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LEGISLATIVE SUMMARY

BILL C-97:
AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 19, 2019 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**.

Legislative Summary of Bill C-97
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-97: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON MARCH 19, 2019 AND OTHER MEASURES*

1 BACKGROUND

Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures (short title: Budget Implementation Act, 2019, No. 1), was introduced and read for the first time in the House of Commons on 8 April 2019.[1]

On 30 April 2019, 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 29 May 2019, and the bill was passed by the House of Commons on 6 June 2019. That day, it received first reading in the Senate; it passed second reading and was referred to the Standing Senate Committee on National Finance on 10 June 2019. The committee reported the bill without amendment on 13 June 2019, and the Senate passed the bill on 20 June 2019. It received Royal Assent on 21 June 2019.

As the bill's short and long titles suggest, the purpose of Bill C-97 is to implement the government's overall budget policy, presented to the House of Commons on 19 March 2019.

Bill C-97 has four parts:

- Part 1 implements income tax and related measures, such as measures concerning zero-emission vehicles, cannabis for medical purposes, training and mineral exploration tax credits, the Home Buyers' Plan and the effects of social assistance payments (clauses 2 to 69).
- Part 2 implements certain goods and services tax/harmonized sales tax measures respecting the health care sector and expenses on zero-emission vehicles (clauses 70 to 80).
- Part 3 concerns the federal excise duty on edible cannabis, cannabis extracts and cannabis topicals (clauses 81 to 86).
- Part 4, which is subdivided into 44 divisions and subdivisions, implements various measures, including amendments to such legislation as the following:
    - *Canada Business Corporations Act* (Subdivision A of Division 2, clauses 98 to 102);
    - *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Subdivision C of Division 2, clauses 104 to 111);

- *Old Age Security Act* (Division 7, clause 156);
- *Food and Drugs Act* (Subdivision C of Division 9, clauses 163 to 184);
- *Pilotage Act* (Division 11, clauses 225 to 269); and
- *Immigration and Refugee Protection Act* (Division 16, clauses 301 to 310).

Part 4 also enacts new legislation, including the following:

- Security Screening Services Commercialization Act (Division 12, clause 270);
- College of Immigration and Citizenship Consultants Act (Division 15, clauses 291 and 292);
- National Housing Strategy Act (Division 19, clauses 313 and 314);
- Poverty Reduction Act (Division 20, clauses 315 to 317); and
- Federal Prompt Payment for Construction Work Act (Division 26, clauses 387 and 388).

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 AND RELATED MEASURES PROPOSED IN THE 2019 BUDGET

2.1.1 Expansion of First-Year Capital Cost Allowance Rate for Zero-Emission Vehicles

Schedule II to the *Income Tax Regulations* (ITR)[2] lists the various classes of property for the purposes of the capital cost allowance (CCA). Part of the capital cost of depreciable property is deductible as CCA each year. In general, the CCA rate is 50% of the normal value of a property in the year it is acquired. The CCA rates that apply to each class of property are set out in section 1100 of the ITR.

Clause 52(1) of Bill C-97 adds to section 1100(1)(a) of the ITR two property classes for zero-emission vehicles, as well as their CCA rates: class 54 (CCA rate of 30%) and class 55 (CCA rate of 40%).

Clauses 43(4) and 53(4) add, respectively, the definition of "zero-emission vehicle" to section 248(1) of the *Income Tax Act* (ITA),[3] and regulations that apply to zero-emission vehicles to section 1102 of the ITR. The new definition specifies that a zero-emission vehicle must be a vehicle that is a plug-in hybrid equipped with a battery of at least 7 kWh, or a fully electric or hydrogen-fuelled vehicle.

Clause 63 adds to Schedule II to the ITR clarifications regarding the property included in new CCA classes 54 and 55.

New class 54 includes zero-emission vehicles that would otherwise be included in ITR classes 10 (automobiles and other motor vehicles) and 10.1 (passenger vehicles of more than $30,000). Clauses 2 and 59 amend, respectively, section 13(7) of the ITA and section 7307 of the ITR to limit to $55,000 the CCA amount applicable to every passenger vehicle in class 54.

New CCA class 55 includes zero-emission vehicles that would otherwise be included in CCA class 16 (tractors, heavy trucks and taxis).

Clause 52(6) amends section 1100(2) of the ITR to establish a temporary CCA rate of 100% as of the acquisition year of property included in new classes 54 and 55 for the period from 19 March 2019 to 31 December 2023. The CCA rate will fall to 75% for years 2024 and 2025 and to 55% for 2026 and 2027. The CCA rates provided in clause 52(1) for classes 54 and 55 will apply thereafter.

Clauses 3, 7, 8, 10 and 53 make coordinating amendments so that zero-emission vehicles are given the same tax treatment as other vehicles in certain circumstances.

2.1.2 Expansion of Tax Incentives for Donations of Cultural Property

Enhanced tax incentive measures are provided to individuals and corporations that give cultural property to certain designated institutions or public authorities in Canada, including some museums.[4] For an object to be eligible for incentive measures, the Canadian Cultural Property Export Review Board must establish that it is of "outstanding significance" and of "national importance" based on criteria set out in section 11(1) of the *Cultural Property Export and Import Act*. In a recent decision, the Federal Court ruled that, to meet the "national importance" criterion, cultural property must have a direct connection with Canada's cultural heritage.[5]

Clauses 4, 13 and 16 of Bill C-97 amend the ITA to eliminate references to the criterion "national importance" for the purposes of the various incentive measures respecting gifts of cultural property, which are, respectively, the following:

- the capital gains exemption for individuals and corporations provided in section 39(1)(a)(i.1) of the ITA;
- the deduction for the monetary value of gifts of cultural property for corporations provided in section 110.1(1)(c) of the ITA; and
- the tax credit for gifts of cultural property for individuals provided in section 118.1(1) of the ITA.

Clauses 48 and 49 amend sections 32(1) and 33(1) of the *Cultural Property Export and Import Act* so that the Canadian Cultural Property Export Review Board no longer considers the "national importance" criterion in determining whether an object constitutes cultural property for the purposes of the various enhanced incentive measures in the ITA.

2.1.3 Expansion of First-Year Capital Cost Allowance Rates for Certain Depreciable Capital Property

Clause 52(2) amends section 1100(1)(b)(i) of the ITR to create the "accelerated investment incentive," which provides enhanced deductions for certain eligible property.

Clause 55(1) adds to the ITR new section 1104(4), which defines "accelerated investment incentive property" as property that, among other things, must have been acquired by a taxpayer after 20 November 2018 and become available for use before 2028.

Clause 52(6) amends section 1100(2) of the ITR respecting the accelerated investment incentive in order to do the following:

- suspend the half-year rule for property eligible for the CCA; and
- enhance the CCA rate prescribed by the ITR by 50%.

The accelerated investment incentive does not apply to property in classes 53 (manufacturing and processing machinery and equipment), 54 and 55 (zero-emission vehicles), and 43.1 and 43.2 (clean energy equipment) of the ITR. This property is instead eligible for the full expensing measure, equivalent to a 100% depreciation rate.

Clause 52(6) also amends section 1100(2) of the ITR to make clean energy equipment and machinery and equipment used primarily to manufacture or process goods eligible, under certain conditions, for an accelerated CCA of 100% as of the first year if this property is acquired after 20 November 2018 and becomes available for use before 2023. The CCA rate of 100% applies as of the year the property is put to use. The CCA rate is reduced to 75% for the years 2024 and 2025 and to 55% for 2026 and 2027.

2.1.4 Non-taxability and Other Treatment of Certain Social Assistance Payments

Some provinces and territories provide financial support, in certain circumstances, to a child's extended family members (such as grandparents) in order to help them cover the costs of caring for and bringing up the child. These payments can reduce the amounts payable, under certain social assistance programs, to those who care for children.

Clause 9 adds section 81(1)(h.1) to the ITA to exempt from an individual's income federal or provincial social assistance payments received as part of a means, needs or income test, when these payments are temporary and for the care and upbringing of a child.

Clause 20 adds section 122.7(1.2) to the ITA to clarify that an individual may qualify as a parent of a dependant for the purpose of the Canada Workers Benefit even if that individual receives social assistance payments for the dependant under a federal or provincial program. Parents of eligible dependants may receive higher Canada Workers Benefit payments than single individuals.

These changes do not apply to payments made under the *Children's Special Allowances Act* (e.g., for a foster person), as they are governed by other provisions of the ITA. In addition, these provisions apply only to payments made to individuals who fill the role of parent as described in section 252(1) of the ITA. These amendments are deemed to have come into force on 1 January 2009.

2.1.5 Removal of Taxable Income in the Determination of the Expenditure Limit for the Enhanced Scientific Research and Experimental Development Tax Credit

The Scientific Research and Experimental Development Program is a tax incentive program administered by the Canada Revenue Agency (CRA) to encourage businesses of all sizes to invest in scientific research and experimental development (SR&ED) activities. The program has two components: a business income tax deduction for qualifying SR&ED expenditures and an investment tax credit for these expenditures. The non-refundable tax credit is worth up to 15% of all qualifying expenditures, but any Canadian-controlled private corporation (CCPC) is eligible for an enhanced refundable tax credit of 35% on up to $3 million of qualifying expenditures.

However, the enhanced refundable tax credit for CCPCs is gradually phased out based on two factors: when the CCPC's taxable income for the previous taxation year exceeds $500,000 and when its taxable capital employed in Canada for the previous taxation year exceeds $10 million.

Bill C-97 amends the ITA to repeal the use of taxable income as a factor in determining the maximum amount of the enhanced refundable tax credit for qualifying SR&ED expenditures. As a result, the full 35% tax credit will be available to all CCPCs (regardless of their income), provided that their taxable capital is no more than $10 million.

Clause 24(3) amends section 127(10.2) of the ITA to remove taxable income as a factor in determining the maximum amount of the enhanced refundable tax credit for SR&ED expenditures. Clauses 11(3), 12(1) and 24(4) repeal, respectively, sections 87(2)(oo), 88(1)(e.8) and 127(10.6)(c) of the ITA, which are no longer necessary with the adoption of this tax measure.

In addition, clause 11(1) amends section 87(2)(j.6) of the ITA so that, when multiple corporations amalgamate, the new corporation is considered to have replaced the amalgamated corporations and to be a continuation of the predecessor corporations for the purpose of calculating the tax credit.

Clauses 11(4), 12(2) and 24(6) specify that the preceding amendments apply to taxation years that end after 18 March 2019.

2.1.6 Tax Measures Related to Canadian Journalism

Clauses 15, 23, 30, 31 and 43 of Part 1 of the bill add three new measures to the ITA intended to support Canadian journalism:

- creation of a tax credit for subscriptions to Canadian digital news;
- creation of a labour tax credit for qualifying journalism organizations; and
- addition of "registered journalism organizations" to the definition of qualified donees.

These measures are available with respect to certain news organizations that meet specific criteria. According to Budget 2019, "[a]n independent panel will be established to recommend eligibility criteria for the purposes of these measures."[6]

To be eligible for any of the three measures, an organization must first be designated as a "qualified Canadian journalism organization" (QCJO), which is defined in amended section 248(1) of the ITA (clause 43 of Bill C-97) as a corporation, partnership or trust that meets certain conditions, including a requirement to:

- operate in Canada; and
- be primarily engaged in the publication of original news content.

QCJO status will be granted by the Minister of National Revenue, who must take into consideration any recommendation made by a body "established for the purpose of this definition."

2.1.6.1 Personal Income Tax Credit for Digital News Subscriptions

Clause 15 introduces new section 118.02, which establishes a digital news subscription tax credit for subscribers to certain QCJO services. Among other requirements, the QCJO must be primarily engaged in producing written news content and not be engaged in a broadcasting undertaking. Taxpayers can claim up to $500 in subscription costs, for a maximum tax credit of $75 annually.[7]

This income tax credit is a temporary measure, available for eligible amounts paid after 2019 and before 2025.[8]

2.1.6.2 Refundable Labour Tax Credit for Journalism Organizations

Clause 23 of the bill adds section 125.6 to the ITA to introduce a 25% refundable tax credit on wages paid to "eligible newsroom employees" working for "qualifying journalism organizations." New section 125.6(1) provides that, for the purposes of this section, a "qualifying journalism organization" is a QCJO that meets certain conditions, including a requirement not to carry on a broadcasting undertaking.

Among other requirements, eligible employees must work a minimum of 26 hours per week and must spend at least 75% of their time "engaged in the production of news content." The eligible salary is capped at $55,000 per employee per year. This section is deemed to have come into force on 1 January 2019.

2.1.6.3 Access to Charitable Tax Incentives for Not-for-Profit Journalism

Qualified donees are organizations, including registered charities, that can issue official receipts for donations, enabling the donors to claim tax credits or deductions for their gifts.[9] Qualified donees can also receive gifts from registered charities.

Clause 31(1) of the bill amends the definition of qualified donee in section 149.1(1) of the ITA to include "a registered journalism organization," which is defined under amended section 248(1) of the ITA (clause 43(3) of the bill) as a "qualifying journalism organization" that has been registered by the Minister of National Revenue. Clause 31(2) adds to section 149.1(1) a definition of a "qualifying journalism organization" for the purposes of sections 149.1 and 149.2 of the ITA. The definition imposes additional criteria on QCJOs wishing to become qualified donees, including the requirement to be established as a corporation or trust and to be "constituted and operated for purposes exclusively related to journalism."

Clause 31, through new section 149.1(14.1), also includes measures designed to promote transparency, such as a requirement for registered journalism organizations to file information returns with the minister.

These provisions come into force on 1 January 2020.

2.1.7 Introduction of the Canada Training Credit

Clause 21 creates a refundable tax credit called the Canada Training Credit (CTC) under new section 122.91 of the ITA. Qualifying individuals may claim part of eligible tuition and fees associated with training they received in that fiscal year. Individuals qualify for the CTC if they were resident in Canada throughout the fiscal year and file a tax return for that fiscal year.

Pursuant to new section 122.91(1), individuals can claim up to their training amount limit or half of their eligible training fees, whichever is less. All individuals' training amount balances start at $0, but qualifying individuals accumulate $250 per year toward their training amount balance. Individuals may claim up to $5,000 over their lifetime. Individuals qualify for annual increases to their training amount balance if they:

- are aged 25 to 64 years at the end of the fiscal year;
- have been resident in Canada throughout the fiscal year;
- have an income of at least $10,000, including working income and parental employment insurance benefits; and
- have an income under the threshold for the second-highest tax bracket ($147,667 in 2019).

Clause 18 modifies section 118.5(1) of the ITA and adds section 118.5(1.2) to the Act to stipulate that fees refunded through the CTC do not qualify as eligible expenses under the tuition tax credit. New sections 122.91(3) and 122.91(4), found in clause 21(1) of the bill, set out rules for computing the CTC in case of an individual's bankruptcy or death, respectively.

All CTC provisions are deemed to have come into force on 1 January 2019, with the exception of the $10,000 minimum income threshold for the training amount balance, which applies to the 2020 taxation year and is adjusted thereafter pursuant to clause 14.

2.1.8 Tax Treatment of Accessing Cannabis for Medical Purposes

The medical expense tax credit is a non-refundable credit equal to 15% of the qualifying medical expenses that are listed in section 118.2(2) of the ITA minus the lesser of the following amounts: $2,302 or 3% of the individual's net income in 2018. Cannabis products may be eligible for the medical expense tax credit where such products are purchased for a patient for medical purposes in accordance with the regulations under the *Controlled Drugs and Substances Act*. However, as of 17 October 2018, cannabis has been regulated under the *Cannabis Regulations*, pursuant to the *Cannabis Act*.

Clause 17 of Bill C-97 amends section 118.2(2)(u) of the ITA to replace references to regulations under the *Controlled Drugs and Substances Act* with the *Cannabis Regulations*. It also changes the products that qualify for the medical expense credit from "marihuana, marihuana plants or seeds, cannabis or cannabis oil" to "cannabis, cannabis oil, cannabis plant seeds or cannabis products" purchased legally under the *Cannabis Act* for medical purposes.

This measure is deemed to have come into force on 17 October 2018.

2.1.9 Extension of the Exception Granted to Agricultural or Fishing Cooperatives for the Calculation of Income Eligible for the Small Business Deduction

Under certain conditions, a CCPC benefits from the small business deduction (SBD), a reduction in the general corporate income tax rate that applies to income of up to $500,000. The ITA also provides a number of measures to limit the types of income that are eligible for the SBD. For example, income from the sales a CCPC makes to a private corporation in which it, or certain other persons, hold a direct or indirect interest is not generally eligible for the SBD, unless these sales are to a farming or fishing cooperative.

Clause 22 amends section 125(7) of the ITA by repealing the definition of "specified cooperative income" and by eliminating the requirement that a corporation's sales of farming products or fishing catches must be to a farming or fishing cooperative to generate income eligible for the SBD.

These amendments apply to taxation years that begin after 21 March 2016.

2.1.10 Extension of the Mineral Exploration Tax Credit

Mining corporations typically incur exploration expenses well before earning income from commercial production. They may have to wait years before they can deduct exploration and development expenses from their tax payable. Flow-through shares[10] enable these corporations to obtain financing by transferring to share purchasers some exploration and development expenses that the company chose not to deduct. These investors can claim the non-refundable 15% mineral exploration tax credit and deduct these exploration and development expenses from their income. This tax credit was created in the *Economic Statement and Budget Update* of 18 October 2000. It has since been renewed several times.

Clause 24 amends sections (a), (c) and (d) of the definition of "flow-through mining expenditure" in section 127(9) of the ITA to extend the eligibility period for the mineral exploration tax credit by five years. As a result, a mining corporation may claim the tax credit for eligible mining exploration expenses incurred after March 2019 and before 2025 under a flow-through share agreement entered into after March 2019 and before April 2024.

