

BUDGET IMPLEMENTATION BILL

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LEGISLATIVE SUMMARY

BILL C-19: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON 7 APRIL 2022 AND OTHER MEASURES

44-1-C19-E

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Legislative Summary of Bill C-19:
(Budget implementation bill)

44-1-C19-E

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LEGISLATIVE SUMMARY OF BILL C-19: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON 7 APRIL 2022 AND OTHER MEASURES*

1 BACKGROUND

Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on 7 April 2022 and other measures (short title: Budget Implementation Act, 2022, No. 1) was introduced in the House of Commons on 28 April 2022 and received second reading on 3 May 2022.¹ As both the short and long titles suggest, the primary purpose of the bill is to implement the government's overall budget policy, which was introduced in the House of Commons on 7 April 2022.² Established legislative practice would have this bill followed by a second budget implementation bill in the fall.

The bill has five parts:

- Part 1 implements various income tax measures through amendments to the *Income Tax Act* (ITA) and other related laws, such as doubling the allowable qualifying expense limit under the Home Accessibility Tax Credit (HATC) and providing a Labour Mobility Deduction for the temporary relocation of tradespeople (clauses 2 to 51).
- Part 2 implements Goods and Services Tax/Harmonized Sales Tax (GST/HST) measures concerning assignment sales of residential housing and the rebates for health care services supplied by charities or non-profit organizations (clauses 52 to 53).
- Part 3 amends or repeals various provisions the *Excise Act, 2001*,³ the *Excise Act*⁴ and other related texts to implement a new federal excise duty framework for vaping products and change how excise duties apply to certain wine or beer products (clauses 54 to 134).
- Part 4 enacts the Select Luxury Items Tax Act (SLITA), which creates a new taxation regime for Canadian sales and importations of certain new motor vehicles, aircraft, and boats (clauses 135 to 173).
- Part 5 implements a range of measures and is subdivided into 32 divisions. It amends many existing pieces of legislation that concern various areas of law. It also enacts the Prohibition on the Purchase of Residential Property by An Act to Implement the Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway and to make related amendments to other Acts (CLGA Implementation Act)(clauses 174 to 502).

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

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: IMPLEMENTATION OF CERTAIN INCOME TAX MEASURES

2.1.1 Authorizing a Labour Mobility Deduction for the Temporary Relocation of Tradespeople to a Work Location

Clause 2 of Bill C-19 adds new sections 8(1)(t) and (14) to the ITA to introduce a new labour mobility deduction for tradespeople to allow, in certain circumstances, the deduction of certain expenses related to an eligible temporary relocation, incurred by eligible taxpayers who are employed in the construction industry.

Clause 2(1) states that under new section 8(1)(t) of the ITA, the new labour mobility deduction allows a taxpayer who is an eligible tradesperson to deduct from income the total of all amounts representing each eligible expense in respect of one or more eligible temporary relocations, up to an annual maximum of \$4,000.

Clause 2(2) adds section 8(14) to the ITA, which sets out the rules that apply to the new labour mobility deduction and defines certain terms.

Section 8(14)(a) defines “taxpayer” as an eligible tradesperson for a taxation year if the individual has income from employment as a tradesperson or apprentice and performs their duties of employment in construction activities described in section 238(1) of the *Income Tax Regulations* (ITR).⁵

Section 8(14)(b) of the ITR defines a “temporary work location” of a taxpayer as a location in Canada at which the taxpayer performs their duties of employment under a temporary employment contract and that is not situated in the locality where the taxpayer is ordinarily employed or carrying on business.

Section 8(14)(c) of the ITR defines an “eligible temporary relocation” as a relocation undertaken by a taxpayer who ordinarily resided in Canada to enable the taxpayer to perform their duties of employment as an eligible tradesperson for a minimum of 36 hours. The temporary lodging must be in Canada, in the same locality as the temporary work, and at least 150 kilometres closer to the work location than the taxpayer’s ordinary residence.

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Section 8(14)(d) of the ITR sets out the criteria for eligible temporary relocation expenses. Eligible expenses must be reasonable expenses in the circumstances incurred by the taxpayer for temporary lodging, transportation between the taxpayer's ordinary residence and the temporary lodging, and meals during the trip.

