminate the agreement and may recommence criminal proceedings. Under new section 715.34(2), only an admission or confession contained in the final text of the agreement will be admissible in evidence.

NOTES

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• Elizabeth Cahill	Section 2.6.14
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• Maxime Charron-Tousignant	Section 2.6.15
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• Dillan Theckedath	Section 2.6.17
• Dominique Valiquet	"Background" section and sections 2.6.12 and 2.6.20
• Adriane Yong	Section 2.6.16

1. *Veterans Well-being Act*, S.C. 2005, c. 21.
2. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

3. “Adjusted aggregate investment income” is defined as “aggregate investment income” – found in section 129(4) of the *Income Tax Act* [ITA] – but excludes any capital gains or losses realized on the disposition of “active assets,” net capital losses carried over from another year and any amount in respect of foreign taxes paid on foreign accrual property income; additionally, adjusted aggregate investment income will include dividends from non-connected corporations, income from a specified investment business and income from savings in certain life insurance policies. “Aggregate investment income” is generally equal to the sum of the corporation’s total net capital gains and net income. “Active asset” is defined as an asset that was used in an active business carried on primarily in Canada, a qualified small business corporation share under section 110.6(1) of a connected corporation, or a certain interest in a partnership.

4. Section 125(5.1) of the ITA also reduces the business limit of a Canadian-controlled private corporation on a straight line basis where its “taxable capital employed in Canada” exceeds $10 million, up to $15 million, where the business limit becomes zero. Taxable capital employed in Canada can be roughly described as the total of its shareholder’s equity, surpluses and reserves, and loans and advances to the corporation, less certain investments.

5. For a definition of “aggregate investment income” – found in section 129(4) of the ITA – see endnote 3.

6. The tax system has two dividend tax credit rates and gross-up factors to recognize the two different corporate income tax rates that generally apply to corporations. The enhanced dividend tax credit and gross-up are applied to dividends distributed to an individual from corporate income taxed at the general corporate tax rate (eligible dividends). The ordinary dividend tax credit and gross-up are applied to dividends distributed to an individual from corporate income not taxed at the general corporate tax rate (ineligible dividends).

7. “Related business” is defined in section 120.4(1) of the ITA and generally refers to a business in respect of which a Canadian resident who is related to the individual is sufficiently connected, either by being actively involved in the business or by having a significant capital interest in the entity carrying on the business.

8. An individual may shelter capital gains realized on the disposition of qualified small business shares up to a lifetime limit, which is indexed to inflation. In general terms, qualified small business shares are shares of a Canadian-controlled private corporation that have been owned by the taxpayer or the taxpayer’s spouse or common-law partner throughout the 24 months prior to the sale, and more than 50% of the fair market value of the assets of the corporation must be attributable to assets used principally in an active business in Canada throughout the 24-month period prior to the sale. In the case of capital gains realized on the disposition of qualified farm or fishing property made after 20 April 2015, the lifetime capital gains limit is the greater of $1 million and the indexed lifetime limit for qualified small business shares. Qualified farm or fishing property is property that is used in the course of carrying on the business of farming or fishing and includes real property (e.g., land and buildings), fishing vessels, a share of the capital stock of a family farm corporation or a family fishing corporation of an individual or the individual’s spouse or common-law partner, an interest in a family farm partnership or a family fishing partnership of an individual or an individual’s spouse or common-law partner, and eligible capital property.

9. “Excluded business” is defined in section 120.4(1) of the ITA and generally refers to a business in respect of which the individual has made a sufficient labour contribution. To meet the definition, the contribution must be at minimum an average of 20 hours per week during the portion of the taxation year that the business operates, or must meet that requirement in any five of the prior calendar years.