2.1.11 Tax Treatment of Communal Organization Business Income Allocated to Its Members

Clause 25 amends section 143 of the ITA, which sets out the mechanism by which income earned by a communal organization is taxed. Members of communal organizations, for religious reasons, live and work together and do not own property in their own right. Section 143(1) provides that any income earned by a communal organization is the property of a fictional trust that is created under that section. The trust can elect to allocate its income, according to the formula set out in section 143(2), to individual members, who can then claim the income on their personal tax returns.

Clause 25 adds section 143(2)(d) to clarify that when the trust earns business income, any amounts it allocates to its members is "deemed to be income from a business carried on by the particular member." This amendment ensures that individual communal organization members are considered to be earning "business income" and thus eligible to claim certain personal tax credits, which would not be possible under the ITA's trust taxation rules.

Clause 25 applies to the 2014 and subsequent taxation years.

2.1.12 Increase of the Home Buyers' Plan Withdrawal Limit and Changes to Its Application on the Breakdown of a Marriage

Clause 27 makes several amendments to section 146.01 of the ITA, which sets out the rules governing the Registered Retirement Savings Plan (RRSP) – Home Buyers' Plan. The Home Buyers' Plan allows a first-time homebuyer to withdraw an amount from an RRSP for the purposes of buying a house, provided the amount is repaid over a period of 15 years. If the minimum annual repayment is not made, that amount will be taxed as income.

Clauses 27(2) and 27(3) amend the definitions of "regular eligible amount" and "supplemental eligible amount" in section 146.01(1) – which are types of withdrawals under the Home Buyers' Plan – to increase the withdrawal limit of the Home Buyers' Plan from $25,000 to $35,000.

Clause 27(4) adds section 146.01(2.1) so that an individual can make a Home Buyers' Plan withdrawal following the breakdown of a marriage or common-law partnership even if the individual is not a first-time homebuyer. To be considered a first-time homebuyer and thus eligible for a withdrawal, the individual must be living separate and apart from the spouse or common-law partner for a continuous period of at least 90 days because of the breakdown of the marriage or common-law partnership. As well, the separation must have arisen in the year of the withdrawal or in one of the four preceding calendar years. Furthermore, the individual cannot make a withdrawal if the individual resides in a house owned by a new spouse or common-law partner.

With respect to the individual's former house, it must be sold no later than the end of the second calendar year after the year in which the withdrawal is made, or alternatively, the individual must buy the spouse's or common-law partner's share in the house. If the individual buys that share, the house will be considered a qualifying home for the purposes of the Home Buyers' Plan.

Clause 27(1) amends the definition of "excluded withdrawal" in section 146.01(1) so that for an individual who makes a Home Buyers' Plan withdrawal following the breakdown of a marriage or common-law partnership but does not, for example, buy a qualifying home, the amount of the withdrawal will not be included in the individual's income as long as the individual repays that amount to an RRSP before the end of the second year after the year in which the withdrawal was made. Clause 27(5) amends section 146.01(3)(a), which deals with repayments, to include reference to the changes made by clause 27(1).

Clauses 27(1) and 27(4) apply for amounts received after 2019, clauses 27(2) and 27(3) apply to the 2019 and subsequent taxation years for amounts received after 19 March 2019, and clause 27(5) applies to repayments made after 2019.

2.1.13 Extension of Liability for Tax Owing on Income from Carrying on Business in a Tax-Free Savings Account

A Tax-Free Savings Account (TFSA) is a general-purpose account that allows individuals to earn tax-free investment income. Individuals 18 years of age and older acquire TFSA contribution room each tax year, with unused room being carried forward to future years. Contributions to the TFSA are not tax deductible, but investment income earned in the account and amounts withdrawn are not included in the individual's taxable income and are not taken into account in determining eligibility for federal income-tested benefits and credits (e.g., the Old Age Security benefits, the Canada Workers Benefit or the Canada Child Benefit).

Section 146.2(6) of the ITA sets out the general manner in which the account allows for tax-free compounding of investment returns and tax-free distributions of accrued gains. One of the requirements for this tax-free treatment is that the account must not carry on a business – such as being used to engage in day trading – in which case the income derived from the business activity will be taxable. If such tax is payable, the TFSA itself and the financial institution that issued that TFSA are jointly and severally liable for the taxes owing. This joint and several liability allows the CRA to pursue either the TFSA or the financial institution for the full amount of taxes owing, leaving the TFSA or the financial institution to pursue each other for any of such sums it believes the other party is responsible for.

Clause 29 of Bill C-97 adds new section 146.2(6.1) to the ITA to include the TFSA's holder – the individual who owns the TFSA – as a party who is joint and severally liable for taxable business activities carried on inside the account, such that the CRA may pursue the TFSA, its holder or the financial institution for the full amount of taxes owing. Clause 29 limits the liability of the TFSA's holder to the total assets that the TFSA has in its possession or under its control plus the amount of all distributions from it on or after the date that the notice of assessment is sent.

This measure applies to the 2019 and subsequent taxation years.

2.1.14 Tax Measures for Employees Reimbursing a Salary Overpayment

Section 153 of the ITA requires income tax to be withheld from certain payments, such as salary, wages or other forms of pay. Under section 153(3), when an amount is deducted or withheld from pay, it is deemed to have been received by the recipient of the pay.

Consequently, when employees receive erroneous overpayments from their employers, if the repayments do not take place in the same tax year as the overpayments, then employees repay the total gross amount of pay to their employers, and the employees recover amounts deducted from their pay through their income tax filing.

Clause 33(1) of the bill amends section 153 of the ITA to add new subsection 153(3.1). Under this subsection, an excess amount (the portion of payment withheld) is deemed not to have been deducted or withheld by a person (i.e., employer) paying a salary, wage or other form of pay if:

- the excess amount was deducted or withheld by the person;
- the excess amount was paid as the result of a clerical, administrative or system error;
- the person elects to have this section apply and the recipient individual has repaid the total excess payment less the excess amount within three years;
- an information return correcting for the total excess payment has not been issued to the individual prior to that election; and
- any additional criteria specified by the Minister of National Revenue have been met.

Under the amendment, since the withheld amounts will not be deemed to have been received by employees, the Minister of National Revenue will be able to return the withheld amounts to employers.

In relation to this amendment, clauses 45 and 50 make consequential amendments to the *Canada Pension Plan* and the *Employment Insurance Act*, adding sections 21.01 and 82.01 to the respective Acts. Under these provisions, an amount deducted by an employer in respect of an excess payment due to a clerical, administrative or system error is deemed not to have been deducted for the purposes of these Acts if:

- before the end of the third year after the calendar year in which the amount was deducted:
  - the employer elects to have the new section apply, and
  - the employee/insured person has repaid, or made an arrangement to repay, the employer;
- the employer has not filed an information return correcting for the excess payment prior to the election described above; and
- any additional conditions specified by the Minister of National Revenue are met.

New sections 21.01(2) and 82.01(2) clarify that the amount that is deemed not to have been deducted is the amount that was deducted by the employer, or the difference between the aggregate of all amounts that were deducted by the employer and the aggregate of all amounts that would have been deducted by the employer had the excess payment not been made.

2.1.15 Expansion of Tax Measures for Electrical Vehicle Charging Stations and Electrical Energy Storage Equipment

Each year, a portion of the capital cost of a depreciable property is deductible as capital cost allowance (CCA) by Canadian businesses at a rate that is determined by the CCA class of the property. Schedule II to the ITR lists the properties that can be included in each CCA class, and section 1100 sets out CCA rates for each type of property.

Class 43.1 in Schedule II to the ITR provides an accelerated CCA rate of 30% per year on a declining-balance basis for clean energy generation and energy conservation equipment.

Clause 61(8) of Bill C-97 adds new subparagraphs (d)(xvii) and (d)(xviii) to expand class 43.1 eligibility to include certain fixed-location electric vehicle charging stations, and certain electrical energy storage property.

New subparagraph (d)(xvii) provides that equipment used for charging electric vehicles, including charging stations, transformers, distribution and control panels, circuit breakers, conduits and related wiring, is eligible for inclusion in class 43.1, if

- the equipment is situated on the load side of an electricity meter used for billing purposes by a power utility, or on the generator side of an electricity meter used to measure electricity generated by the taxpayer;
- more than 75% of the electrical capacity of the equipment is dedicated to charging electric vehicles; and
- the equipment is an electric vehicle charging station that supplies more than 10 kW of continuous power or is used primarily in connection with at least one electric vehicle charging station that supplies more than 10 kW of continuous power. These electric vehicle charging stations cannot be buildings.

New subparagraph (d)(xviii) stipulates that a fixed-location energy storage property is eligible for inclusion in class 43.1 if the property is batteries, compressed air energy storage, flywheels, control and conditioning equipment and related structures. However, it excludes buildings, pumped hydroelectric storage, hydroelectric dams and reservoirs, property used solely for backup electrical energy, batteries used in motor vehicles, fuel cell systems where the hydrogen is produced via steam reformation of methane or property otherwise included in class 10 or 17. In addition, to be eligible for inclusion in class 43.1, either the electrical energy to be stored must be used with properties in class 43.1, or the efficiency of the electrical energy storage system must be greater than 50%.

These amendments apply in respect of property acquired after 21 March 2016 that has not been used or acquired for use before 22 March 2016.

Several sections of the ITR are also amended due to the expansion of class 43.1 eligibility to include certain fixed-location electric vehicle charging stations, and certain electrical energy storage property.

Clauses 61(1), 61(2), 61(3), 61(4) and 61(7) amend paragraph (d) of class 43.1 to remove the references to battery storage equipment from, respectively, subparagraph (d)(i) regarding solar and ground heating energy, subparagraph (d)(v) regarding wind energy, subparagraph (d)(vi) regarding solar energy, subparagraph (d)(vii) regarding geothermal energy, and subparagraph (d)(xiv) regarding tidal energy.

Subparagraph (d)(xii) of class 43.1 describes a fixed-location fuel cell that uses hydrogen generated from photovoltaic energy, wind energy or hydro-electric equipment. Clause 61(6) amends subparagraph (d)(xii) to include energy generated from tidal energy, and geothermal equipment.

Clause 61(9) stipulates that the amendments made by clauses 61(1) to 61(4) and 61(6) to 61(8) apply in respect of property acquired after 21 March 2016 that has not been used or acquired for use before 22 March 2016.

Subparagraph (d)(vii) of class 43.1 was amended in 2017 to implement a Budget 2017 measure that extends the accelerated CCA rate to a broader range of geothermal projects and expenses. That amendment is re-enacted in clause 61(5), after the amendment made by clause 61(4), noted above, so that the Budget 2017 measure and the amendment made by clause 61(4) are both in effect with different effective dates. Specifically, the Budget 2017 measure is in effect for property acquired for use after 21 March 2017 that has not been used or acquired for use before 22 March 2017, while the amendment made by clause 61(4) applies to property acquired after 21 March 2016 that has not been used or acquired for use before 22 March 2016.

Clause 62(1) amends paragraphs (a) and (b) of class 43.2 to expand eligibility criteria for that class to match the expanded criteria for class 43.1. Class 43.2 in Schedule II to the ITR provides for a temporary accelerated CCA rate of 50% for certain class 43.1 properties if they are acquired after 22 February 2005 and before 2025.

Clause 62(2) stipulates that the amendment to clause 62(1) applies in respect of property acquired after 21 March 2016 that has not been used or acquired for use before 22 March 2016.

2.1.16 Eligibility of Joint Projects with Belgian Producers for the Canadian Film or Video Production Tax Credit

Section 1106(3) of the ITR allows film or video co-production projects between Canada and other countries to qualify for the Canadian film or video production tax credit. This section lists the co-production treaties between Canada and other countries. Co-production film or video projects involve the financial participation of one or more producers of national origin and one or more producers from other countries.[11]

Clause 56(1) amends section 1106(3) of the ITR to allow joint projects of producers from Canada and Belgium to qualify for the Canadian film or video production tax credit.

Clause 56(2) states that the amendment in clause 56(1) is deemed to have come into force on 12 March 2018.

2.1.17 Rules for Pension Adjustment Calculations for Registered Pension Plans That Reference the Enhanced Canada Pension Plan

Section 8302(3) of the ITR sets out the rules for calculating the “normalized pension” of an individual under a defined benefit provision of a registered pension plan, which is used in determining the pension adjustment for that individual for a given taxation

year. The pension adjustment, which represents the value of benefits earned under an employer-sponsored registered pension plan and other retirement arrangements by an individual in a given taxation year, reduces the individual's RRSP contribution limit.

Because of the introduction of changes to the Canada Pension Plan (CPP) and the Quebec Pension Plan (QPP),[12] clause 60 amends section 8302(3)(j) of the ITR and adds section 8302(3)(j.1) to provide for the calculation of the normalized pension in cases when the individual's registered pension plan is integrated either with the base CPP or QPP, or with the full CPP or QPP (i.e., the base and additional components of the CPP or QPP).

The changes are deemed to have come into force on 1 January 2019.

2.2 PART 2: IMPLEMENTATION OF CERTAIN GOODS AND SERVICES TAX/ HARMONIZED SALES TAX MEASURES PROPOSED IN THE 2019 BUDGET

2.2.1 Goods and Services Tax/Harmonized Sales Tax Treatment of Certain Supplies, Importations and Services in the Health Care Sector

Budget 2019 proposes measures to expand health-related tax relief under the goods and services tax/harmonized sales tax (GST/HST) regime. These changes provide GST/HST relief for Canadians who are experiencing infertility and are turning to assisted human reproduction to start a family. At present, human ova and in vitro embryos are not relieved of GST/HST.

Moreover, Bill C-97 expands the list of GST/HST-exempt health care services to specifically include a multidisciplinary health care service and allows for the purchase of certain foot care devices to be relieved of GST/HST on the written order of licenced podiatrists and chiropodists.

2.2.1.1 Goods and Services Tax/Harmonized Sales Tax Treatment of Multidisciplinary Health Care Services

The following provisions amend Part II of Schedule V to the *Excise Tax Act* (ETA) so that the list of GST/HST-exempt health care services is expanded to include multidisciplinary health care services.

Clause 75(1) amends Part II of Schedule V of the ETA, which deals with health care services, by adding section 7.4. This amendment specifies the conditions under which a multidisciplinary health care service can be exempt from GST/HST. Furthermore, this amendment applies to the supply of services included in sections 5 to 7.3, if the particular service is supplied separately.

Clause 75(2) specifies that the amendments in clause 75(1) apply to any supply made after 19 March 2019.

2.2.1.2 Goods and Services Tax/Harmonized Sales Tax Treatment of Human Ova

The following provision amends Part I of Schedule VI to the ETA so that human ova are not subject to GST/HST.

Clause 76(1) amends the list of supply for prescription drugs or biologicals by adding section 6 concerning the supply of an ovum, as defined in section 3 of the *Assisted Human Reproduction Act*.

2.2.1.3 Goods and Services Tax/Harmonized Sales Tax Treatment of Foot Care Devices

The following provisions amend section 1 of Part II of Schedule VI of the ETA so that on the written order of licenced podiatrists and chiropodists, the purchase of certain foot care devices is relieved of GST/HST.

Clause 77(1) amends the definition of "specified professional" and considers two distinct cases. The first case refers to the supply of medical devices related to sections 23, 24.1 and 35. These sections refer specifically to orthotic or orthopedic devices, footwear that is specially designed for use by an individual who has a crippled or deformed foot or other similar disability, or a graduated compression stocking, an anti-embolic stocking or similar article. The clause adds podiatrists and chiropodists to the list of professionals who can provide a written order which will relieve GST/HST on these items. The second case refers to the supply of all other medical and assistive devices listed in Part II of Schedule VI of the ETA.

Clause 77(2) specifies that the amendments in clause 77(1) apply to any supply made after 19 March 2019.

2.2.1.4 Goods and Services Tax/Harmonized Sales Tax Treatment of In Vitro Embryos

The following clauses amend Schedule VII and Part I of Schedule X of the ETA so that in vitro embryos are not subject to GST/HST. Note that "in vitro embryo" is defined in section 3 of the *Assisted Human Reproduction Act*.

Clause 78(1) adds in vitro embryos to the list of non-taxable importations specified in Schedule VII of the ETA. This amendment is deemed to have come into force on 20 March 2019.

Clause 79(1) adds in vitro embryos to the list of non-taxable property specified in Part I of Schedule X of the ETA. This amendment is deemed to have come into force on 20 March 2019.

2.2.2 Goods and Services Tax/Harmonized Sales Tax Treatment of Expenses Incurred in Respect of Zero-Emission Passenger Vehicles

Clause 70 amends the definition of "passenger vehicle" provided in section 123(1) of the ETA to include "zero-emission passenger vehicle," which has the meaning given in the definition added to section 248(1) of the ITA by section 43(4) of Bill C-97.

This amendment ensures that the GST/HST treatment of expenses in respect of a zero-emission passenger vehicle parallels its treatment under the ITA.

Clauses 71 and 72 amend sections 201(b) and 202(1) of the ETA so that the total amount a GST/HST registrant can claim as an input tax credit in respect of the acquisition, improvement, importation or bringing into a province of a zero-emission passenger vehicle is limited to $55,000.

Clauses 73 and 74 make coordinating amendments to paragraphs (b), (b.01) and (b.1) of the definition of "imported taxable supply" given in section 217 of the ETA, as well as to section 235(1) of the ETA to keep the GST/HST treatment of expenses in respect of a zero-emission vehicle parallel to their treatment under the ITA.

All these amendments come into force on 19 March 2019.

2.3 PART 3: IMPLEMENTATION OF FEDERAL EXCISE DUTY RATES ON EDIBLE CANNABIS, CANNABIS EXTRACTS AND CANNABIS TOPICALS

Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (the *Cannabis Act*) received Royal Assent on 21 June 2018. The Act created a framework under which individuals 18 years or older can legally access certain cannabis products through a regulated retail sector and grow limited amounts of cannabis in their homes.