The expenses must have been incurred in the taxation year, the previous taxation year or prior to 1 February of the following taxation year. Section 8(14)(e) states that an eligible temporary relocation expense under section 8(14)(d) does not include an expense other than one that is referred to in section 8(1)(t) that is deducted for a taxation year, an expense that was deductible under section 8(1)(t) for the immediately preceding taxation year, and an expense for which the taxpayer is entitled to receive a reimbursement, allowance or any other form of assistance, unless it is included in the taxpayer's income for any taxation year but is not deductible in computing the income of the taxpayer.

Section 8(14)(f) of the ITR limits the maximum amount of expenses that a taxpayer may claim for a taxation year to 50% of the taxpayer's income from employment as an eligible tradesperson at all temporary work locations referred to in section 8(14)(c)(i).

These amendments apply to the 2022 and subsequent taxation years.⁶

2.1.2 Allowing for the Immediate Expensing of Eligible Property

Section 1100 of the ITR establishes the capital cost allowance (CCA) system for determining the tax deductions that a taxpayer may claim in respect of the capital cost of their depreciable property. In general, CCA rates are based on the useful life of assets. Accelerated (enhanced) CCA provides a financial benefit to the taxpayer by virtue of the tax deferral it provides.

Clauses 3, 34, 35 and 36 of Bill C-19 introduce the rules for the new immediate expensing incentive, a temporary measure announced in Budget 2021 that allows for an enhanced CCA of up to \$1.5 million per year, available in the year in which “designated immediate expensing property” acquired by an “eligible person⁷ or partnership” becomes available for use, in certain circumstances.

Clause 34(1) adds new sections 1100(0.1) to 1100(0.3). New section 1100(0.1) is added to the ITR so that a deduction is allowed in computing the income of “an eligible person or partnership,” under section 20(1)(a) of the ITA, to the lesser of:

- the immediate expensing limit (\$1.5 million);
- the undepreciated capital cost (UCC) of the eligible person or partnership's “designated immediate expensing property”; and

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- if the eligible person is not a “Canadian-controlled private corporation”⁸ (CCPC), the amount of income earned from the source of income that is a business or property in which the relevant designated immediate expensing property is used.

New section 1100(0.3) lists the expenses excluded from section 1100(0.1)(b) that relate to the UCC.

New section 1100(0.2) states that the amount determined under section 1100(0.1) of the ITR shall be deducted from the UCC of the depreciation class to which the designated immediate expensing property belongs in order to ensure that the CCA of a property does not exceed its capital cost.

Clauses 34(2) to 34(8) make consequential amendments to section 1100 of the ITR.

Clause 35 amends section 1102(20.1) of the ITR to add a specific anti-avoidance rule in order to ensure that the immediate expensing incentive is used for the purposes intended by the ITR.

Clause 36 adds sections 1104(3.1) to 1104(3.6) to the ITR that introduce rules of interpretation for the new immediate expensing incentive. In particular, new section 1104(3.6) of the ITR introduces interpretive rules for determining whether eligible persons or partnerships are associated with each other for the purpose of calculating the immediate expensing limit.

Under new section 1104(3.1) of the ITR, an “eligible person or partnership” for a particular taxation year is:

- (a) a corporation that was a CCPC throughout the year;
- (b) an individual (other than a trust) who was resident in Canada throughout the year; or
- (c) a Canadian partnership all of the members of which were, throughout the period, persons described in (a) or (b) or any combination thereof.

Under new section 1104(3.1) of the ITR, an “immediate expensing property” must, among other conditions listed in section 1104(3.1), be property of a class prescribed by the ITR, other than property included in any of Classes 1 to 6, 14.1, 17, 47, 49, and 51 in Schedule II to the ITR.

A “designated immediate expensing property” is an “immediate expensing property” of an eligible person or partnership that became available for use in the taxation year and is designated as such in prescribed form filed with the Minister of National Revenue within the prescribed period (clause 36(1)).