10. "Excluded shares" is defined in section 120.4(1) of the ITA to include a share of a corporation if all of the following conditions are met: less than 90% of the business income of the corporation is from the provision of services; the corporation is not a professional corporation, as defined in section 248(1); the individual owns 10% or more of the corporation's capital stock shares; and the income of the corporation is not derived directly or indirectly from another related business.
11. *Income Tax Regulations*, C.R.C., c. 945.
12. *Excise Act*, 2001, S.C. 2001, c. 22.
13. Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts, 1st Session, 42nd Parliament.
14. Department of Finance Canada, *Equality + Growth: A Strong Middle Class*, Budget 2018 [Budget 2018], 27 February 2018, p. 177.
15. *Excise Tax Act*, R.S.C. 1985, c. E-15.
16. Veterans Affairs Canada, *Rehabilitation services and vocational assistance*.
17. *Veterans Well-being Regulations*, SOR/2006-50.
18. Veterans Affairs Canada, "Income Replacement Benefit," *Factsheet*.
19. The Supplementary Retirement Benefit pays an amount equal to 2% of the total amount of the Earnings Loss Benefit paid to the Canadian Forces member or veteran, or on behalf of that person, with no prescribed reduction. It is paid to, among others, survivors of veterans who died before the age of 65 for a reason unrelated to their service and who were receiving the Earnings Loss Benefit at the time of their death, veterans who cease to receive the Earnings Loss Benefit when they reach 65 and survivors who cease to receive the Earnings Loss Benefit because the deceased veteran would have turned 65.
20. Veterans Affairs Canada, *Rates*.
21. Ibid.
22. The Canadian Forces Income Support Benefit is a benefit of last resort based on family income that is set under Part 2 of the VWBA.
23. Government of Canada, *Pan-Canadian Framework on Clean Growth and Climate Change*.
24. Government of Canada, "Pan-Canadian Approach to Pricing Carbon Pollution," Backgrounder.
25. Government of Canada, *Technical paper: federal carbon pricing backstop*.
26. Ibid.
27. Ibid.
28. Ibid.
29. Government of Canada, *Carbon pricing: regulatory framework for the output-based pricing system*.
30. Government of Canada, *Technical paper: federal carbon pricing backstop*.
31. Ibid.
32. *Financial Administration Act*, R.S.C. 1985, c. F-11.
33. Department of Finance Canada, *Deposit Insurance Review: Consultation Paper*, 16 September 2016, p. 15.
34. *Canada Deposit Insurance Corporation Act*, R.S.C. 1985, c. C-3.
35. *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.

36. *Bank of Canada Act*, R.S.C. 1985, c. B-2.

37. *Currency Act*, R.S.C. 1985, c. C-52.

38. Bank of Canada, *Regulatory Oversight of Designated Clearing and Settlement Systems*.

39. Financial Stability Board, *Key Attributes of Effective Resolution Regimes for Financial Institutions*.

40. Department of Finance Canada, *Building a Strong Middle Class*, Budget 2017, 22 March 2017, p. 212.

41. *A second Act to implement certain provisions of the budget tabled in Parliament on March 22, 2017 and other measures*, S.C. 2017, c. 33, Division 6 of Part 5, p. 246.

42. *Payment Clearing and Settlement Act*, S.C. 1996, c. 6, Sch.

43. *Canadian International Trade Tribunal Act*, R.S.C. 1985, c. 47 (4th Supp.)

44. *Canadian High Arctic Research Station Act*, S.C. 2014, c. 39, s. 145.

45. Budget 2018, p. 99.

46. *Game Declared in Danger of Becoming Extinct*, C.R.C., c. 1236.

47. Budget 2018, p. 135.

48. *Canadian Institutes of Health Research Act*, S.C. 2000, c. 6.

49. *Red Tape Reduction Act*, S.C. 2015, c. 12.

50. *Department of Employment and Social Development Act*, S.C. 2005, c. 34.

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

52. The Working While on Claim pilot, extended in 2015, is scheduled to end in August 2018. For more information on the Working While on Claim pilot project see André Léonard, “5. Earnings Permitted While Receiving Benefits,” *Employment Insurance: Ten Changes in 2012–2013*, Publication no. 2013-03-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 23 January 2013.

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

54. *Budget Implementation Act, 2017, No. 1*, S.C. 2017, c. 20, Part 4, Division 10. The Act raised the number of judges of the Alberta Court of Queen’s Bench from 57 to 68, and of the Supreme Court of Yukon from one to two. Furthermore, the number of additional judges who may be appointed under section 24 of the *Judges Act* was raised from 13 to 16 in the case of appellate court judges and from 50 to 62 in the case of superior court judges. These amendments came into force on 29 September 2017 following the adoption of an Order in Council (see Government of Canada, PC Number 2017-1217 (Order in Council), 29 September 2017).

55. Office of the Commissioner for Federal Judicial Affairs Canada, *Number of Federally Appointed Judges as of April 1, 2018*, accessed 5 April 2018.

56. Budget 2018, p. 194.

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