A federal excise duty framework for cannabis products was implemented through the *Budget Implementation Act, 2018, No. 1*. The federal government subsequently signed agreements with certain provincial and territorial governments to implement a coordinated framework for cannabis taxation, and regulations describing the additional excise duty rates for each signatory province or territory were announced on 17 September 2018. The framework came into force on 17 October 2018, and non-medical cannabis was made available for legal retail sale.

Combined federal–provincial duties on cannabis consist of a flat-rate duty imposed at the time the cannabis products are packaged and an ad valorem duty imposed on packaged cannabis products at the time the products are delivered to a purchaser. In addition, Alberta, Nunavut, Ontario and Saskatchewan impose an additional cannabis duty or varying amounts when packaged and stamped cannabis products are delivered to a purchaser.

In advance of the government's legalization of new classes of cannabis products – such as edible cannabis, cannabis extracts and cannabis topicals – Bill C-97 creates an excise duty framework for such products. The duties applicable to cannabis products that were legalized under the *Cannabis Act* remain unchanged, with the exception of cannabis oil, which is subject to the new excise duty framework on or after 1 May 2019.

Clause 86 of Bill C-97 amends sections 1 to 4 of Schedule 7 of the *Excise Act, 2001*[13] to create a new excise duty regime for edible cannabis, cannabis topicals and cannabis extracts, including cannabis oil. These products are subject to a duty of $0.0025 per milligram of the product's total delta-9-tetrahydrocannabinol (THC), one of the intoxicating compounds in cannabis. In addition, all provinces except Manitoba have agreed to a coordinated framework for cannabis taxation, proposing a flat-rate additional duty of $0.0075 per milligram of the product's total THC.

Clauses 81 to 85 make consequential amendments to sections 2, 172, 233.1, 234.1 and 238.1(2)(b) of the *Excise Act, 2001*, including adding or modifying definitions to reflect the new excise regime as well as to align the Act with the *Cannabis Act* and *Cannabis Regulations*.

These measures come into force on 1 May 2019, although packaged cannabis products produced in Canada on or before 30 April 2019 are subject to the original excise regime if they are delivered to a purchaser on or after 1 May 2019.

2.4 PART 4: IMPLEMENTATION OF VARIOUS MEASURES

2.4.1 Division 1 of Part 4

2.4.1.1 Subdivision A: Amendments to the *Bank Act*

Clause 87 amends section 151 of the *Bank Act*[14] to allow members of a federal credit union to vote prior to meetings in person, by phone or electronic means or by other prescribed means, rather than just by mail.

Clauses 88 and 89 amend sections 156.04 and 156.05, respectively, to provide additional exceptions to the requirements for proxy solicitation. Specifically, proxies may be solicited if the total number of shareholders whose proxies are solicited is 15 or fewer or if the solicitation is published in a prescribed fashion.

Clause 90 amends section 156.071 to allow the Governor in Council, which could already make regulations respecting the conditions under which a bank is exempt from any of the requirements contained in sections 156.02 to 156.07, to also make regulations respecting the following:

- the powers that may be granted by a shareholder in a form of proxy; and
- proxy circulars and forms of proxy, including the form and content of those documents.

Clauses 91 and 92 make a technical amendment to *An Act to amend certain Acts in relation to financial institutions*.

2.4.1.2 Subdivision B: Amendments to the *Canadian Payments Act*

The *Canadian Payments Act*[15] applies to the Canadian Payments Association, which has recently been renamed Payments Canada. Clause 93 amends section 91.1(1) of the Act to allow the term of the elected directors of the board of directors of Payments Canada to be renewed twice, rather than once.

Clause 94 amends section 15(1) to extend the renewable term of the chairperson and deputy chairperson of the board from two to three years but limit the total time of service to six years.

Clause 95 amends section 18(1) to allow the board to change its by-laws to prescribe classes of members of the Stakeholder Advisory Council for the purposes of section 21.2(7), which is amended by clause 96.

Clause 96 amends section 21.2(7) to allow remuneration for members of the Stakeholder Advisory Council rather than stipulating that they shall serve without remuneration but may be paid for any reasonable travel and living expenses. The remuneration would be set by by-law and paid to members of the council that fall within the classes set in section 18(1) and certain representatives of those members. Clause 96 also adds new section 21.2(8) to the *Canadian Payments Act* to allow travel and living expenses to continue to be reimbursed.

Clause 97 provides that these measures shall come into force on a day to be fixed by order of the Governor in Council.

2.4.2 Division 2 of Part 4

2.4.2.1 Subdivision A: Amendments to the *Canada Business Corporations Act*

Section 183 of the *Budget Implementation Act, 2018, No. 2* introduced sections 21.1, 21.2, 21.3 and 21.4 to the *Canada Business Corporations Act* (CBCA).[16] Though the *Budget Implementation Act, 2018, No. 2* received Royal Assent on 13 December 2018,

the amendments to the CBCA do not come into force until 13 June 2019. Some of the provisions in Subdivision A of Division 2 of Part 4 thus propose amendments to provisions that are not yet in force.

Clause 98 amends the French version of new section 21.3(1) of the CBCA for clarity. The title of the section changes from "Divulgation au directeur" to "Communication au directeur." In the body of the section, the word "divulgue" is replaced with "communique." No changes were made to the English version.

Clause 99 introduces new section 21.31. Section 21.31(1) deals with the disclosure of information by corporations to investigative bodies. Upon the request of an investigative body, section 21.31(1) requires a corporation to provide the investigative body with a copy of the corporation's register of individuals with significant control or to disclose to the investigative body any specified information that is in the corporation's register of individuals with significant control.

Section 21.31(2) defines the investigative bodies for the purpose of this section. They include any police force, the Canada Revenue Agency (CRA) and any provincial body that has responsibilities similar to those of the CRA, and any prescribed body that has investigative powers in relation to offences referred to in the schedule to the CBCA.

Section 21.31(3) specifies that an investigative body may make a request for disclosure only if it has reasonable grounds to suspect that the copy of the register or the specified information would be relevant to investigating an offence. Moreover, the investigative body must also have reasonable grounds to suspect that:

- the corporation that is the subject of the request committed the offence or was used to commit the offence, facilitate the commission of the offence, or protect from detection or punishment a person who has committed the offence;
- an individual with significant control over the corporation that is the subject of the request is also an individual with significant control over a corporation that committed the offence; or
- an individual with significant control over the corporation that is the subject of the request is also an individual who, directly or indirectly, influences the affairs of an entity, other than a corporation, that committed the offence or was used for that purpose.

Section 21.31(4) specifies that an investigative body must serve a request on the corporation by leaving the request at the corporation's registered office as shown in the last notice filed under section 19 or sent to the corporation by registered mail to that registered office. The request is deemed to be received when it would be delivered in the ordinary course of mail delivery, unless there are reasonable grounds to believe that the corporation did not receive the request at that time or at all.

Section 21.31(5) states that if a corporation, without reasonable cause, contravenes section 21.31(1), it is guilty of an offence and liable on summary conviction to a fine of not more than $5,000.

Section 21.31(6) indicates that the Governor in Council may, by order, amend the schedule to the CBCA by adding or deleting a reference to an offence.

Clause 99 also adds section 21.32, which applies to investigative bodies that make a disclosure request under section 21.31(1) of the CBCA. Section 21.32 sets out the record keeping and reporting requirements for investigative bodies.

Section 21.32(1) dictates the record-keeping requirements that an investigative body must abide by when it makes a request for disclosure. There are seven items an investigative body must collect:

- the name of the corporation that was the subject of the request;
- the reasonable grounds on which the request was based;
- information respecting what was requested;
- the date the request was served or deemed to have been received;
- information respecting the service or the sending of the request;
- all information received from the corporation in response to the request; and
- any prescribed information.

Section 21.32(2) stipulates the reporting requirements the investigative body must follow. Every investigative body that makes a request shall, within 90 days after the end of the calendar year in which the request was made, provide the director with a report setting out the total number of requests made by it in that year and, in the case of the Royal Canadian Mounted Police (RCMP) and the CRA, the number of requests made in each province.

Section 251 of the CBCA states that every person who, without reasonable cause, contravenes a provision of the Act or the regulations for which no punishment is provided is guilty of an offence punishable on summary conviction. However, new section 21.32(3) states that section 251 does not apply if an investigative body does not abide by its record keeping and reporting requirements.

Clause 100 amends section 21.4(1) by changing the title preceding the body text from "Offence – preparation and maintenance of register" to "Offence – contravention of subsection 21.1(1) or 21.31(1)," and expanding the scope by which a director or officer of a corporation may be found in contravention of an infraction. A director or officer that does not provide a disclosure to an investigative body now commits an offence, whether or not the corporation has been prosecuted or convicted.

Clause 101 adds to the CBCA, after section 268, the schedule set out in Schedule 1 to Bill C-97. This schedule lists the offences with which a corporation may be charged, as referred to in sections 21.31(2), 21.31(3) and 21.31(6).

2.4.2.2 Subdivision B: Amendment to the *Criminal Code*

Money laundering is a criminal offence under section 462.31(1) of the *Criminal Code*,[17] and requires proof, beyond a reasonable doubt, that the accused intended to conceal or convert property or proceeds that he or she knew or believed were the result of a designated criminal activity, or that he or she was wilfully blind to such a fact. Wilful blindness is the subjective awareness of circumstances that should alert a person to the truth of a fact, and is accompanied by a deliberate refusal to confirm its existence.

The House of Commons Standing Committee on Finance undertook a five-year legislative review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* from 8 February to 20 June 2018. During its review, the committee heard in testimony from the RCMP that professional money launderers have structured their criminal operations in a manner that separates them from the criminal origins of the funds, so that they are insulated from knowledge of the criminal origins of those funds – to the extent that they do not meet the standard of wilful blindness – in order to avoid being successfully convicted of money laundering. In its report, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, the committee recommended:

> [I]n recognizing the difficulty prosecutors have in laying money-laundering charges due to the complexity of linking money laundering to predicate offences, that the Government of Canada:
>
> - bring forward Criminal Code and Privacy Act amendments in order to better facilitate money laundering investigations.[18]

Clause 103 of Bill C-97 amends section 462.31(1) of the *Criminal Code* to alter the legal standard for an accused's awareness of the criminality of the funds from wilful blindness to "recklessness." Under Canadian law, an individual is "reckless" if he or she is aware that there is a risk that his or her conduct could be prohibited, but nevertheless persists in spite of that risk.

2.4.2.3 Subdivision C: Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

Canada's anti–money laundering regime was formally established in 2000 under the National Initiative to Combat Money Laundering. The *Proceeds of Crime (Money Laundering) Act* was adopted that year and created a mandatory reporting system for suspicious financial transactions, large cross-border currency transfers, and certain prescribed transactions. In December 2001, the *Proceeds of Crime (Money Laundering) Act* was amended to include measures to address terrorist

financing and was renamed the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA),[19] which formally created Canada's Anti–Money Laundering and Anti–Terrorist Financing Regime and fulfilled Canada's obligations under the United Nations *International Convention for the Suppression of the Financing of Terrorism*.

The Regime seeks to detect and deter money laundering and terrorist financing, and it aims to facilitate their investigation and prosecution. The PCMLTFA pursues these objectives in three main ways: by establishing record keeping and client identification standards, by requiring reporting from financial intermediaries, and by putting the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) in place to oversee its compliance.

Although some fiat money may be digital, in general, central authorities do not issue digital currencies – nor is the value of such currencies guaranteed by governments, as is the case with state-issued fiat money. Digital currencies may take a variety of forms with corresponding uses, such as those used only to purchase virtual goods and services within the virtual community, or those used to purchase both real and virtual goods and services. The latter form is called "bidirectional digital currency" and includes such currencies as Bitcoin and Litecoin, which are also considered to be "cryptocurrencies," because they use cryptography for security.

Clause 104 amends section 2(2) of the PCMLTFA to add "virtual currency" and "dealing in virtual currencies" to a list of terms that can be defined by regulations made by the Governor in Council on the recommendation of the Minister of Finance.

Section 55(3) of the PCMLTFA authorizes the disclosure of certain information to a number of entities by FINTRAC, Canada's financial intelligence unit led by the Department of Finance Canada. Established by the PCMLTFA and its regulations, FINTRAC collects financial intelligence and enforces the compliance of reporting entities with the legislation and regulations. FINTRAC is independent from law enforcement and has no investigative powers.

Clauses 107(2) and 107(3) of Bill C-97 amend section 55(3) of the PCMLTFA to add the Agence du revenu du Québec and the Competition Bureau to the list of entities to which FINTRAC may disclose information. In the case of the Agence du revenu du Québec, the disclosure is permitted if FINTRAC has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence of wrongfully obtaining or attempting to obtain a rebate, refund or credit, or of evading or attempting to evade paying taxes. In the case of the Competition Bureau, the disclosure is permitted if FINTRAC has reasonable grounds to suspect that the information would be relevant to investigating or prosecuting an offence – or the attempt thereof – under the *Competition Act*, the *Consumer Packaging and Labelling Act*, the *Precious Metals Marking Act* or the *Textile Labelling Act*.

Under the PCMLTFA, where an individual or entity receives a notice that they have violated a compliance agreement entered into with FINTRAC or has been deemed to have committed certain violations under the Act, the individual or entity can appeal the decision to a federal court. Upon doing so, the court shall take every reasonable precaution, including conducting hearings in private, to maintain the confidentiality of certain information related to the individual or entity. Clause 110 adds new section 73.21(4.1) to exclude the identity of the individual or entity, the nature of the violations and the amount of the penalty imposed from the scope of appeal-related confidentiality.

Under section 73.22 of the PCMLTFA, FINTRAC has a discretionary power to publicize the nature of the violation, the name of the person or entity that committed it, and the amount of the penalty imposed when proceedings in respect of a violation of the Act have ended. Clause 111 amends section 73.22 of the PCMLTFA to require FINTRAC to publicize this information when any person or entity is deemed to have committed a violation of the Act or is served with a notice of a decision indicating that they have committed a violation. Clause 111 also requires that this information be publicized if a person or entity is issued a notice of default in respect of a compliance agreement entered into with FINTRAC.

The information FINTRAC is able to disclose to listed entities is referred to as "designated information" as defined by sections 55(7), 55.1(3) and 56.1(5) of the PCMLTFA.

Clauses 107(4), 108 and 109 amend sections 55(7)(o), 55.1(3)(o) and 56.1(5)(o) of the PCMLTFA, respectively, in order to clarify that any information that was sent to FINTRAC as a result of the operations of Part 2 of the PCMLTFA ("Reporting of Currency and Monetary Instruments") is to be considered "designated information" for the purposes of disclosure. In addition, clauses 105, 106 and 107(1) amend sections 9.3(2.1), 9.5(a) and 55(1) of the PCMLTFA, respectively, to clarify certain language in the PCMLTFA.

2.4.2.4 Subdivision D: Amendments to the *Seized Property Management Act*

Canada's Anti–Money Laundering and Anti–Terrorist Financing Regime is composed of many federal departments and agencies. One of these departments, Public Services and Procurement Canada, manages assets seized or restrained under specific sections of the *Criminal Code*, the *Controlled Drugs and Substances Act* and the PCMLTFA through the Seized Property Management Directorate.

The *Seized Property Management Act* (SPMA)[20] authorizes the Minister of Public Services and Procurement:

- to provide consultative and managerial services to law enforcement agencies in relation to property seized or restrained in connection with designated criminal offences;
- to dispose of this property when courts declare forfeiture; and
- to allocate proceeds of these dispositions.

The department also provides, on a cost-recovery basis, seized property management and secure storage services to all federal agencies, departments and Crown corporations.

Clauses 114(1) and 116(1) of Bill C-97 amend sections 3 and 9, respectively, of the SPMA to authorize the Minister of Public Services and Procurement to provide consultative and "other services" to any person employed either in the federal public service or by a provincial or municipal authority in relation to the seizure, restraint, custody, management, forfeiture or disposal of property that was used or connected to the commission of an offence or violation.

Clauses 114(1) and 115 amend sections 3 and 4(1) of the SPMA, respectively, to authorize the minister to manage property seized, restrained or forfeited under any Act of Parliament or of the legislature of a province. Clauses 114(1) and 114(2) amend section 3, and section 116(3) amends section 9 to authorize the minister – with the consent of the provincial government – to dispose of property when it is forfeited to the Crown under any legislature of a province and share the proceeds of this disposition. The minister is responsible for all property under his or her management.

2.4.3 Division 3: Amendments to the *Employment Equity Act*

Division 3 of Part 4 amends the *Employment Equity Act* (EEA)[21] with the goal, according to Budget 2019, of introducing "pay transparency measures for federally regulated employees in order to reduce wage gaps."[22] Part of the stated purpose of the EEA is "to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability" (section 2).

The EEA sets out a number of requirements for employers, including a requirement for private sector employers to file reports annually with the Minister of Employment, Workforce Development and Labour (section 18(1)). Information to be included in these reports includes "the salary ranges of its employees and the degree of representation of persons who are members of designated groups in each range and in each prescribed subdivision of the range" (section 18(1)(c)). The EEA defines "designated groups" as "women, Aboriginal peoples, persons with disabilities and members of visible minorities." Clause 127 of Bill C-97 amends section 18(1)(c) to

ensure that the report includes "any other information in relation to the salary of its employees that may be prescribed." This includes information that makes wage gaps within occupational groups more evident.[23]

Failing to comply with the reporting requirements set out in section 18 is a violation of the EEA and carries a potential associated monetary penalty.

2.4.4 Division 4: Authority for Payments from the Consolidated Revenue Fund for Certain Purposes

The federal government has committed to returning all direct proceeds from the federal carbon pollution pricing system to the jurisdiction of origin. For jurisdictions that do not meet the Canada-wide federal standard for reducing carbon pollution, the bulk of the proceeds will go to individuals through Climate Action Incentive payments made under the *Income Tax Act* (ITA).