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Section 1104(3.1) of the ITR also specifies that the designated immediate expensing incentive is available in respect of eligible property acquired by a CCPC after 18 April 2021 and that becomes available for use before 1 January 2024. For persons and partnerships, the property must be acquired after 31 December 2021 and be available for use before 1 January 2025 to be eligible for immediate expensing.

New sections 1104(3.2), 1104(3.3) and 1104(3.5) of the ITR establish the limits and set the annual immediate expensing limit for eligible persons or partnerships. Generally, an eligible person or partnership's immediate expensing limit is \$1.5 million per taxation year and must be shared among the associated members of a CCPC group or among the members of a partnership.⁹

Lastly, clause 3 contains a special rule regarding the recapture of depreciation of passenger vehicles in Class 10.1 of the ITR.

These amendments are deemed to have come into force on 19 April 2021.

2.1.3 Making Changes to the Children's Special Allowance

2.1.3.1 Amendments to the *Income Tax Act*

Section 81(1)(h) of the ITA generally exempts social assistance benefits, such as those paid in respect of foster children, from the computation of a taxpayer's income according to certain criteria. To be eligible for this exemption, the children must be unrelated to the taxpayer and the payments must be made under an Act of Parliament or a law of a province.

Section 81(1)(h.1) of the ITA generally exempts from the computation of the taxpayer's income social assistance benefits received where such benefits are temporary and are for the care and upbringing of a child who is related to the taxpayer. To be eligible for this exemption, the payments must be provided for under a program of the Government of Canada or the government of a province.

Clauses 4(1) and 4(2) amend sections 81(1)(h) and 81(1)(h.1) of the ITA, respectively, to extend the exemption to payments made under programs provided for under the laws of an Indigenous governing body, as defined in the *Children's Special Allowances Act* (CSAA).

Section 122.6 of the ITA defines certain terms that apply under the Canada Child Benefit (CCB). Clause 9 amends section (i) of the definition of "eligible individual" in section 122.6 of the ITA to provide that an individual shall not fail to qualify for the CCB as a parent solely because they receive a social assistance payment with respect to a child under a program of an Indigenous governing body as defined by the CSAA.

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Section 122.7 of the ITA defines certain terms that apply under the Canada Workers Benefit, including the definition of “eligible individual,” which describes certain requirements for a person to be eligible for the Canada Workers Benefit.

Clause 10 amends section 122.7(1.2) of the ITA to provide that, for the purposes of the definitions of “eligible individual” and “eligible dependant” in section 122.7(1), an individual shall not fail to qualify for the Canada Workers Benefit as a parent solely because they receive a social assistance payment with respect to another individual from an Indigenous governing body, as defined in section 2 of the CSAA, unless the amount is a special allowance under the CSAA.

These measures are deemed to have come into force on 1 January 2020.

2.1.3.2 Amendments to the *Children’s Special Allowances Act*

Bill C-19, Part 1, clauses 26 to 32 amend the CSAA and its regulations (clauses 46 to 48), retroactive to 1 January 2020.¹⁰ Children’s special allowances provide payments to federal and provincial agencies and institutions that care for children, such as children’s aid societies.¹¹

The changes in Bill C-19 will bring the CSAA into line with *An Act respecting First Nations, Inuit and Métis children, youth and families*, which came into force on 1 January 2020. This Act provides a framework within which Indigenous councils, governments, and other Indigenous governing bodies can provide child and family services to specific groups of Indigenous children.¹²

The term “Indigenous governing body” is added to most clauses of the CSAA. As a result, these provisions of the CSAA apply to the child and family services provided by Indigenous governing bodies under *An Act respecting First Nations, Inuit and Métis children, youth and families*.¹³

Specifically, clause 26 amends the definitions in the CSAA (section 2) to add a definition of “Indigenous governing body.” For the purposes of the CSAA, an Indigenous governing body must meet the definition of that term in section 1 of *An Act respecting First Nations, Inuit and Métis children, youth and families*, that is to say, a council, government of other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. The Court of Appeal of Quebec observed in February 2022 that “disputes could conceivably arise as to which entities will qualify as an ‘Indigenous governing body’” under this definition.¹⁴