Clauses 129(1) to 129(6) authorize the Minister of Finance to specify ministers to requisition payments to the provinces for climate action support. The amounts to be paid to specified provinces in a specified period are based on estimates of the charges levied under Part 1 of the *Greenhouse Gas Pollution Pricing Act*; estimates of the amounts to be rebated, refunded or remitted under that Act or any other Act; and estimates of the amounts paid as rebates under the ITA.

Payments from the Consolidated Revenue Fund, outlined in clauses 130 to 132, were announced in Budget 2019.

Clause 130 authorizes the Minister of Infrastructure and Communities or the Minister of State (Indigenous Services) to provide up to $2.2 billion to provinces, territories, municipalities, municipal associations, provincial, territorial and municipal entities and First Nations for the purpose of municipal, regional and First Nations infrastructure.

Clause 131(1) authorizes the Minister of Natural Resources to provide a maximum of $950 million to the Federation of Canadian Municipalities for the purpose of providing funding to the Green Municipal Fund.

Clause 131(3) authorizes the Minister of Infrastructure and Communities to provide up to $60 million to the Federation of Canadian Municipalities for the purpose of providing funding to the Asset Management Fund.

Clause 132(1) authorizes the Minister of Public Safety and Emergency Preparedness to provide a maximum of $65 million to the Shock Trauma Air Rescue Service for the acquisition of new emergency ambulance helicopters.

Clauses 131(2), 131(4) and 132(2) authorize these ministers to come to agreements with the recipients on the terms and conditions of the payments.

2.4.5 Division 5 of Part 4

Division 5 of Part 4 amends the *Bankruptcy and Insolvency Act*, the *Companies' Creditors Arrangement Act*, the *Canada Business Corporations Act* and the *Pension Benefits Standards Act, 1985*.

2.4.5.1 Amendments to the *Bankruptcy and Insolvency Act*

Clause 133 adds section 4.2 to the *Bankruptcy and Insolvency Act* (BIA)[24] to incorporate a duty to act in good faith for any party in a BIA proceeding. Section 4.2 also gives a court the power to make any order that it considers appropriate if it finds that a party did not act in good faith.

Section 67(1) of the BIA sets out the types of property that cannot be seized and distributed among creditors in a bankruptcy, including:

- any property that is exempt from execution or seizure under applicable provincial laws;
- property held by the bankrupt person or entity in trust for any other person;
- goods and services tax credit payments; and
- property held in an RRSP, a Registered Retirement Income Fund or any prescribed plan, except contributions made within one year before the date of bankruptcy.

Clause 134 amends section 67(1)(b.3) to add registered disability savings plans to the list of exempted property.

Section 101 of the BIA allows a court to determine whether payments of dividends or redemption of shares by a bankrupt company made within one year before the date of bankruptcy were made when the corporation was insolvent or if they rendered the corporation insolvent. If either of these was the case, the court may allow the trustee to recover these amounts with interest from the directors of the corporation.

Clause 135 amends section 101(1) to allow for such examinations in respect of payments for termination pay, severance pay or incentive benefits or other benefits to any person managing the business and affairs of the corporation.

Clause 135 adds section 101(2.01), which provides that if such a payment was made when the corporation was insolvent or rendered the corporation insolvent, the court may allow the trustee to recover these amounts with interest from the directors of the corporation. The court may only do so if it finds the following:

- the payment occurred when the corporation was insolvent, or it rendered the corporation insolvent;
- the payment was conspicuously over the fair market value of the consideration received by the corporation;
- the payment was made outside the ordinary course of business; and
- the directors did not have reasonable grounds to believe that the payment was not made under these circumstances.

Clause 135 also adds section 101(5.1) so that directors have the onus of proving that the payment was not made under these circumstances or that they had reasonable grounds to believe that it was not made under these circumstances. Lastly, clause 135 adds section 101(3.1) to exonerate any director who protested the making of such payments in accordance with any law governing the operation of the corporation.

Each of these provisions come into force on a day to be fixed by the Governor in Council and will apply to BIA proceedings commenced on or after that date.

2.4.5.2 Amendments to the *Companies' Creditors Arrangement Act*

Clause 140 adds section 18.6 to the *Companies' Creditors Arrangement Act* (CCAA)[25] to introduce a duty for all parties in a CCAA proceeding to act in good faith. Section 18.6 also gives a court, on application by an interested person, the power to make any order that it considers appropriate if it finds that a party did not act in good faith.

Clause 139 adds section 11.9 to the CCAA to allow a court to require any party to a CCAA proceeding to disclose its economic interest in the debtor company on any terms the court considers appropriate. In making this order, the court is to consider, among other things:

- whether the monitor approved the proposed disclosure;
- whether the disclosure would enhance the prospects of a viable compromise or arrangement; and
- whether any party would be materially prejudiced as a result.

"Economic interest" includes the following:

- a claim; an eligible financial contract; an option or a mortgage, hypothec, pledge, charge, lien or any other security interest;
- the consideration paid for any right or interest; or
- any other prescribed right or interest.

Section 11 of the CCAA allows a court to make any order that it considers appropriate in relation to CCAA proceedings, while section 11.2 allows it, on application by the debtor company, to provide a security or charge over part or all of the company's property in favour a party who agrees to provide interim financing to the company.

Clause 136 adds section 11.001 to provide that when a section 11 order is made at the same time as or during the period referred to in a section 11.02 order, which deals with the initial stay of proceedings, the section 11 order must be limited to relief that is reasonably necessary for the debtor company to continue its operations in the ordinary course of business during that period.

Similarly, clause 138 adds section 11.2(5) to the CCAA so that when an application is made for a section 11.2 order at the same time as an application for or during the period referred to in a section 11.02 order, the court must be satisfied that the terms of the financing allowed by the section 11.2 order are limited to what is reasonably necessary for the continued operations of the company during that period.

Lastly, clause 137 amends section 11.02(1) so that the maximum length of the initial stay order is reduced from 30 days to 10 days.

Each of these provisions comes into force on a day to be fixed by the Governor in Council and applies to CCAA proceedings commenced on or after that date.

2.4.5.3 Amendments to the *Canada Business Corporations Act*

Section 122(1)(a) of the *Canada Business Corporations Act* (CBCA) requires directors and officers of a corporation, in exercising their powers and discharging their duties, to act honestly and in good faith with a view to the best interests of the corporation. Clause 141 of Bill C-97 adds section 122(1.1) to provide that in doing so, directors and officers of a corporation may consider:

- the interests of shareholders, employees, retirees and pensioners, creditors, consumers and governments;
- the environment; and
- the long-term interests of the corporation.

Clause 142 adds section 125.1 to introduce a requirement for corporations specified in regulations to develop an approach with respect to the remuneration of the directors and employees who are "members of senior management," as that term is defined in regulations.

Clause 143(1) adds Part XIV.1, "Disclosure Relating to Diversity," to the CBCA, requiring directors of corporations specified in regulations to disclose:

- the diversity of senior management;
- the well-being of employees, retirees and pensioners;
- the approach taken with respect to remuneration as required under section 125.1; and
- the recovery of incentive benefits or other benefits paid to senior management.

The required information, which would be defined in regulation, must be provided to the shareholders and the Director of Corporations Canada.

Clause 143(2) replaces the title of new Part XIV.1 provided in clause 143(1) with "Disclosure Relating to Diversity, Well-being and Remuneration."

Clause 143(3) requires that shareholders vote on the remuneration approach presented to them. Such a vote is not binding on the corporation, and its results must be disclosed to shareholders.

The disclosure requirements related to diversity contained in clause 143(1) reflect those contained in section 24 of Bill C-25, An Act to amend the Canada Business Corporations Act, the Canada Cooperatives Act, the Canada Not-for-profit Corporations Act, and the Competition Act, which received Royal Assent on 1 May 2018. However, section 24 of that Act has not yet come into force and is replaced by the provisions contained in clause 143(1).

Clause 144 amends section 261(1) to provide the Governor in Council with powers to make regulations regarding certain aspects of the new disclosure requirements.

These clauses come into force on days to be fixed by the Governor in Council. However, clauses 143(2), 143(3) and 144 must not come into force before clauses 142 and 143(1).

2.4.5.4 Amendments to the *Pension Benefits Standards Act, 1985*

The *Pension Benefits Standards Act, 1985*[26] provides that plan members are entitled to their accrued pension benefits, regardless of whether the plan is ongoing or terminated.[27] For greater certainty, clause 146 adds section 17.1 to prohibit a pension plan from providing that plan benefits, or a member's benefit, are affected when the plan is terminated.

Clause 147 adds section 17.2 to allow pension administrators to purchase certain types of immediate or deferred life annuities, to be defined in regulation, for former plan members or survivors of a defined benefit pension plan to satisfy – in full or in part – its pension obligations to these individuals, subject to the following conditions:

- the purchase of such an annuity is authorized by the plan;
- the life annuity provides a former plan member or survivor with a benefit that is equal to the amount that the individual would have received under the defined-benefit pension plan as of the day of the annuity's purchase; and
- the administrator complies with the notice requirements, which would be defined in regulation.

The administrator must obtain the Superintendent of Financial Institutions' approval of the provider of a purchased life annuity, unless that provider is a "life company," as defined under the *Insurance Companies Act*. When a purchased life annuity only satisfies part of the pension obligation to the former plan member or survivor, the plan remains responsible for the remaining portion of the obligation to that individual.

Lastly, clauses 145(2) and 145(3) amend the definition of "former member" under section 2 of the *Pension Benefits Standards Act, 1985* to exclude an individual for whom, before the plan was terminated, a life annuity was purchased that fully satisfies the administrator's pension obligations with respect to the individual's benefits.

The changes contained in clauses 145(2), 145(3) and 147 reflect those contained in clauses 1(2) and 15 of Bill C-27, An Act to amend the Pension Benefits Standards Act, 1985, which received first reading in the House of Commons on 19 October 2016 and has not proceeded further since then.

These clauses come into force on Royal Assent, except clauses 145(2), 145(3) and 147, which come into force on a day to be fixed by the Governor in Council.

2.4.6 Division 6: Changes to the *Canada Pension Plan*

Section 60 of the *Canada Pension Plan*[28] provides that claimants must apply for benefits or that an application must be made on behalf of the claimant, and that payment of benefits must be approved by the Minister of Employment and Social Development. Canada Pension Plan (CPP) benefits include retirement pensions, post-retirement benefits, disability pensions, survivors' pensions and death benefits, as well as benefits for children of disabled or deceased CPP contributors.

Clause 153 amends section 60 of the *Canada Pension Plan* to authorize the minister to waive the requirement to apply for a retirement pension, provided certain conditions are met. Specifically, the person must have contributed to the CPP and have reached the age of 70. In addition, at least one of the following must apply:

- the person must be in receipt of a benefit under the *Canada Pension Plan*, the *Old Age Security Act* or a provincial pension plan; and
- the person must have filed an income tax return for the year prior to that in which the minister is considering waiving the requirement (new section 60(1.2)).

The application is deemed to have been made and received the day the requirement for an application for a retirement pension is waived (new section 60(1.3)).

Clause 154 of the bill adds new section 67(3.2) to the *Canada Pension Plan* to set out new rules regarding when a person for whom the requirement to make an application was waived may start to receive the CPP retirement pension. Specifically, the pension is payable for each month after the requirement for an application was waived, as well as for each of the previous 12 months during which the person had reached the age of 70.

Clause 155 of the bill provides that this division of the bill comes into force on 1 January 2020.

2.4.7 Division 7: Amendments to the *Old Age Security Act*

Section 2 of the *Old Age Security Act*[29] defines a pensioner's income as the person's income for the year, as determined under the ITA, while allowing for certain deductions from income. It includes an exemption for the lesser of $3,500 and the person's employment income when determining benefits payable for any month after June 2008.

Clause 156 amends this exemption by adding an end date of July 2020. Clause 156 also amends section 2 to introduce a new income exemption for the purposes of calculating the Guaranteed Income Supplement, starting in July 2020. This new income exemption excludes the first $5,000 of a person's combined employment and self-employment income, along with 50% of the person's combined income that is between $5,000 and $15,000.

2.4.8 Division 8: Amendments to the *Canadian Forces Superannuation Act*, the *Public Service Superannuation Act* and the *Royal Canadian Mounted Police Superannuation Act*

Division 8 of Part 4 of Bill C-97 amends the *Canadian Forces Superannuation Act*,[30] the *Public Service Superannuation Act*[31] and the *Royal Canadian Mounted Police Superannuation Act*[32] to increase the funding surplus limit for federal public sector

pension funds. The surplus limit is the amount by which assets in each pension fund exceed the amount required to pay pension contributors. Any surplus below the limit may be left in the pension fund as a prudent margin. Where the surplus is above the limit, government contributions to the pension fund may be halted temporarily in order to reduce the surplus.[33] Clause 157 amends section 55.4(5) of the *Canadian Forces Superannuation Act*, clause 158 amends section 44.4(5) of the *Public Service Superannuation Act*, and clause 159 amends section 29.4(5) of the *Royal Canadian Mounted Police Superannuation Act* to increase the surplus limit to 25% of the pension fund's liability toward its contributors.

2.4.9 Division 9 of Part 4

2.4.9.1 Subdivision A: Amendments to the *Bankruptcy and Insolvency Act* Regarding Trustee Licensing Fees and Electronic Records

Clauses 160 and 161 amend sections 13.2 and 26 of the BIA. Clause 160 amends section 13.2(2) so that trustees can pay their annual licensing fees on or before a date to be prescribed by regulation or, if there is no prescribed date, on or before 31 December. Clause 161 amends section 26(1) to remove the requirement that trustees retain original copies of minutes, proceedings, resolutions, court orders and other matters or proceedings required for a complete account of the trustee's administration of the estate.

2.4.9.2 Subdivision B: Amendments to the *Electricity and Gas Inspection Act*

The *Electricity and Gas Inspection Act* (EGIA)[34] and the regulations made under the Act set the rules for the sale and purchase of electricity and natural gas and define units for energy measurement. Measurement Canada, an agency of Innovation, Science and Economic Development Canada, is responsible for administering the EGIA.

Clause 162 adds section 28.1(1) to the EGIA to allow the Minister of Industry to make regulations prescribing units of measurement for electricity and gas sales in addition to the units already specified in section 3 of the EGIA, notwithstanding the *Weights and Measures Act*. It also adds section 28.1(2), which prescribes the terms of expiry of a regulation made under section 28.1(1).

2.4.9.3 Subdivision C: Amendments to the *Food and Drugs Act*

Clauses 163 to 184 make several amendments to the *Food and Drugs Act* (FDA).[35] The amendments affect the classification of products governed by the FDA, introduce new oversight of clinical trials, introduce a regulatory framework for advanced therapeutic products and implement new powers for inspectors.

Clause 163 amends section 2 to add definitions for "advanced therapeutic product," "clinical trial" and "food for a special dietary purpose." The clause also amends the existing definition of "therapeutic product authorization" to accommodate the new categories of "advanced therapeutic product authorization" and "clinical trial."

Clause 164 authorizes the Minister of Health, after considering such issues as risk to human health and the possibility of deception, to assign a thing or a class of things that falls within two or more definitions of "food," "drug," "cosmetic" or "device" to any one of those descriptions, and to add it to one of the four parts of new Schedule A to the FDA, which list things that fall within the definition of "food," "drug," "cosmetic" or "device."[36] The minister may also delete items from the schedule. As set out in clause 177, the current Schedule A is renamed Schedule A.1, and under clause 178, the new Schedule A is added to the FDA before Schedule A.1.

Clause 166 addresses the new category of authorizations for clinical trials and includes a prohibition against conducting clinical trials on drugs, devices and food for special dietary purposes without an authorization. It also requires authorization holders to comply with all conditions of authorizations and requires the authorization holders to make information about the clinical trials public, as prescribed.

Clause 167 amends section 21.7, regarding the terms and conditions of authorizations, to include the holders of the new category of authorizations for advanced therapeutic products.

Clause 169 adds new sections to the FDA under the new category "Advanced Therapeutic Products." These provisions authorize the minister to issue, amend, suspend or revoke licences that authorize the importation, sale, advertisement, manufacture, preparation, preservation, packaging, labelling, storage or testing of advanced therapeutic products. The clause also contains a prohibition against conducting any of these activities without a licence. In addition, the clause authorizes the minister to maintain a list of advanced therapeutic products in new Schedule G.

Clause 170, among other things, expands the powers of inspectors, expands "enter any place" to include remote access via telecommunications and amends the section on warrants to include telewarrants. Clause 171 introduces new section 27.3 on "Preventive and Remedial Measures," which authorizes the minister to order a person the minister has reasonable grounds to believe has contravened or is likely to contravene the Act or regulations to take measures to be in compliance with the Act. Clause 172 lists several new regulation-making authorities for clinical trials and clinical trial authorizations, as well as necessary amendments to existing regulation-making authorities to reflect the amendments described above. Similarly, clauses 173 to 175 specify which provisions are subject to the punishments provided for in current sections 31.1, 31.2 and 31.4 of the FDA.

Clause 176 updates section 36(3) to accommodate the new examination powers given to inspectors under clause 170 and to incorporate a new reference to electronic data. Clauses 177 to 179 list the changes to the FDA's schedules. Clauses 180 to 183 are transitional provisions to permit persons who are already authorized under the Act to sell or import a drug or a natural health product for a clinical trial, a positron-emitting radiopharmaceutical for a study, or certain classes of medical device for investigational testing to continue to do so. Clause 184 stipulates that provisions related to clinical trials and clinical trial authorizations, as well as the provisions that clarify which punishments apply to which provisions, come into force on a day to be fixed by an order in council.

2.4.9.4 Subdivision D: Amendments to the *Importation of Intoxicating Liquors Act*

Clauses 185 to 189 amend sections 2, 3, 4, 6 and 8 of the *Importation of Intoxicating Liquors Act*[37] to allow a person to import liquor into a province.

Clause 185 adds Nunavut to the list of territories found in the definition of "province" set out in section 2.

Clause 186(1) amends section 3(1) to restrict the prohibition on persons importing liquor so that it applies only to liquor that is being imported from a place outside Canada, thus allowing Canadians to import liquor from other provinces and territories. It also provides an exception from the prohibition for the *Foreign Missions and International Organizations Act*, which has provisions governing liquor importation by foreign missions and international organizations, in order to provide consistency between the two statutes.

Clauses 186(2) and 186(3) both amend section 3(2), which lists the exceptions to the prohibition on importation set out in section 3(1). The changes clarify that the transportation of liquor is now permitted through a province to a territory, or through Canada to a destination outside of Canada, by the producer of the liquor or by a common carrier provided the liquor is not opened, drunk, or used. Furthermore, the exceptions for the importation of wine, beer or spirits for personal consumption set out in section 3(2)(h) are repealed.

Clauses 187, 188 and 189 make changes, respectively, to sections 4, 6 and 8 to remove reference to the sending, taking or transporting of liquor in these provisions, which govern the burden of proof with respect to the right to import liquor, the prosecution of offences, and the importation of liquor for sacramental or medicinal purposes.

2.4.9.5 Subdivision E: Amendments to the *Precious Metals Marking Act*

The *Precious Metals Marking Act*[38] seeks to ensure that the information provided to consumers on the quality of a precious metal article is not misleading or deceptive and provides for the uniform description and quality marking of precious metal articles in the Canadian marketplace. Competition Bureau Canada is responsible for the administration and enforcement of the Act.

Clause 190 amends the *Precious Metals Marking Act* by replacing sections 9(a) and 9(b) to clarify that the Governor in Council may make regulations to designate articles that are exempt from the application of this Act and parts of articles that are exempt from testing for the purposes of this Act, on a conditional or an unconditional basis.

2.4.9.6 Subdivision F: Amendments to the *Textile Labelling Act*

Clause 191 amends sections 11(1)(b) and 11(1)(c) of the *Textile Labelling Act*[39] to enable the Governor in Council to add conditions to the exemptions from provisions in the Act or regulations. Exemption conditions are therefore allowed for some textile fibre products and some related transactions where the label on the product does not show the textile fibre content and whose sale, import or advertising by the dealer is prohibited by regulation.

2.4.9.7 Subdivision G: Amendments to the *Weights and Measures Act*

Subdivision G of Division 9 of Part 4 of Bill C-97 amends the *Weights and Measures Act* (WMA),[40] primarily to update certain definitions of basic units in accordance with international standards.

Specifically, clause 192 amends the definitions of "measuring machine" and "weighing machine" in the WMA by removing the portion specifying that the machine "has a moving or movable part that has or can have an effect on the accuracy of the machine."

Clause 196 amends the seven definitions in Part I of Schedule I to the WMA to specify that they are consistent with the definitions adopted at the latest General Conference on Weights and Measures, which took place in November 2018.

Clause 193 adds section 10.1 to the WMA to enable the Minister of Industry to make regulations authorizing the use of new units of measurement.

2.4.9.8 Subdivision H: Amendments to the *Hazardous Materials Information Review Act*

Subdivision H of Division 9 of Part 4 amends the *Hazardous Materials Information Review Act* (HMIRA),[41] adjusting the process that a supplier or an employer must follow to claim that certain information required under the *Hazardous Products Act* should be exempt from disclosure because it is confidential business information (CBI). This is meant to harmonize the provisions of the HMIRA relating to the communication of CBI with similar provisions in other Acts.[42]

Currently, to seek an exemption from disclosing such information, a supplier or employer files a claim with the Chief Screening Officer. The file is reviewed and a determination on the validity of the claim is made. If a claim, or a portion of a claim, is found not to be valid, the claimant is ordered to comply with relevant provisions relating to disclosing the information. Validity decisions can be appealed through a process outlined in sections 20 to 27 of the HMIRA.

Clause 198(2) of Bill C-97 adds to section 10(1) of the HMIRA a definition of "confidential business information," which is not defined in the current HMIRA.

Clause 200 of Bill C-97 amends section 11 of the HMIRA to provide that a supplier or an employer who wishes to file a claim for such an exemption does so through the Minister of Health, rather than through the Chief Screening Officer.

This change in authority is reflected in amended sections 12 to 47, which, under clause 201, replace the current sections. Under amended section 12, the minister reviews the claim and determines whether it, or a portion of it, is valid. Amended section 14 provides that where a claim is deemed invalid, the minister can order the claimant to comply with the relevant provisions of various Acts in the same manner that the screening officer is currently empowered to do. Under amended sections 15 to 18, the minister can also review the associated safety data sheet or label and make certain orders with respect to it. The appeal process described in current sections 20 to 27 of the HMIRA is removed, but its absence does not mean that the minister's decision cannot be reviewed, as an application for judicial review can still be made pursuant to the *Federal Courts Act*.

Current section 19(1) of the HMIRA provides that a claimant who is a supplier is exempt from disclosure until the final disposition relating to the claim has been made. Amended section 19(1) specifies that a claimant is exempt until all judicial reviews and appeals have been exhausted; this is called an interim exemption period.

Under amended section 19(2), once a claim or a portion of it is determined to be valid, the claimant is exempt for a three-year period beginning on the day after the day on which all judicial reviews and appeals are exhausted. However, amended sections 21 and 22 provide that, for both the interim exemption period and the

three-year exemption period attached to a valid claim, the exemption can be cancelled or suspended in certain circumstances. Amended sections 24 and 25 set out the conditions under which suspended or cancelled exemptions can be reinstated.

Provisions relating to the disclosure of CBI are set out in amended sections 26 to 31. They include the authority of the minister, set out in amended section 27, to disclose CBI without consent or notification to the affected person "if the disclosure is necessary to address serious and imminent danger to human health or safety or to the environment."

Clauses 206 to 210 set out a number of transitional provisions to address claims both for exemptions for CBI and for appeals from decisions relating to CBI that are in process under the existing provisions of the HMIRA.

2.4.9.9 Subdivision I: Amendments to the *Canada Transportation Act*

Clause 214 adds new sections 6.2 to 6.5, dealing with electronic administration and enforcement of federal legislation, to the *Canada Transportation Act* (CTA).[43] New section 6.2 authorizes the Minister of Transport to use electronic means to administer or enforce any Act that falls within the minister's authority. This authority may also be delegated to any person or class of persons that have been delegated administrative or enforcement powers by the Minister of Transport.

New sections 6.3 and 6.4 state that any requirement to provide information, submit documentation or furnish signatures may also be fulfilled using electronic means, as long as these items are provided in a format approved by the minister and they meet standards set out by regulation.

New section 6.5 authorizes the Governor in Council to make regulations about such electronic submissions and establishes the modalities under which the submissions will be approved. It also authorizes the Governor in Council to make regulations allowing the minister to permit or direct the use of other electronic or non-electronic means of submitting information and sets out the circumstances in which the minister may do so.

Clause 215, through new sections 6.6 to 6.8 of the CTA, sets out the process through which any person or class of persons may seek an exemption from the application of any statutory provision administered or enforced by the minister. Section 6.6 specifies that an application must be made for such an exemption. It also stipulates that the minister may request any additional information considered necessary to process and assess the application, and may place any conditions on the exemption considered appropriate.

Under new section 6.7, to order an exemption to the application of the CTA or other Act under the authority of the Minister of Transport, the minister must be satisfied that the exemption is in the public interest and that it promotes innovation in transportation through research, development or testing. An initial exemption order is valid for a maximum of five years and may be renewed for an additional five years. Exemption orders must be made available to the public, unless the minister believes that overriding safety or security reasons would make such an order inappropriate, or that publishing an order would identify confidential or personal information. The Minister of Transport may recover any costs associated with processing or assessing an exemption order prior to issuing the exemption.

2.4.9.10 Subdivision J: Amendments to the *Pest Control Products Act*

The *Pest Control Products Act* (PCPA)[44] sets out prohibitions in relation to pest control products, as well as the process and requirements associated with registering such products.

Section 17(1) of the PCPA authorizes the Minister of Health to initiate a special review of the registration of a pest control product in certain circumstances, including "if the Minister has reasonable grounds to believe that the health or environmental risks of the product are, or its value is, unacceptable."

Section 28(1) of the PCPA requires the minister to consult the public and federal and provincial government departments and agencies before making certain decisions. A consultation is initiated when the minister makes a consultation statement public. Under section 28(5), when the minister reaches a decision after that consultation, the minister makes the decision statement public.

Clause 217 adds new section 17(6), which specifies that any special review that the minister initiates is limited to the aspect of the pest control product that caused the special review to be initiated. However, new section 17(7) adds that the scope of the re-evaluation or special review can be expanded at any time before the decision statement is made public to include aspects that would also be cause for initiating an additional special review in specific circumstances. New section 17(8) specifies that if the scope is expanded after the consultation statement is made public, the minister must make public a new or revised consultation statement.

Clause 218 adds new section 17.1 to specify circumstances under which the minister may choose not to initiate a special review. Where a special review is required because a member country in the Organisation for Economic Co-operation and Development has prohibited the use of an active ingredient, new section 17.2 provides that ministerial decisions either to expand the scope of a re-evaluation or special review or to not initiate a special review, and the reasons for those decisions, must be made public.

2.4.9.11 Subdivision K: Amendments to the *Quarantine Act*

Subdivision K of Division 9 of Part 4 contains a single clause – clause 220 – which amends the *Quarantine Act*[45] by repealing sections 62.1 and 62.2. Section 62.1 requires proposed regulations made under the Act to be tabled in both houses of Parliament and automatically referred to the appropriate parliamentary committees, then at the discretion of those committees, studied and reported back to the appropriate house. Section 62.2 stipulates that the Minister of Health may make regulations without tabling them in Parliament if the minister deems them to be minor or needing to be made immediately to protect public health or safety.

2.4.9.12 Subdivision L: Amendments to the *Human Pathogens and Toxins Act*

Subdivision L contains a single clause that amends the *Human Pathogens and Toxins Act*.[46] Clause 221 repeals section 66.1, which requires proposed regulations made under the Act to be tabled in both houses of Parliament, referred to the appropriate parliamentary committees, and studied and reported back to the appropriate House, at the discretion of those committees. Clause 221 also repeals section 66.2, which stipulates that the Minister of Health may make regulations without tabling them in Parliament if the minister deems them to be minor or needing to be made immediately to protect public health or safety.

2.4.10 Division 10: Amendments to the *Royal Canadian Mounted Police Act*

Legislative changes are made in Division 10 of Part 4 of Bill C-97 to make permanent the RCMP Interim Management Advisory Board created in January 2019 in response to the recommendations made by the Civilian Review and Complaints Commission for the RCMP and the former Auditor General of Canada Sheila Fraser concerning harassment in the workplace.[47] Clause 222 adds new Part V to the *Royal Canadian Mounted Police Act*[48] to establish the Management Advisory Board. The board provides advice to the RCMP Commissioner on the administration and management of the RCMP. It is composed of 13 part-time members appointed by the Governor in Council and may provide both solicited and unsolicited advice on the development and implementation of RCMP policies, modernization plans, corporate and strategic plans and budgets. Clause 222 also outlines the Board's mandate, the process for the appointment, tenure and remuneration of members, and the Board's right of access to information, as well as where and when meetings are held.

This division comes into force on a day to be fixed by order of the Governor in Council.

2.4.11 Division 11: Amendments to the *Pilotage Act*

Marine pilotage is a service by which marine pilots take control of a vessel and navigate it through ports, straits, lakes, rivers and other waterways. Canada's four pilotage authorities have the exclusive right to provide pilotage services within

their respective geographic area, and they do not receive parliamentary appropriations. The authorities can hire employee pilots or engage pilots belonging to a pilotage corporation through a contract for services.

According to the *Canada Transportation Act* Review released in 2016,[49] Canada's pilotage governance model has remained largely unchanged since the *Pilotage Act* was enacted in 1972.[50] The report recommended merging the pilotage authorities, assessing the governance framework for marine navigation services and reviewing compulsory pilotage areas every three to five years.

On 31 May 2017, Transport Canada launched the *Pilotage Act* review as part of the federal government's Oceans Protection Plan, and the final report was published on 22 May 2018.[51] The report's 38 recommendations included having the federal government review the purpose of the Act, improve the governance model for pilotage in Canada, make the system more nationally consistent and simplify the tariff-setting process.

Clause 226 of Bill C-97 introduces a statement of principles for the delivery of pilotage services. Among these are that the provision of pilotage services must be efficient and cost-effective, that technological developments must be taken into account and that risk management must be used effectively.

Regarding governance, clause 227 amends section 3 of the *Pilotage Act* to prohibit users of pilotage services and those who provide pilotage services from being on the board of a pilotage authority.

Clause 242 adds sections 38.1 to 38.84 to the *Pilotage Act,* transferring responsibility for issuing licences and pilotage certificates from the pilotage authorities to the Minister of Transport. The minister may also suspend, cancel or refuse to issue or renew a licence or certificate subject to various conditions. These powers are currently assigned to the pilotage authorities under section 27 of the *Pilotage Act*. The pilot concerned may challenge the minister's decision before the Transportation Appeal Tribunal of Canada. Clause 267 amends section 2(2) of the *Transportation Appeal Tribunal of Canada Act* to enable the tribunal to hear reviews and appeals under the *Pilotage Act*.

Clause 232 adds new section 15.5 to the *Pilotage Act* to make service contracts between pilotage authorities and pilot corporations publicly available.

Clause 255, by replacing section 52, transfers responsibility for making regulations respecting the provision of pilotage services from the pilotage authorities to the Governor in Council. These regulations concern matters such as the establishment of compulsory pilotage areas, the types of ships that are subject to compulsory pilotage and waivers of compulsory pilotage.

Under section 33 of the *Pilotage Act*, pilotage authorities set their own tariffs of pilotage charges by regulation. Any person who believes these tariffs are prejudicial to the public interest may challenge them before the Canadian Transportation Agency. The following amendments are among those made to sections 33 to 35 of the Act by clause 238. Pilotage charges – a term which replaces "tariffs of pilotage charges" – are no longer established by regulation, but by resolution. The authority must publish a notice on its website of any proposal to set or revise a charge, and any person may comment on the proposal within the timeframe indicated in the notice and file with the Agency a notice of objection related to the proposal.

The bill also grants the Minister of Transport greater powers to enforce the Act and increases the monetary penalties for violations of the Act. For example, under new section 47 of the *Pilotage Act*, set out in clause 253 of the bill, an individual in charge of a ship that enters a compulsory pilotage area without a licensed pilot or a pilotage certificate holder may face a punishment of imprisonment for a maximum term of 18 months and a maximum fine of $1 million. Currently, a similar offence is liable to a maximum fine of $5,000.

Clause 252, through new sections 46.1 to 46.46, adds enforcement provisions that, among other things, enable the minister to designate an authorized person to administer and enforce the *Pilotage Act*. This person may enter any place to verify compliance or prevent non-compliance with the Act on reasonable grounds.[52] This person is granted investigative powers, including the power to seize documents and take samples, and may order a ship to stop, proceed or leave Canadian waters if the person has reasonable grounds to believe that an offence under the Act has been committed. This person may also order the detention of a ship.

Clause 258 provides that the Minister of Transport must undertake a review of the *Pilotage Act* every 10 years.

2.4.12 Division 12: Enactment of the Security Screening Services Commercialization Act

Clause 270 enacts An Act respecting the commercialization of security screening services (short title: Security Screening Services Commercialization Act [SSSCA]), the purpose of which is to dissolve the Canadian Air Transport Security Authority (CATSA) and replace it with a "designated screening authority." In 2016, the *Canada Transportation Act* (CTA) Review proposed replacing CATSA as part of a recommendation to overhaul Canada's regulatory, financing and delivery models for airport security.

Sections 1 to 6 of the SSSCA provide its short title and define key terms, as well as the scope of application provisions.

Section 7 provides for a corporation that has been incorporated under the *Canada Not-for-profit Corporations Act* to be designated by order of the Governor in Council as the designated screening authority. Sections 8 to 15 establish the scope of the designated screening authority's powers and responsibilities.

Sections 16 and 17 empower the Minister of Transport to issue written directions to the screening authority on any matter respecting aviation security and to establish confidentiality requirements. Sections 18 to 23 outline the designated screening authority's obligations to provide screening services directly or through a screening contractor. They also provide a framework for the relationship between the designated screening authority and aerodrome operators, as well as criteria for the certification of screening contractors.

Sections 24 to 30 outline the process for imposing charges for screening services and define the principles that the designated screening authority must follow in determining the amount of a charge. The Canadian Transportation Agency is responsible for evaluating proposed increases in accordance with the Consumer Price Index. The Minister of Transport may, at the request of the designated screening authority, approve a proposal to establish or increase a charge.

Sections 31 and 32 provide a process by which interested persons may, within 30 days of publication of the notice of a proposal to create or increase a charge, object to the proposal. The decision regarding the objection rests with the Canadian Transportation Agency. No objection may be made if the minister has approved the proposal, or if the increase is in accordance with the Consumer Price Index and has been approved by the Agency. Section 33 establishes the Canadian Transportation Agency's obligations to maintain the confidentiality of information that it obtains during proceedings undertake under the SSSCA. Sections 34 to 36 establish that, notwithstanding the CTA, objections may not be referred to mediation, the Agency's decisions may not be appealed, and the Governor in Council may not issue policy directions to the Agency in respect of its powers under the SSSCA.