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To meet the definition under the bill, an Indigenous governing body must also have given notice that it intends to exercise its legislative authority in relation to child and family services under section 20(1) of *An Act respecting First Nations, Inuit and Métis children, youth and families*; have asked to enter into a coordination agreement for the provision of child and family services with the Minister of Indigenous Services and relevant provincial governments under section 20(2) of that Act; and, meet any conditions prescribed in regulations.¹⁵

Clause 27 of the bill adds new section 3(c) to the CSAA, providing that an allowance is payable from the Consolidated Revenue Fund for the care, maintenance, education, training, or advancement of a child who is maintained by an Indigenous governing body or one of its departments or agencies (new sections 3(c)(i) and 3(c)(ii)). A child maintained by an agency appointed either by an Indigenous governing body or by an authority established under the laws of an Indigenous governing body for the protection and care of children may also receive the allowance (new section 3(c)(iii)).

Clauses 28, 29, 30, 31 and 32 amend the CSAA to add “Indigenous governing body” in the following sections, which set out the conditions and modalities of payment of the Special Allowance and contain lists of the types of child welfare bodies eligible to receive such payment: application for special allowance (section 4 (1)(a)); no allowances payable (section 4(3)); when special allowance ceases (section 4(4)(a)); recipient of special allowance and report (sections 5 and 6); return of special allowance, recovery of amount of payment and deduction from subsequent special allowance (sections 9(1), 9(2) and 9(3)); and, agreements for exchange of information (section 11). Clause 32(2) of Bill C-19 also amends the regulation-making powers under the CSAA, so that these powers apply to the regulation of Indigenous governing bodies in the same way as they apply to other child welfare bodies (sections 13(a) and 13(c)).¹⁶

These amendments are deemed to have come into force on 1 January 2020.

2.1.4 Increasing the Allowable Qualifying Expense Limit Under the Home Accessibility Tax Credit

Section 118.041(3) of the ITA provides the formula for the calculation of the HATC, which is for eligible renovation expenditures that improve the accessibility, functionality and safety of dwellings inhabited by individuals with a disability or 65 years of age or older.¹⁷ This non-refundable tax credit is calculated as 15% of qualifying expenditures up to a maximum of \$10,000 of expenditures in respect of an eligible dwelling. Section 118.041(5) provides that the maximum amount that may be claimed per eligible dwelling when more than one individual makes a claim in respect of that dwelling is \$10,000.

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Clause 5 amends section 118.041(3) to increase the maximum amount of qualifying expenditures that may be claimed per eligible dwelling to \$20,000. It also makes consequential amendments to section 118.041(5) to increase the maximum amount of expenditures that may be shared among individuals in respect of an eligible dwelling to \$20,000. These changes apply to the 2022 and subsequent taxation years.

2.1.5 Expanding the Criteria for the Mental Functions Impairment Eligibility as Well as the Life-Sustaining Therapy Category Eligibility for the Disability Tax Credit

The current eligibility rules for the disability tax credit (DTC) may be summarized in the following way:

- a. the individual has one or more severe and prolonged impairments in physical or mental functions;
- b. the effects of the impairment or impairments are such that the individual is either:
 - markedly restricted in the ability to perform a basic activity of daily living or would be markedly restricted but for life-sustaining therapy ...; or
 - significantly restricted in the ability to perform more than one basic activity of daily living and the cumulative effect of the significant restrictions is equivalent to being markedly restricted in the ability to perform a basic activity of daily living ...; and
- c. a medical practitioner certifies that the individual meets the [above-mentioned] requirements.¹⁸

Clauses 6 and 7 make several amendments pertaining to the second eligibility rule, specifically with regard to what is comprised in “mental functions necessary for everyday life” (which is included in the definition of “basic activity of daily living”¹⁹) and to what constitutes life-sustaining therapy, as contemplated by sections 118.3(1)(a.1)(i) to 118.3(1)(a.1)(iii) of the ITA.

Clause 6(1) amends one of the conditions for therapy to be considered life-sustaining therapy, by reducing the number of times an individual must undergo therapy each week from three times to two times. The total duration of the therapy must still average no less than 14 hours a week.²⁰

A consequential amendment is made by clause 6(2) to the preamble of section 118.3(1.1) of the ITA.

Clause 6(3) also amends section 118.3(1.1)(b) to 118.3(1.1)(d) of the ITA, which sets out the conditions for calculating time spent on life-sustaining therapy.

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The main changes brought about by this clause are:

- The introduction of new categories of activities that count towards time spent on therapy, namely time spent on activities that are directly related to the determination of the amount of a particular compound that can be safely consumed.
- The replacement of the requirement that the administration of the therapy for a child be done by the “child’s primary caregivers” with “another person.”
- The possibility of counting time spent by another person administering the therapy for an individual who is unable to do so due to an impairment or impairments in physical or mental function towards time spent on therapy.

Clause 7(1) amends the list of mental functions necessary for everyday life provided by section 118.4(1) of the ITA, by including new functions as well as by removing the requirement that problem solving, goal setting and judgment be taken together when determining if the effects of the impairment or impairments meet the eligibility threshold.²¹

These changes are meant to help approximately 45,000 additional “families and people living with disabilities access the DTC, and other related support measures like the Registered Disability Savings Plan and the Child Disability Benefit,”²² each year. They are also meant to “make it easier to be assessed, reduce delays, and improve access to benefits.”²³

Clauses 6(4) and 7(2) provide that these changes apply from taxation years 2021 onward in respect of certificates that are filed with the Minister of National Revenue after Royal Assent.

2.1.6 Providing Clarity in Respect of the Determination of the One-Time Additional Payment Under the Goods and Services Tax/Harmonized Sales Tax Credit

Clause 8(1) amends section 122.5(3.001) of the ITA to modify the formula that determines the one-time additional COVID-19 payment under the GST/HST credit for the 2019–2020 benefit year.²⁴ According to the Government of Canada, “the measure was a special GST credit top-up payment, which doubled the maximum annual GST credit amounts for the 2019–2020 benefit year and the credit was delivered in April 2020.”²⁵ In particular, clause 8(1) replaces the formula $0.5*(A - B)$ with $A - B - C$ where:

- A represents the credit amount to which individuals are entitled based on their marital status and their number of dependent children for the 2019–2020 benefit year. This part of the formula remains unchanged.

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- B represents the amount that the credit is reduced by if an individual's salary exceeds \$37,789. If the amount exceeds \$37,789, the amount that exceeds \$37,789 is multiplied by 5% and the credit is reduced by this amount for the 2019–2020 benefit year. This part of the formula remains unchanged.
- C represents the amount for the four payments eligible individuals received under the existing annual GST/HST credit specified under section 122.5(3) of the ITA. This amount reduces the one-time additional COVID-19 payment under the GST/HST credit for the 2019–2020 benefit year. This part of the formula is added because of the amendment.

The amended formula addresses a discrepancy between the legislation enacting the one-time additional COVID-19 payment under the GST/HST credit²⁶ and the announcement made by the Government of Canada on 18 March 2020.²⁷

2.1.7 Modifying the Delivery of Climate Action Incentive Payments

Clauses 11, 17, 18, 19 and 20 amend or add sections 122.8(1), 122.8(2), 122.8(4) to 122.8(8.1), 152(1.2)(d), 160.1(1)(b), 160.1(1.2), 160.1(2) and 160.1(3), 163(2)(c.4), 164(2.21) and 164(3) of the ITA to change the delivery of the Climate Action Incentive payments from a refundable credit claimed annually on personal income tax returns to quarterly payments made through the benefit system. Moreover, the goal is to provide the payments at the beginning of the quarter in advance of the collection of the proceeds from the federal fuel charge.