Sections 37 to 40 require air carriers to collect charges on behalf of the designated screening authority from passengers and to remit the charges in their entirety to the authority. Sections 41 and 42 allow the designated screening authority to seek a court order for the seizure and detention of aircraft if an air carrier has failed to collect or remit charges.

Sections 43 to 49 establish prohibitions and offences, section 50 empowers the Governor in Council to make regulations, and section 51 requires a review by the minister after a period of five years. Sections 52 to 63 are transitional provisions relating to the closing out of affairs and dissolution of CATSA, as well as the transition period and initial charges for the designated screening authority.

Clauses 271 to 278 make consequential amendments to the *Aeronautics Act*, the *Financial Administration Act*, the CTA and the *Secure Air Travel Act* to replace references to CATSA with references to the designated screening authority. To ensure parity with the French version, clause 275 also adds the word "occupies" to the English version of section 8.7(1)(a) of the *Aeronautics Act* regarding the power to enter an aviation-related facility.

Clause 279 specifies the various provisions that will come into force on a date to be fixed by the Governor in Council, on a transfer date to be determined by agreement between CATSA and the designated screening authority, and on the day when CATSA is dissolved.

2.4.13 Division 13: Amendments to the *Aviation Industry Indemnity Act*

The *Aviation Industry Indemnity Act* (AIIA)[53] grants the Minister of Transport the authority to establish an undertaking with an aviation industry participant to indemnify it against loss, damage or liability resulting from designated "events," including acts of war, terrorism or civil unrest. The airline, airport authority, or other industry participant entering into such an agreement must demonstrate an inability to purchase an insurance policy that covers such risks from a private commercial insurer and must incur damages beyond a loss of income. The AIIA's provisions replaced the Aviation War Risk Liability Program, a national aviation indemnity regime created by Royal Prerogative following the 11 September 2001 terrorist attacks to underwrite aviation industry participants who were not able to purchase so-called "war risk" coverage from private insurers.[54]

While the current AIIA identifies NAV CANADA – the private entity that operates Canada's civil air navigation system – as an aviation industry participant eligible to enter into a ministerial indemnification agreement, clause 281 of Bill C-97 expands the definition of "event" in section 2 of the AIIA to include instances where NAV CANADA would provide air navigation services to the Canadian military. Clause 288 amends section 10 to clarify that the minister is not required to consider the availability of private insurance policies that would cover such a provision of service during the biannual assessment of the commercial insurance market. Similarly, clause 289 amends section 11 to exempt the minister from reporting to Parliament on this event, unless an undertaking related to it is issued, amended, or revoked.

Clause 282 amends section 3 of the AIIA to include beneficiaries named under an aviation industry participant's insurance policy as a new category of entities eligible for ministerial indemnity coverage under the AIIA. While beneficiaries were eligible for compensation under the government's Aviation War Risk Liability Program between 2002 and 2014,[55] they were not included in the AIIA. Clauses 280 and 283 to 287 make consequential amendments to the AIIA to reflect the inclusion of beneficiaries as eligible for the ministerial indemnity coverage provided for in the Act.

2.4.14 Division 14: Amendments to the *Transportation Appeal Tribunal of Canada Act*

The *Budget Implementation Act, 2018, No. 2* added administrative monetary penalties to the *Marine Liability Act*. Clause 290 of Bill C-97 amends the *Transportation Appeal Tribunal of Canada Act* to clarify that the Transportation Appeal Tribunal of Canada has jurisdiction over reviews and appeals of those penalties.

2.4.15 Division 15: Enactment of the College of Immigration and Citizenship Consultants Act and Related Amendments to the *Citizenship Act* and the *Immigration and Refugee Protection Act*

Clause 292 enacts An Act respecting the College of Immigration and Citizenship Consultants (short title: College of Immigration and Citizenship Consultants Act [CICCA]), which establishes the College of Immigration and Citizenship Consultants (CICC). The CICC is responsible for licensing and regulating immigration and citizenship consultants to maintain professional standards.

Section 1 of the CICCA provides its short title. Section 2 defines key terms. Section 3 provides that the Governor in Council may designate any federal minister to be the minister responsible for the CICCA.

Sections 4 to 15 establish and set out the organization of the CICC, including making provision for a fund to compensate persons who have been adversely affected by a member of the College. Sections 16 to 28 provide rules for establishing the board of directors of the CICC. Section 29 establishes two CICC committees – the Complaints Committee and the Discipline Committee – and provides for the establishment of other committees. Sections 30 to 41 establish a registrar responsible for issuing licences to consultants, maintaining a public register of licensees and verifying licensed consultants' compliance with the CICCA. The registrar's compliance verification powers are not to be used with respect to privileged information. The term "privileged" is defined in section 2 as being "subject to a privilege under the law of evidence, litigation privilege, solicitor–client privilege or the professional secrecy of advocates and notaries." Similar provisions regarding privileged information also apply in the context of investigations and disciplinary proceedings.

Section 42 makes it mandatory for licensed consultants to have professional liability insurance.

Section 43 provides that the minister is responsible for establishing a code of professional conduct to which consultants must adhere. Set in regulations, it can be amended by the board of directors with the minister's written prior approval. Section 44 provides that a consultant who fails to meet the standards established by the code commits professional misconduct or is incompetent.

Sections 45 to 49 set out how complaints are to be managed by the CICC, including those with respect to formerly licensed consultants. Sections 50 to 57 set out the investigative duties and powers of the Complaints Committee. Sections 58 to 70 provide for disciplinary hearings and introduce measures that can be taken upon a finding of misconduct or incompetence by a consultant. Sections 71 to 73 provide for the judicial review of decisions made by the CICC. Sections 74 to 76 establish the powers of the minister.

Sections 77 and 78 establish that the College may seek an injunction against a person who falsely claims to be a licensed consultant, or who falsely claims to be a consultant and represents or advises a person for a fee in connection with an application or proceeding under the *Citizenship Act* or the *Immigration and Refugee Protection Act*. Section 79 sets out criminal offences for licensed consultants who mislead investigators or do not comply with conditions established by the Discipline Committee in interim and final decisions.

Section 80 authorizes the CICC board of directors to make by-laws respecting matters necessary to carry on the activities of the College. Section 81 empowers the Governor in Council to make regulations for carrying out the purposes and provisions of the Act. Section 82 provides that, in case of conflict or inconsistency, the regulations prevail over the by-laws.

Sections 83 to 88 are transitional provisions that establish an interim board of directors that will undertake the establishment of the CICC. There are two different mechanisms provided, based on the continuance, or not, of the existing regulatory body, namely, the Immigration Consultants of Canada Regulatory Council.

Clauses 293 to 297 of the bill make related amendments to the *Citizenship Act* and *Immigration and Refugee Protection Act*, while clauses 298 and 299 make consequential amendments to the *Access to Information Act* and the *Privacy Act*.

Clause 300 specifies that the provisions come into force on specific days to be fixed by order of the Governor in Council.

2.4.16 Division 16: Amendments to the *Immigration and Refugee Protection Act*

Clause 301 of Bill C-97 amends section 3 of the *Immigration and Refugee Protection Act* (IRPA) by adding a new objective to the Act, that of maintaining the integrity of the Canadian immigration system through the establishment of fair and efficient procedures.

Clauses 302 to 310 modify IRPA's application in three ways. The amendments extend the waiting periods before failed refugee claimants can make temporary resident permit applications, applications based on humanitarian and compassionate

grounds and applications for pre-removal risk assessments. They also authorize the Governor in Council to issue an order to stop the processing and issuance of temporary resident visas to nationals of specific countries because the governments of those countries are delaying the issuance of travel documents for their nationals in Canada. Lastly, the amendments introduce a new ground of ineligibility for refugee protection if a claimant has previously made a claim for refugee protection in another country.

Currently, a 12-month waiting period applies before a temporary resident permit application or an application on humanitarian and compassionate grounds can be submitted when the Refugee Protection Division (RPD) or the Refugee Appeal Division (RAD) of the Immigration and Refugee Board of Canada, or the Federal Court, rejects a claim or determines that a claim has been withdrawn or abandoned. Clauses 302 and 303 of the bill, respectively, add new section 24(3.1) and amend section 25(1.2) to specify that a person who is ineligible to have a refugee claim referred to the RPD may not apply for a temporary resident permit or make an application on humanitarian and compassionate grounds in Canada if that person has made an application for a pre-removal risk assessment that is being processed by Immigration, Refugees and Citizenship Canada.

Clause 308 amends section 112(2)(b.1) to change the day that marks when persons who are ready for removal begin the 12-month waiting period to apply for a pre-removal risk assessment: the period now commences on the day of the last decision at the RPD, RAD or Federal Court. Under amended section 112(2)(c), if a pre-removal risk assessment has been conducted, and the person is not removed at that time, another pre-removal assessment may be conducted by the minister after 12 months following the last decision of the Minister of Citizenship and Immigration or the Federal Court.

Clause 304 adds new section 87.31 to IRPA, allowing the Governor in Council to issue orders with respect to applications for temporary resident visas, work permits and study permits if foreign governments are unreasonably refusing to issue or delaying the issuance of travel documents for their nationals in Canada. Such orders may indicate that applications for temporary resident visas, work permits or study permits will not be received, or processed, or will be suspended or terminated. In the case of terminated applications, orders can provide for the reimbursement of fees.

Clause 305 amends section 100(1) of IRPA, directing officers to examine the eligibility of a claim before they refer it to the RPD and thus removing the three-day deadline for these referrals.

Clause 306 adds new section 101(1)(c.1) to IRPA, introducing a new ground of ineligibility for refugee protection, namely, if a refugee claim has been made in a country with which Canada has a data-sharing agreement, such as Australia, New Zealand, the United States or the United Kingdom.[56] Clause 307 amends

section 104(1) to provide that an officer may give notice to the RPD or the RAD, with respect to a claim in proceedings before either entity, that a claimant has been found to be ineligible for refugee protection; this notice results in the cancellation of the ongoing proceedings. Clause 308.1, through new section 113.01, introduces a mandatory pre-removal risk assessment hearing for persons ineligible to make a refugee claim in Canada based on this new ground. Clause 309 is a transitional provision that makes the application of the new ground of ineligibility retroactive to 8 April 2019, the date that Bill C-97 was introduced.

Clause 310 coordinates amendments to IRPA if clause 302(1) of Bill C-97 and section 15(1) of the *Balanced Refugee Reform Act* are both in force, because, if that is the case, responsibility for pre-removal risk assessments will shift from Immigration, Refugees and Citizenship Canada to the RPD.

2.4.17 Division 17: Amendments to the *Federal Courts Act*

Division 17 of Part 4 of Bill C-97 amends the *Federal Courts Act*[57] to increase the number of Federal Court judges. Clause 311 amends section 5.1(1) of the Act to increase the number of puisne judges from 36 to 39. Budget 2019 states that these three new positions will ensure "efficient and timely processing of asylum claimants seeking judicial review."[58]

2.4.18 Division 18: Amendments to the *National Housing Act*

Clause 312 amends section 57 of the *National Housing Act*.[59] This section sets out the powers of Canada Mortgage and Housing Corporation (CMHC) with respect to loans and contributions to owner-occupied housing projects.

Section 57(1) provides that CMHC may make loans and contributions in respect of housing projects occupied or intended to be occupied by the owner of the project, make loans to refinance debt related to such a housing project, and forgive amounts owing on those loans. Clause 312 amends section 57(1) to also allow CMHC to acquire an interest or right in such a housing project, and to make an investment in order to acquire such an interest or right.

Section 57(2) specifies that CMHC may determine the terms and conditions on which it exercises its authorities under section 57(1). For consistency with section 57(1), clause 312 adds to section 57(2) the references to the acquisition of an interest or right in an owner-occupied housing project and making an investment to acquire such an interest or right. Clause 312 also amends section 57(2) to require CMHC to seek the approval of the Minister of Finance when determining these terms and conditions.

2.4.19 Division 19: Enactment of the National Housing Strategy Act

Division 19 of Part 4 enacts An Act respecting a national housing strategy (short title: National Housing Strategy Act).

Section 3 of the National Housing Strategy Act provides that the Governor in Council may designate a minister to be responsible for the Act.

Section 4 declares that it is the housing policy of the Government of Canada

- to recognize that the right to adequate housing is a fundamental human right affirmed in international law;
- to recognize that housing is essential to the inherent dignity and well-being of the person and to building sustainable and inclusive communities;
- to support improved housing outcomes for all the people of Canada; and
- to further the progressive realization of the right to adequate housing as recognized in the *International Covenant on Economic, Social and Cultural Rights*, to which Canada is a party.

Section 5 requires that, to further the housing policy, the minister develop and maintain a national housing strategy, taking into account key principles of a human rights–based approach to housing. The National Housing Strategy, among other things,

- sets out a long-term vision for housing in Canada that recognizes the importance of housing in achieving social, economic, health and environmental goals;
- establishes national goals relating to housing and efforts to eliminate homelessness and identifies related priorities, initiatives, timelines and desired outcomes;
- focuses on improving outcomes for individuals in greatest need; and
- provides for participatory processes that ensure the ongoing engagement of civil society, stakeholders, vulnerable groups and individuals with lived experience of housing need and homelessness.

Sections 6 to 12 establish a National Housing Council (NHC), whose purpose is to further the National Housing Strategy by providing advice to, and undertaking specified activities for, the minister. The NHC is to be composed of two co-chairs and nine to 15 other members. Section 7 sets out that *ex officio* members of the NHC are the President of the CMHC, the Federal Housing Advocate (FHA), the deputy minister of the department of the minister responsible for applying the Act, and the Deputy Minister of Indigenous Services. Section 8 establishes that, when appointing members to the NHC, the minister is to take into consideration the importance of representation of persons who are members of vulnerable groups, persons with lived

experience of housing need and homelessness, persons who reflect the diversity of Canadian society, and persons who have expertise in human rights. Section 9 specifies that the President of the CMHC is the *ex officio* co-chair of the NHC, and a ministerial designee is the other co-chair. The NHC meets four times each year or as requested by the minister.

Section 13 establishes an FHA, whose mandate comprises:

- monitoring the implementation of the housing policy – including its goals, timelines and desired outcomes – and assessing its impact on persons who are members of vulnerable groups and persons with lived experience of housing need and homelessness;
- conducting research and analysis on systemic housing issues, including by initiating studies into the economic, institutional, or industry conditions that affect the housing system and over which Parliament has jurisdiction;
- consulting with vulnerable groups, persons with lived experience of housing need and homelessness, and civil society organizations;
- receiving submissions with respect to systemic housing issues; and
- providing advice to the minister.

Section 13 also states that the FHA may conduct a review of any systemic housing issue raised through a submission and may request that the NHC establish a review panel to hold hearings on that issue. If the FHA conducts a review, the FHA must provide the minister and those who presented the submission with a report stating the FHA's opinion on the issue and any recommendations on matters to further the housing policy that are under Parliament's jurisdiction.

Section 14 requires that the FHA be appointed by the Governor in Council for a term of no more than three years, which may be renewed for one further term.

Under section 16, the FHA must submit an annual report to the minister on systemic housing issues. The report must contain

- a summary of the FHA's activities, any submissions received by the FHA, and the results of the FHA's consultations, analysis, research and study; and
- recommended measures to address systemic housing issues that are under Parliament's jurisdiction.

The minister must table the FHA's report before both houses of Parliament, and the FHA may publish the report after it is tabled.

Section 16 provides additional details on the establishment of review panels by the NHC, upon request of the FHA, as provided for in section 13. The NHC must appoint three members to the review panel, taking into consideration the importance of representing persons who are members of vulnerable groups, persons with lived experience of housing need and homelessness, and persons with expertise in human rights. The panel must hold hearings on the relevant housing issue for which it was established and, in so doing, offer the public – particularly members of communities that are affected by the issue and groups that have expertise in human rights and housing – an opportunity to participate. It must prepare and submit to the minister a report stating the panel's opinion on the issue and recommend actions to address the issue that are under Parliament's jurisdiction. The FHA may make representations and propose recommendations to the panel and, for the purposes of doing so, may work with communities affected by the issue.

Sections 17 and 18 outline accountability measures under the National Housing Strategy Act. Section 17 requires the minister to deliver a response to the FHA's report to both houses of Parliament within 120 days of the tabling of the report. Section 18 requires the minister, before 31 March 2021, and within every three years after that date, to table a report in both houses of Parliament on the effectiveness of the National Housing Strategy.

Clause 314 stipulates that this Division comes into force on a day to be fixed by order of the Governor in Council.

2.4.20 Division 20: Enactment of the Poverty Reduction Act

Clause 315 of Bill C-97 enacts An Act respecting the reduction of poverty (short title: Poverty Reduction Act [PRA]) to provide targets for poverty reduction to be achieved by 2020 and by 2030, set out Canada's Official Poverty Line and other metrics to measure poverty, and to establish the National Advisory Council on Poverty. The provisions of the new Act are explained in greater detail below.

Clause 316 of the bill repeals section 687 of the *Budget Implementation Act, 2018, No. 2*. This section, which came into force upon Royal Assent, previously enacted the *Poverty Reduction Act* with the same poverty reduction targets as those outlined in this bill. The text of Division 20 also has previous legislative history, having been included in Bill C-87, An Act respecting the reduction of poverty (short title: Poverty Reduction Act), a bill that had not moved beyond second reading as of April 2019.[60]

2.4.20.1 Poverty Reduction Targets

Section 6 of the new PRA establishes targets for poverty reduction. The targets are to reduce poverty rates by 20% by 2020 and by 50% by 2030, compared with the Market Basket Measure (MBM)[61] in 2015.

2.4.20.2 Official Poverty Line and Other Metrics

Section 7(1) of the new PRA establishes the Official Poverty Line (i.e., the MBM) as the "official metric" to measure the level of poverty and to assess progress toward meeting the established targets. Section 7(2) specifies that the Official Poverty Line will be reviewed, on a regular basis as determined by Statistics Canada, to ensure that it represents the current cost of a basket of goods and services in keeping with "a modest, basic standard of living in Canada."