In particular, clause 11 amends sections 122.8(1) and 122.8(2) by updating the definitions of “eligible individual,” “qualified dependent,” “qualified relation,” and “persons not eligible or qualified” to specify the eligibility to a specified month rather than the tax year. Clause 11 also amends sections 122.8(4) through 122.8(8.1) to modify provisions relating to the payments of the Climate Action Incentive, modify provisions regarding individuals who are shared-custody parents, modify the Minister of Finance's authority to specify payments for a province under the federal carbon pricing system, modify the deemed rebate in respect of the fuel charge, modify the provision that one individual per household can apply for the Climate Action Incentive payment, modify the provisions regarding the exception of qualified dependents, modify the list of situations in which an individual is required to notify the Minister of Finance of a change of event that may change an individual's admissibility to the Climate Action Incentive payment.

Clauses 17, 18, 19 and 20 apply consequential amendments to sections 152(1.2)(d), 160.1(1)(b), 160.1(2), 160.1(3), 163(2)(c.4) and 164(3) as a result of the changes introduced in clause 11. This also includes the addition of section 160.1(1.2) and 164(2.21), which are also consequential amendments.

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2.1.8 Extending Deadlines for Film or Video Production Tax Credits

Clauses 13, 39 and 40 make amendments to two tax credits: the Canadian Film or Video Production Tax Credit (CPTC) and the Film or Video Production Services Tax Credit (FVPSTC).

In order to claim the CPTC, “[p]roduction companies must apply ... for both a Canadian film or video production certificate (Part A certificate) and a certificate of completion (Part B certificate) for each production.”²⁸

Clause 39 introduces new section 1106(1.1) to the ITR, which provides an amended definition of the term “application for a certificate of completion” for taxation years ending in 2020 and 2021. This change extends the latest deadline to file an application by 12 months.

Clause 39 also introduces new section 1106(1.2) to the ITR, which amends subparagraph (a)(iv) of the definition of “excluded production” found in section 1106(1) of the ITR for taxation years ending in 2020 and 2021. An “excluded production” may not claim the CPTC. This change extends by one year the current two-year period within which “a production [must] be shown in Canada under a written agreement”²⁹ signed “with a Canadian distributor or with a broadcaster licensed by the Canadian Radio-television and Telecommunications Commission”³⁰ in order for it not to be considered an “excluded production.”

Clause 13 amends the definition of “production commencement time” found in section 125.4(1) of the ITA, which is used to determine what expenses may be counted as “labour expenditure” in the computation of the CPTC. This change provides a one-year extension to the current two-year timeline provided by subparagraph (b)(iii) of the definition.

Clause 43 introduces new section 9300(1.1) to the ITR, which sets out the criteria for a production to qualify as an “accredited production” for the purposes of the FVPSTC.³¹ It extends by 12 months the current 24-month period within which expenditures must be incurred in order to count towards meeting the applicable expenditures threshold.

These changes only apply in cases where the labour expenditure of the corporation in respect of the production for the taxation years ending in 2020 or 2021 was greater than zero. They are meant to recognize “the disruptions caused by the COVID-19 pandemic on film and video productions.”³²

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2.1.9 Providing a Tax Incentive for Specified Zero-Emission Technology Manufacturing Activities

Clause 12 amends the ITA by adding section 125.2(1) after section 125.1 to introduce the zero-emission technology manufacturing deduction, a temporary measure that is intended to reduce the corporate income tax rate applicable to profits that arise from qualified zero-emission technology manufacturing activities by 50% for tax years beginning after 2021 and before 2029. Specifically, under new section 125.2(1) of the ITA, the reduced tax rates on qualified zero-emission technology manufacturing income are:

- 7.5%, where such income would otherwise be taxed at the general corporate income tax rate of 15%; and
- 4.5%, where such income would otherwise be taxed at the small business tax rate of 9%.

The deduction is phased out for taxation years beginning after 2028 and completely eliminated for taxation years beginning after 2031.

Clause 41(1) amends section 5202 of the ITR by adding definitions for “qualified zero-emission technology manufacturing activities,” “zero-emission technology manufacturing cost of capital,” and “zero-emission technology manufacturing cost of labour.” These definitions are important for determining a corporation’s “zero-emission technology manufacturing profits” for the purposes of the zero-emission technology manufacturing deduction as defined in new section 125.2(1) of the ITA.

“Qualified zero-emission technology manufacturing activities” include activities that are performed in connection with the manufacturing or processing of solar energy conversion equipment, wind energy conversion equipment and zero-emission vehicles, and activities that are performed in connection with the production in Canada of hydrogen by electrolysis of water; and gaseous, liquid, or solid biofuels as defined in section 1104(13) of the ITR, as amended by clause 37.

The “zero-emission technology manufacturing cost of capital” is the portion of that corporation’s cost of capital that was used in qualified zero-emission technology manufacturing activities.

A corporation’s “zero-emission technology manufacturing cost of labour” is that portion of its cost of labour incurred while performing qualified zero-emission technology manufacturing activities.

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Section 125.2(1) sets out the formula for computing a corporation's "zero-emission technology manufacturing profits" for a given taxation year. Under this formula, a corporation's zero-emission technology manufacturing profit is equal to the corporation's adjusted income for the taxation year multiplied by the proportion represented by the total of the zero-emission manufacturing and processing cost of labour and the zero-emission manufacturing and processing cost of capital over the total of the corporation's cost of capital and cost of labour for the taxation year.

Note that if 90% or more of the corporation's costs of labour and costs of capital for a taxation year are used in qualified zero-emission technology manufacturing activities, 100% of the profits qualify for the tax rate reduction.

Clause 42 amends section 5204 of the ITR to provide for the computation of Canadian manufacturing and processing profits where a corporation is part of a partnership at any time in the corporation's taxation year.

These measures are deemed to have come into force on 1 January 2022.

- 2.1.10 Providing the Canada Revenue Agency the Discretion to Accept Late Applications for the Canada Emergency Wage Subsidy, the Canada Emergency Rent Subsidy and the Canada Recovery Hiring Program

Under the current rules, an entity must file an application within 180 days after the end of the qualifying period to be eligible to receive the Canada Emergency Wage Subsidy (CEWS), the Canada Emergency Rent Subsidy and the Canada Recovery Hiring Program.

Clause 14(1) adds section 125.7(16) to the ITA to provide the Minister of National Revenue with the discretion to extend, at any time, the time for filing an application for any of these subsidies.³³

Clause 14(2) provides that this change is retroactive to 11 April 2020, which is the date when the CEWS was introduced.

- 2.1.11 Including Postdoctoral Fellowship Income in the Definition of "Earned Income"

Clause 15(1) amends section 146(1) of the ITA by adding a new section 146(1)(b.01) to the definition of earned income. The definition states that postdoctoral fellowship income earned in connection with a program that consists primarily of research will be included in the calculation of the taxpayer's registered retirement savings plan (RRSP) deduction limit. However, postdoctoral fellowship income is excluded from the taxpayer's RRSP deduction limit when it leads to a diploma from a college or a coll ge d'enseignement g n ral et professionnel, or a bachelor, masters, doctoral or equivalent degree.

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Clauses 15(2) and 15(3) specify that this measure would apply retroactively to 2011. A taxpayer who received postdoctoral fellowship income in a tax year after 2010 and before 2021 may, before 2026, file an election with the Minister of National Revenue to include that income in their RRSP deduction limit.

2.1.12 Enabling Registered Charities to Enter into Charitable Partnerships

According to the government, the changes introduced by clauses 16, 23 and 40 are meant

to allow a charity to provide its resources to organizations that are not qualified donees, provided that the charity meets certain requirements designed to ensure accountability. This is intended to implement the spirit of Bill S-216, the *Effective and Accountable Charities Act*.³⁴

Bill S-216 was tabled in the Senate on 24 November 2021.³⁵

This is done by introducing two new definitions, namely “grantee organization” and “qualifying disbursement” in section 149.1(1) of the ITA (clause 16(3)).

The term “grantee organization” can be summarized as excluding a “qualified donee.”

The term “qualifying disbursement,” as it relates to a grantee organization, generally means a disbursement by a charity by way of gift or by otherwise making resources available, which disbursement

- is in furtherance of a charitable purpose;
- is exclusively applied to charitable activities in furtherance of a charitable purpose of the charity; and
- meets prescribed conditions.