Section 8(1) of the new PRA refers to additional metrics (see Schedule 4 to Bill C-97[62]) that are also to be used to measure Canada's poverty level. Section 8(2) provides that the schedule may be amended by an order in council, in order to add or delete a metric.

2.4.20.3 The National Advisory Council on Poverty

Section 9(1) of the new PRA establishes the National Advisory Council on Poverty (NACP), which consists of eight to 10 members, including a chairperson and a member with responsibility for children's issues. Section 9(2) stipulates that the deputy minister reporting to the designated minister[63] is an *ex officio* member of the NACP. Section 9(3) sets out that other members are appointed by the Governor in Council for a maximum term of three years and may be reappointed on the expiry of their terms.

Section 9(4) provides that the chairperson is appointed on a full-time basis, while other members may receive full-time or part-time appointments. Section 9(5) specifies that the chairperson supervises and directs the NACP's work. Further, section 9(6) stipulates that, if the chairperson is absent or unable to act, or if the office of the chairperson is vacant, the minister may appoint another NACP member to act as chairperson for up to 90 days; for a longer acting period, a Governor in Council appointment is required.

Regarding remuneration, section 9(7) provides for NACP members, other than the deputy minister, to be paid as determined by the Governor in Council for their work connected to the NACP. Section 9(8) specifies that NACP members are to be reimbursed for travel, living and other expenses that are incurred while absent from their ordinary places of work (for full-time members) or from their ordinary places of residence (for part-time members).

Under section 9(9), all NACP members are considered Government of Canada employees for the purposes of workers' compensation benefits, while full-time members are also deemed to be public service employees for the purposes of superannuation.

Section 10 of the new PRA sets out the functions of the NACP as follows:

- advising the minister on poverty reduction in Canada, including on programs, funding and activities supporting poverty reduction;
- undertaking consultations with the public, including academics, other experts, Indigenous persons, and persons with lived experience in poverty;
- reporting to the minister within six months of the end of each fiscal year on progress made toward poverty reduction, and on advice the NACP has provided to the minister with respect to poverty reduction; and
- undertaking any other activity determined by the minister.

Under section 12, the NACP report referred to in section 10 must be tabled in each house of Parliament within 15 sitting days of its receipt by the minister.

Finally, section 11 provides that the NACP may be dissolved by order of the Governor in Council, on the recommendation of the minister, after the minister determines that the poverty level has been reduced by 50% below the level of poverty in 2015.

Clause 317 of the bill provides that sections 9 to 12 of the new PRA, related to the NACP, come into force on a date determined by order of the Governor in Council.

2.4.21 Division 21: Amendments to the *Veterans Well-being Act*

Clauses 318 to 321 amend the *Veterans Well-being Act*[64] to make members of the Supplementary Reserve eligible for the education and training benefit. Under clause 322, the changes come into force on 5 July 2019.

2.4.22 Division 22: Amendments to the *Canada Student Loans Act* and the *Canada Student Financial Assistance Act*

The *Canada Student Loans Act* (CSLA) governs the provision of loans issued to students up to 1 August 1995, while the *Canada Student Financial Assistance Act* (CSFAA) governs the provision of financial assistance issued to students as of 1 August 1995.[65]

Clause 323 of the bill amends section 4(2)(b) of the CSLA to extend the interest-free period on student loans made on or after 1 August 1993, from the last day of the month in which the borrower ceases to be a full-time student, to six months from this date. Clause 323 amends section 4(4) in a similar way, in favour of returning full-time students whose student loans were made before 1 August 1993 but were consolidated thereafter.

Similarly, clause 325 of the bill amends sections 7(1)(a) and 7(1)(b) of the CSFAA to extend the interest-free period on student loans made to full-time and part-time students, from the last day of the month in which the borrower ceases to be a student, to six months from this date.

Clauses 324 and 326 of the bill make transitional provisions to apply the new rules regarding interest-free periods to borrowers who ceased to be students at any time during the six months before the day on which the relevant provisions of the bill come into force (new sections 22.1(1) and 22.1(2) of the CSLA, and new sections 20.1(1) and 20.1(2) of the CSFAA).

Clause 327 of the bill provides that Division 22 of Part 4 of Bill C-97 comes into force on 1 November 2019.

2.4.23 Division 23: Amendments to the *Canada National Parks Act*

Division 23 of Part 4 amends the *Canada National Parks Act*[66] to achieve the following:

- establish Thaidene Nene National Park Reserve of Canada in the Northwest Territories; and
- decrease the hectarage of the Lake Louise and Mount Norquay ski areas in Banff National Park of Canada.

A national park reserve is an area that is operated in the same manner as a national park, but in which Indigenous people have outstanding claims to Indigenous rights and title.[67] Thaidene Nene National Park Reserve of Canada is established pursuant to an agreement between Parks Canada, the Government of the Northwest Territories, the Łutsël K'e Dene First Nation, the Northwest Territory Métis Nation and other Indigenous groups.[68] Under clause 333, the provisions establishing the national park reserve come into force on a day to be fixed by order of the Governor in Council, which must be after the agreement between the Government of Canada and the Government of the Northwest Territories regarding the transfer of the administration of the lands comes into effect.

The reduction in the size of the Lake Louise and Mount Norquay ski areas is set out in the *Lake Louise Ski Area Site Guidelines for Development and Use* of 2015[69] and the *Mt. Norquay Ski Area Site Guidelines for Development and Use* of 2011.[70] Clause 332 amends Schedule 5 of the *Canada National Parks Act* to change the size of these ski areas.

2.4.24 Division 24: Amendments to the *Parks Canada Agency Act*

Currently, the unspent balance of money appropriated to the Parks Canada Agency may be carried forward to the year following the year in which the money was appropriated. Clause 334 amends section 19 of the *Parks Canada Agency Act*[71] to provide that any balance of money appropriated to the Agency that is not spent by in the fiscal year in which it was appropriated lapses at the end of that fiscal year. Under clause 335, the amendment comes into force on 1 April 2021.

2.4.25 Division 25 of Part 4

Division 25 of Part 4 changes the machinery of government by establishing two new departments to replace the Department of Indian Affairs and Northern Development: the Department of Indigenous Services Canada and the Department of Crown-Indigenous Relations and Northern Affairs. Additionally, it amends various Acts related to Indigenous matters.

2.4.25.1 Subdivision A: Enactment of the Department of Indigenous Services Act

Clause 336 of Bill C-97 enacts An Act respecting the Department of Indigenous Services (short title: Department of Indigenous Services Act) to establish the department of the same name. The Act contains a two-paragraph preamble noting, among other things, the government's commitment to implement the *United Nations Declaration on the Rights of Indigenous Peoples*.[72] The preamble also states that the department will carry out its activities in a way that

- ensures that Indigenous individuals have access to services;
- recognizes socio-economic gaps between Indigenous peoples and other Canadians;
- recognizes and promotes Indigenous ways of knowing, being and doing;
- collaborates and cooperates with Indigenous peoples and with the provinces and territories; and
- implements the gradual transfer of departmental responsibilities to Indigenous organizations.

Sections 3 and 4 of the new Act stipulate that presiding over the department is the Minister of Indigenous Services, who is responsible for its management and direction. Section 6 sets out the minister's powers, duties and functions, which cover all matters over which Parliament has jurisdiction – and that are not assigned to another federal organization – relating to the provision of services to eligible Indigenous individuals and governing bodies. These services are those related to child and family services, education, health, social development, economic development, housing, infrastructure, emergency management, governance and any other matter designated by an order in council.

In addition, section 7 provides that the minister is to give Indigenous organizations the opportunity to collaborate in the development, provision, assessment and improvement of these services, and is to take measures to gradually transfer departmental responsibilities over these services to them. Section 8 stipulates that the powers, duties and functions outlined in sections 6(2) and 7 are subject to existing agreements, such as land claims and self-government agreements. Under section 9, the minister can enter into agreements with Indigenous organizations regarding the provision of services and the transfer of responsibilities.

Section 15 states that annually, the minister must table a report before each house of Parliament on the socio-economic gaps between First Nations individuals, Inuit, Métis individuals and other Canadians, as well as on the measures taken to close these gaps and the progress made to transfer departmental responsibilities to Indigenous organizations.

Clause 336.1 provides that Subdivision A comes into force on a day to be fixed by order of the Governor in Council, but no later than 15 July 2019.

2.4.25.2 Subdivision B: Enactment of the Department of Crown-Indigenous Relations and Northern Affairs Act

Clause 337 of Bill C-97 enacts An Act respecting the Department of Crown-Indigenous Relations and Northern Affairs (short title: Department of Crown-Indigenous Relations and Northern Affairs Act) to establish the department of the same name. The Act contains a two-paragraph preamble noting, among other things, the government's commitment to implement the *United Nations Declaration on the Rights of Indigenous Peoples*. The preamble also states that the department will carry out its activities in a way that

- collaborates with Indigenous peoples and with the provinces and territories with respect to the negotiation and implementation of agreements;
- recognizes and implements treaties between the Crown and Indigenous peoples;
- promotes the self-reliance, prosperity and well-being of northern residents and communities;

- recognizes and promotes Indigenous ways of knowing, being and doing; and
- promotes public awareness and understanding with respect to reconciliation with Indigenous peoples.

Sections 3 and 4 of the new Act stipulate that presiding over the department is the Minister of Crown-Indigenous Relations, who is responsible for its management and direction. Section 6 sets out the minister's powers, duties and functions, which cover all matters over which Parliament has jurisdiction – and that are not assigned to another federal organization – relating to relations with Indigenous peoples.
In addition, section 7 provides that the minister is responsible for

- leading the government's work with respect to the affirmation of Indigenous peoples' rights and the implementation of treaties and other agreements with Indigenous peoples;
- negotiating treaties and other agreements to advance Indigenous self-determination; and
- advancing reconciliation with Indigenous peoples.

Section 10 states that annually, the minister must table before each house of Parliament a report on measures taken to advance Indigenous self-determination and reconciliation with Indigenous peoples.

Under section 11, a Minister of Northern Affairs may be appointed. In the absence of such an appointment, the Minister of Crown-Indigenous Relations would effectively be the Minister of Northern Affairs.

Section 13 provides that the duties, powers and functions of the Minister of Northern Affairs cover all matters over which Parliament has jurisdiction – and that are not assigned to another federal organization – with respect to the northern territories, their resources and their affairs, and to policies, directives and programs related to the Canadian North. Further, under section 14, the Minister of Northern Affairs is responsible for coordinating the government's activities in the territories, promoting the territories' social, economic and political development, and fostering knowledge of the Canadian North.

Section 15 stipulates that the Minister of Northern Affairs, with some exceptions, also administers federal Crown lands in Nunavut, public real property in Yukon and public lands in the Northwest Territories.

Section 17 states that the Minister of Northern Affairs may enter into agreements with a territory for the transfer of responsibilities to the territory.

Clause 337.1 provides that Subdivision B comes into force on a day to be fixed by order of the Governor in Council, but no later than 15 July 2019.

2.4.25.3 Subdivision C: Repeal of the *Department of Indian Affairs and Northern Development Act* and Amendments to Other Acts

Clauses 338 to 381 set out transitional provisions, consequential amendments and coordinating amendments to various bills and Acts related to the enactment of the Department of Indigenous Services Act and the Department of Crown-Indigenous Relations and Northern Affairs Act. The transitional provisions relate to office holders (and their ability to continue to occupy a position), amounts appropriated, and decisions made prior to the enactment of those Acts. The consequential and coordinating amendments are mainly to ensure that references to the former ministers and departments in agreements, bills and Acts are to be read as references to the ministers and departments as defined in the legislation enacted by clauses 336 and 337.

Notably, clause 357 amends the *Indian Act* to replace the Minister of Indian Affairs and Northern Development with the Minister of Indigenous Services as the superintendent general of Indian affairs. As a result, the Minister of Indigenous Services becomes responsible for administering the *Indian Act*.

Clause 382 repeals the *Department of Indian Affairs and Northern Development Act*.

Clause 383 provides that Subdivision C, with some exceptions, comes into force on a day to be fixed by order of the Governor in Council, but no later than 15 July 2019. Clauses 368(2) and 369(2) come into force on a day to be fixed by order of the Governor in Council, but not earlier than the coming into force of clauses 368(1) and 369(1). Clauses 368(1), 368(2), 369(1) and 369(2) replace the minister and department referred to in sections 2 and 9 of the *First Nations Financial Transparency Act*. Clauses 376 to 381 are coordinating amendments to other bills and come into force on specific dates.

2.4.25.4 Subdivision D: Amendments to the *First Nations Land Management Act*, the *First Nations Oil and Gas and Moneys Management Act* and the *Addition of Lands to Reserves and Reserve Creation Act*

Subdivision D of Division 25 of Part 4 of Bill C-97 amends the *First Nations Land Management Act*,[73] the *First Nations Oil and Gas and Moneys Management Act* (FNOGMMA)[74] and the *Addition of Lands to Reserves and Reserve Creation Act*.[75] Clause 384 amends section 44 of the *First Nations Land Management Act* so that the *Statutory Instruments Act* does not apply to an order made by the Minister of Indian Affairs and Northern Development, at the request of a First Nation with a land code in force, to set apart any Crown lands as a reserve for the use and benefit of the First Nation.

Clause 385 amends sections 22(1) and 22(2) of the FNOGMMA to provide that the Minister of Indian Affairs and Northern Development, rather than the Governor in Council, can add a First Nations name to or amend a First Nations name in Schedule 1 to the Act. Currently, no First Nations are listed in this schedule. According to section 22(1) of the FNOGMMA, a First Nation's name can be added to Schedule 1 following an affirmative vote by the First Nation to ratify oil and gas codes, approval to transfer the management and regulation of oil and gas exploitation and exploration to the First Nation, and the First Nation's development of laws in accordance with section 35(1)(a) of the FNOGMMA.

Clause 386 amends section 4 of the *Addition of Lands to Reserves and Reserve Creation Act* (not yet in force) on the first day when both clause 384 of Bill C-97 and section 675 of the *Budget Implementation Act, 2018, No. 2* are in force to provide that the *Statutory Instruments Act* does not apply to an order made by the minister,[76] at the request of a First Nations governing body, to set apart any Crown lands as a reserve.

2.4.26 Division 26: Enactment of the Federal Prompt Payment for Construction Work Act

Canadian construction operations are generally comprised of a land owner and a contractor that manages the construction project and/or undertakes construction work that is outlined in the construction contract between them. In what is commonly referred to as the "contracting chain," the contractor may subcontract specified work to one or more subcontractors, who themselves may subcontract particular work to additional subcontractors. These contracts may contain a "pay-if-paid" clause stipulating that a supervising contractor/subcontractor will only pay its subcontractors when it has been paid. Consequently, delayed payment to a supervising contractor/subcontractor may delay payment to all subordinate subcontractors.

Depending on a contract's terms, a contractor/subcontractor may withhold entire payments to a subordinate subcontractor when only a small proportion of that payment is in dispute between them. Furthermore, there is no federal legal requirement for the terms of a construction contract to specify that delayed payment will result in interest payments or require that the costs incurred as a result of the delay will be repaid. Through a contingent payment clause, it is also possible that subcontractors will be contractually obliged to continue working when they have not received required payments due to any delay. The risk associated with delayed payments may be considered by subcontractors when they are developing their bids to work on any particular construction project, thereby increasing the overall costs of construction.

A "construction lien" is a claim made against a property when full payment has not been made for the work performed or materials supplied. A contractor, subcontractor or any other professional supplying labour or materials for work on that property may initiate this claim. A construction lien impedes the sale or transfer of a property, or the use of the property as security for debt. If the owner of the property or any other

party wishes to remove the lien, that person must resolve the claim in court, settle the claim with whomever initiated the lien, or post security with the court until the litigation is resolved. Provincial legislation governs the procedure and timelines for placing and enforcing construction liens, and they are not enforceable against the Crown.

A "holdback" is a contractual practice that requires any party entering into a construction contract with another party who may also subcontract portions of the work, to retain certain funds for the purpose of satisfying any lien claims of those subcontractors further down the construction pyramid. These funds are held until the expiry of any deadline to file a lien on the construction project and until any liens have been satisfied. In certain provinces, holdbacks are required by provincial legislation; for example, Ontario's *Construction Lien Act* requires a land owner to hold back 10% of the contract price from the contractor, in addition to the amount of any registered liens of which the land owner has received notice. Holdbacks are intended to expedite the resolution of lien claims by recovering those sums from a party who is higher on the construction pyramid than the party with whom the claimant is directly contracted. For example, a subcontractor working under a contractor may collect a lien payment from the land owner, who then reduces the final payment to the contractor by a corresponding amount when releasing what remains of the holdback to the contractor.

Clause 387 of Bill C-97 enacts An Act to establish a regime for prompt payment for construction work performed for the purposes of a construction project in respect of federal real property or federal immovables (short title: Federal Prompt Payment for Construction Work Act [FPPCWA]), the purpose of which, as stated in section 4, is "to promote the orderly and timely carrying out of construction projects" in respect of federal property by addressing the non-payment of contractors and subcontractors. In general, as set out in section 5, the FPPCWA applies to any federal construction contract between the Crown and a service provider, contractor or subsequent subcontractor for work performed within Canada.

Section 8 provides that, before entering into such a contract, the Crown must inform any prospective contractors that the work will be subject to the Act; similarly, each party further along the contracting chain must inform any prospective subcontractors of the same, such that all contracted parties in the construction chain have been made aware of the FPPCWA's application.

Under sections 9 to 11, invoices for work performed must be in writing and cannot be subject to any requirements for verification of the work performed. Parties may specify their invoicing schedule in the construction contract, but if this schedule is left unspecified, they are required to submit written invoices on a monthly basis. Where the Crown receives such an invoice, it has 28 days to provide full payment unless it provides the contractor with a "notice of non-payment" within 21 days of the invoice's receipt. Where a contractor receives payment from the Crown for work

performed by its subcontractors, it has 35 days to make such payments to those subcontractors unless it provides a notice of non-payment within 28 days. The deadlines to make such a payment or provide a notice of non-payment are each extended by seven days for each subsequent contract along the contracting chain.

As provided by section 14, if payment is not made upon the expiry of the applicable payment deadline, interest will accumulate on those outstanding sums at a rate that is the greater of that prescribed by regulation and that which is included within the construction contract. Under section 9(5), in order for all parties to calculate applicable payment deadlines, the contractor must – upon request – inform any subcontractor along the contracting chain of the date when the Crown received the invoice.

Notices of non-payment may pertain to all work details in the invoice or only a portion thereof, and section 13 stipulates that they must include a description of the work under dispute, the amount that is being withheld, the reasons for the non-payment and any other prescribed information.

If a contractor or subcontractor receives a partial payment as a result of a notice of non-payment for a portion of the work invoiced, under sections 10(2) and 11(2) they must pay their subcontractors any amounts which were included in that invoice on a rateable basis in the following order:

- any subcontractor whose work is not the subject of the notice of non-payment, while retaining any amount for works performed by itself that are not the subject of the notice of non-payment, and thereafter; and
- any subcontractor whose work is partly the subject of the notice of non-payment, while retaining any amount for works performed by itself that are partly the subject of the notice of non-payment.

Section 12 provides that where the construction contract provides for holdbacks, parties to the contract may nevertheless hold back stipulated sums, but only to the extent permissible under the law of the province or territory where the work is being undertaken.

Section 16 sets out a dispute resolution mechanism for parties who have not been fully paid in accordance with the time limits set out in the Act or their particular contract. These parties must provide a “notice of adjudication” to all parties subject to the dispute, which contains a description of the dispute, the amount disputed, a proposed adjudicator and any other prescribed information. The proposed adjudicator must be chosen from a list established by the “Adjudicator Authority,” which will be designated by a minister who is to be designated by an order of the Governor in Council to oversee the operations of the Act. Section 17 provides that the parties must jointly select an adjudicator, a selection which cannot be restricted by contract; otherwise the Adjudicator Authority will make the selection on their behalf.

Under section 16(2), the deadline for providing a notice of adjudication is 21 days after the Crown has issued a certificate of completion for the project, or the deadline for payment provided under the Act for the final invoice of the completed works, whichever comes later.

Sections 18 and 19 provide that the decision of the adjudicator is binding on the parties and any payment prescribed therein must be made within 10 days of the decision or as otherwise determined by the adjudicator. If such payment is not made by this time, the owed party may suspend all further construction work under the contract, and such a suspension cannot be taken as a breach of such contract. This party may also, within two years of receiving the decision of the adjudicator, file that decision with the Federal Court or a provincial Superior Court, which would make the decision enforceable as an order of that court. The decision of the adjudicator may be overturned by a written agreement between the parties, by a court order or by the decision of an arbitrator.

Under section 6, if a province or territory operates a prompt payment and/or dispute resolution regime substantially similar to that outlined in the FPPCWA, the Governor in Council may not apply the provisions of the Act related to the dispute resolution regime or the contractor-to-subcontractor and subcontractor-to-subcontractor payment and notification requirements. Section 23 stipulates that the Governor in Council is authorized to make regulations regarding, among other things, the criteria in determining whether a province or territory operates a substantially similar regime to that of the FPPCWA, as well as for generally carrying out the purposes and provisions of the FPPCWA. In addition, section 7 states that the Governor in Council may, by order, also exempt any construction project from the application of the Act.

The minister who is to be designated by an order of Governor in Council to oversee the operations of the Act may – under section 22 – make regulations prescribing the following:

- information that the federal government, a service provider, a contractor or a subcontractor must provide to a person with whom they are entering into a contract for construction work, and the form and manner in which the information is to be submitted;
- the form and content of a proper invoice and the manner in which it is to be submitted;
- the form and any additional content of a notice of non-payment and the manner in which it is to be submitted;
- the powers, duties and functions of the Adjudicator Authority;
- the eligibility and qualifications of individuals who may be designated as adjudicators;

- the powers, duties and functions of adjudicators;
- the maximum fees for the services of an adjudicator;
- the form and any additional content of a notice of adjudication and the manner in which it is to be submitted; and
- the procedure and time limits governing the adjudication.

Clause 388 of the bill states that the FPPCWA comes into force on a day to be fixed by order of the Governor in Council. However, section 25 of the Act specifies that, for a year after the coming-into-force date, the FPPCWA will not apply to contracts entered into with contractors before that date, or to contracts entered into with subcontractors before that date or during the year before that date.

NOTES

* This Legislative Summary was prepared by the following authors:

Andrew Barton	Sections 2.1.16, 2.2.1 and 2.4.2.1
Julie Béchard	Sections 2.4.15 and 2.4.16
Brett Capwell	Sections 2.1.8, 2.1.13, 2.3, 2.4.2.2, 2.4.2.3, 2.4.2.4 and 2.4.26
Maxime Charron-Tousignant	Section 2.4.17
Brittany Collier	Section 2.4.25.4
Daniel Farrelly	Section 2.4.13
Sylvain Fleury	Sections 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.9, 2.1.10 and 2.2.2
Geneviève Gosselin	Sections 2.4.11 and 2.4.14
Michaela Keenan-Pelletier	Sections 2.4.8 and 2.4.10
Isabelle Lafontaine-Émond	Section 2.4.21
Alexandre Lafrenière	Section 2.4.12
Michaël Lambert-Racine	Sections 2.1.17 and 2.4.5
Alexandre Lavoie	Sections 2.4.23 and 2.4.24
Olivier Leblanc-Laurendeau	Sections 2.4.25.1, 2.4.25.2 and 2.4.25.3
Sophie Leduc	Sections 2.4.9.2 and 2.4.9.5
Sarah Lemelin-Bellerose	Sections 2.4.9.6 and 2.4.9.7
Francis Lord	Section 2.1.5
Robert Mason	Revisions

- Laura Munn-Rivard and Ryan van den Berg — Section 2.4.19
- Sonya Norris — Sections 2.4.9.3, 2.4.9.11 and 2.4.9.12
- Mayra Perez-Leclerc — Sections 2.4.6, 2.4.7, 2.4.20 and 2.4.22
- Shaowei Pu — Sections 2.1.15 and 2.4.18
- Zackery Shaver — Section 2.4.9.9
- Alex Smith — Sections 2.1.14 and 2.4.4
- Brett Stuckey — Section 2.4.1
- Nicole Sweeney — Section 2.1.6
- Marlisa Tiedemann — Sections 2.4.3, 2.4.9.8 and 2.4.9.10
- Dominique Valiquet — Section 1
- Ryan van den Berg — Section 2.1.7
- Adriane Yong — Sections 2.1.11, 2.1.12, 2.4.9.1 and 2.4.9.4

1. Bill C-97, An Act to implement certain provisions of the budget tabled in Parliament on March 19, 2019 and other measures, 1st Session, 42nd Parliament (S.C. 2019, c. 29).
2. *Income Tax Regulations*, C.R.C., c. 945.
3. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).
4. *Cultural Property Export and Import Act*, R.S.C. 1985, c. C-51. Under section 32(2), the minister may designate any institution or public authority indefinitely or for a period of time, and generally or for a specified purpose, for the purposes of the tax incentives for gifts of cultural property set out in the *Income Tax Act*.
5. *Heffel Gallery Limited v. Canada (Attorney General)*, 2018 FC 605.
6. Government of Canada, "Tax measures: Supplementary Information," *Budget 2019*.
7. Ibid.
8. Ibid.
9. Government of Canada, *Qualified donees*.
10. Government of Canada, *Flow-through shares (FTSs)*.
11. UNESCO Institute for Statistics, *International co-production*.
12. Following the adoption of Bill C-26, An Act to amend the Canada Pension Plan, the Canada Pension Plan Investment Board Act and the Income Tax Act in December 2016, contributions and benefits under the Canada Pension Plan (CPP) began increasing on 1 January 2019. The increase will be phased in over the 2019–2025 period. With those changes, the income replacement rate will increase from 25% to 33% of pensionable earnings over time. Similar changes were made to the Quebec Pension Plan.
13. *Excise Act, 2001*, S.C. 2002, c. 22.
14. *Bank Act*, S.C. 1991, c. 46.
15. *Canadian Payments Act*, R.S.C. 1985, c. C-21.
16. *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.
17. *Criminal Code*, R.S.C. 1985, c. C-46.
18. House of Commons, Standing Committee on Finance, *Confronting Money Laundering and Terrorist Financing: Moving Canada Forward*, Twenty-fourth Report, 1st Session, 42nd Parliament, November 2018, Recommendation 20, p. 6.

19. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.
20. *Seized Property Management Act*, S.C. 1993, c. 37.
21. *Employment Equity Act*, S.C. 1995, c. 44.
22. Department of Finance Canada, *Investing in the Middle Class*, Budget 2019, 19 March 2019, p. 328.
23. Bill C-97, "Summary."
24. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
25. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.
26. *Pension Benefits Standards Act, 1985*, R.S.C. 1985, c. 32 (2nd Supp.).
27. Innovation, Science and Economic Development Canada, *Enhancing Retirement Security for Canadians: Consultation Document*.
28. *Canada Pension Plan*, R.S.C. 1985, c. C-8.
29. *Old Age Security Act*, R.S.C. 1985, c. O-9.
30. *Canadian Forces Superannuation Act*, R.S.C. 1985, c. C-17.
31. *Public Service Superannuation Act*, R.S.C. 1985, c. P-36.
32. *Royal Canadian Mounted Police Superannuation Act*, R.S.C. 1985, c. R-11.
33. Government of Canada, *Funding Policy for the Public Sector Pension Plans*.
34. *Electricity and Gas Inspection Act*, R.S.C. 1985, c. E-4.
35. *Food and Drugs Act*, R.S.C. 1985, c. F-27.
36. New Schedule A to the *Food and Drugs Act* appears in Schedule 2 to Bill C-97.
37. *Importation of Intoxicating Liquors Act*, R.S.C. 1985, c. I-3.
38. *Precious Metals Marking Act*, R.S.C. 1985, c. P-19.
39. *Textile Labelling Act*, R.S.C. 1985, c. T-10.
40. *Weights and Measures Act*, R.S.C. 1985, c. W-6.
41. *Hazardous Materials Information Review Act*, R.S.C. 1985, c. 24 (3rd Supp.), Part III.
42. Bill C-97, "Summary."
43. *Canada Transportation Act*, S.C. 1996, c. 10.
44. *Pest Control Products Act*, S.C. 2002, c. 28.
45. *Quarantine Act*, S.C. 2005, c. 20.
46. *Human Pathogens and Toxins Act*, S.C. 2009, c. 24.
47. Civilian Review and Complaints Commission for the RCMP [Royal Canadian Mounted Police], "Findings and Recommendations," *Report into Workplace Harassment in the RCMP*; and Sheila Fraser, *Review of four cases of civil litigation against the RCMP on Workplace Harassment: Report to the Minister of Public Safety and Emergency Preparedness – March 2017*.
48. *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10.
49. *Canada Transportation Act* Review, *Pathways: Connecting Canada's Transportation System to the World*, Vol. 1, Transport Canada, 2015.
50. *Pilotage Act*, R.S.C. 1985, c. P-14.
51. Marc Grégoire, Pilotage Act *Review Final Report – April 2018*, Transport Canada, 2018.
52. The authorized person may enter a dwelling house or living quarters without the consent of the occupant only if the authorized person has a warrant or believes that the place is not being lived in.
53. *Aviation Industry Indemnity Act*, S.C. 2014, c. 29, s. 2.

54. House of Commons, Standing Committee on Transport, Infrastructure and Communities, *Evidence*, 2nd Session, 41st Parliament, 11 February 2014, 0845 (Mr. Dave Dawson, Director, Airports and Air Navigation Services Policy, Department of Transport).

55. Lisha Li, "Up in the Air," *Canadian Underwriter*, 1 July 2016.

56. As specified in *Immigration and Refugee Protection Regulations*, SOR/2002-227, ss. 315.21–315.36.

57. *Federal Courts Act*, R.S.C. 1985, c. F-7.

58. Department of Finance Canada, *Investing in the Middle Class*, Budget 2019, 19 March 2019, p. 184.

59. *National Housing Act*, R.S.C. 1985, c. N-11.

60. For additional information, see Havi Echenberg and Mayra Perez-Leclerc, *Legislative Summary of Bill C-87: An Act respecting the reduction of poverty*, Publication no. 42-1-C87-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 31 January 2019.

61. Statistics Canada publishes statistics for three different low-income thresholds, or "lines." These are the Low Income Cut-offs, the Low Income Measures and the Market Basket Measure (MBM). Statistics Canada has clearly and consistently emphasized that low-income lines are not measures of poverty.

    Developed by Employment and Social Development Canada, the MBM is based on "the cost of a specific basket of goods and services representing a modest, basic standard of living," which is then statistically adjusted for different household formations. The calculations are done for 19 specific communities and 31 population centres of various sizes and in a range of provinces. Based on that specific basket and an economic family of two adults and two children, the MBM deducts certain "non-discretionary" expenses, e.g., personal payroll tax payments, out-of-pocket childcare costs and non-insured medically prescribed health services, when calculating disposable income.

    See Statistics Canada, Income Statistics Division, *Low Income Lines: What they are and how they are created*, Income Research Paper Series, 8 July 2016. (For the definition of MBM, see Statistics Canada, "Market Basket Measure (MBM)," *Dictionary, Census of Population, 2016*.)

62. The document *Opportunity for All: Canada's First Poverty Reduction Strategy* identifies 12 additional metrics, which are not listed in Schedule 4 to the bill. See Employment and Social Development Canada, *Opportunity for All: Canada's First Poverty Reduction Strategy*, 2018, pp. 71–80.

63. Section 4 of the Poverty Reduction Act allows the Governor in Council to designate, by order, a minister for the purposes of the new Act. Further, section 5 requires the designated minister to develop and implement a poverty reduction strategy.

64. *Veterans Well-being Act*, S.C. 2005, c. 21.

65. Government of Canada, *Acts and Regulations: Student Financial Assistance*.

66. *Canada National Parks Act*, S.C. 2000, c. 32.

67. Parks Canada, "What does a National Park Reserve designation mean?," *Sable Island National Park Reserve*.

68. Parks Canada, "Thaidene Nene National Park Reserve," *National Parks*.

69. Parks Canada, *Lake Louise Ski Area Site Guidelines for Development and Use: Banff National Park*, July 2015.

70. Parks Canada, *Mt. Norquay Ski Area Site Guidelines for Development and Use: Banff National Park*, July 2011.

71. *Parks Canada Agency Act*, S.C. 1998, c. 31.

72. *United Nations Declaration on the Rights of Indigenous Peoples*, 13 September 2007.

73. *First Nations Land Management Act*, S.C. 1999, c. 24.

74. *First Nations Oil and Gas and Moneys Management Act*, S.C. 2005, c. 48.

75. *Addition of Lands to Reserves and Reserve Creation Act*, S.C. 2018, c. 27, s. 675.

76. Under section 3 of the *Addition of Lands to Reserves and Reserve Creation Act*, the Governor in Council "may, by order, designate any member of the Queen's Privy Council for Canada as the Minister for the purposes" of the Act.

APPENDIX – ACRONYMS AND INITIALISMS

Title	Acronym or Initialism
Aviation Industry Indemnity Act	AIIA
Bankruptcy and Insolvency Act	BIA
Canada Business Corporations Act	CBCA
Canada Mortgage and Housing Corporation	CMHC
Canada Pension Plan (Italicized when referring to the Act)	CPP
Canada Revenue Agency	CRA
Canada Student Financial Assistance Act	CSFAA
Canada Student Loans Act	CSLA
Canada Training Credit	CTC
Canada Transportation Act	CTA
Canadian Air Transport Security Authority	CATSA
Canadian-controlled private corporation	CCPC
capital cost allowance	CCA
College of Immigration and Citizenship Consultants	CICC
College of Immigration and Citizenship Consultants Act	CICCA
Companies' Creditors Arrangement Act	CCAA
confidential business information	CBI
delta-9-tetrahydrocannabinol	THC
Electricity and Gas Inspection Act	EGIA
Employment Equity Act	EEA
Excise Tax Act	ETA
Federal Housing Advocate	FHA
Federal Prompt Payment for Construction Work Act	FPPCWA
Financial Transactions and Reports Analysis Centre of Canada	FINTRAC
First Nations Oil and Gas and Moneys Management Act	FNOGMMA
Food and Drugs Act	FDA
goods and services tax/harmonized sales tax	GST/HST
Hazardous Materials Information Review Act	HMIRA
Immigration and Refugee Protection Act	IRPA
Income Tax Act	ITA
Income Tax Regulations	ITR
Market Basket Measure	MBM
National Advisory Council on Poverty	NACP
National Housing Council	NHC

Title	Acronym or Initialism
Pest Control Products Act	PCPA
Poverty Reduction Act	PRA
Proceeds of Crime (Money Laundering) and Terrorist Financing Act	PCMLTFA
qualified Canadian journalism organization	QCJO
Quebec Pension Plan	QPP
Refugee Appeal Division	RAD
Refugee Protection Division	RPD
Registered Retirement Savings Plan	RRSP
Royal Canadian Mounted Police	RCMP
scientific research and experimental development	SR&ED
Security Screening Services Commercialization Act	SSSCA
Seized Property Management Act	SPMA
small business deduction	SBD
Tax-Free Savings Account	TFSA
Weights and Measures Act	WMA