Clause 40 introduces new section 3703 to the ITR, which provides the conditions that a disbursement must meet in order to be a qualifying disbursement. These can generally be described as “specific accountability requirements”³⁶ in the form of “upfront agreements, up front due diligence and regular reporting.”³⁷

As part of these accountability requirements, the charity is namely required to:

- undertake an inquiry sufficient to obtain reasonable assurances that the provisions in the agreement will be complied with;
- provide ongoing monitoring of the grantee organization;

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- undertake adequate remedial action if it becomes aware that any part of the agreement is not being complied with; and
- ensure that the disbursement is exclusively applied to charitable activities in furtherance of one of its charitable purposes (clause 16(3), which amends section 149.1(1) of the ITA).

Consequential amendments are made to include references to qualifying disbursements to the definitions of “charitable purposes” and “charitable organization” provided in section 149.1(1) of the ITA (clauses 16(1) and 16(2)), and to several subsections of section 149.1 of the ITA (clauses 16(4) to 16(8) and clause 16(10)). As well, clause 16(9) repeals section 149.1(10) of the ITA.

Consequential amendments are also made to include references to qualifying disbursements to section 188.1 of the ITA, which imposes a penalty on registered charities in certain circumstances (clause 23).

Clause 40 also introduces section 3704 to the ITR. It details information pertaining to a qualifying disbursement that must be disclosed by a charity as part of its public information return, namely:

- the name of any grantee organization that received more than \$5,000 in total qualifying disbursements from the charity;
- the purpose of each such qualifying disbursement; and
- the total amount disbursed by the charity to each such grantee organization.

According to the government, these changes are “designed to facilitate the ability of charities to work in partnerships with others”³⁸ and are an attempt to address concerns expressed by “registered charities ... that having ... to take ownership of the activity [as a result of the current direction and control requirement], ... [is] inappropriate in many scenarios.”³⁹

2.1.13 Introducing Measures to Revoke the Registration of an Organization as a Charity Where that Organization is Listed as a Terrorist Entity

Clause 21 amends section 168(1) of the ITA, which sets out the circumstances under which the registration of a qualified donee may be revoked, by adding a reference to “registered charity” in section 168(1)(f). This paragraph “prevent[s] organizations from acting as conduits in the making of a directed gift,”⁴⁰ meaning situations where an organization “accepts a gift which was expressly or implicitly conditional on making a gift to another person, club, society, association or organization,”⁴¹ including grantee organizations but excluding qualified donees.

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Clause 22(1) amends section 188(1.2) of the ITA, which namely determines when the winding-up period of a charity starts for the purposes of the revocation tax set out in section 188(1.1) of the ITA. In the case of a charity that becomes a “listed terrorist entity,”⁴² it provides that the winding-up period starts after the day on which it becomes so listed.

This amendment is consequential to amendments introduced by the *Budget Implementation Act, 2021, No. 1*⁴³ (BIA 2021, No. 1), which aimed to prevent terrorist entities from qualifying as registered charities. One of these amendments provided for the immediate and automatic revocation of the registration of a qualified donee upon it becoming a listed terrorist entity through the introduction of section 164(3.1) to the ITA. Clause 22(2) provides that the amendment made by clause 22(1) is retroactive to 29 June 2021, the date on which the BIA, 2021, No.1 received Royal Assent.

2.1.14 Enabling the Canada Revenue Agency to Use Taxpayer Information to Assist in the Collection of Canada Emergency Business Account Loans

Section 241(4) of the ITA, section 295(5) of the *Excise Tax Act* (ETA) and section 211(6) of the *Excise Act, 2001* set out circumstances in which a government official may disclose taxpayer information, the types of information that may be disclosed and to whom that information may be disclosed. Clauses 24, 25 and 33 amend these sections, respectively, to allow taxpayer information to be provided to an official of the Canada Revenue Agency (CRA) solely for the purpose of the collection of amounts owed in respect of the Canada Emergency Business Account (CEBA) program established by Export Development Canada. As of 26 January 2022, an amount of \$49.2 billion in CEBA loans had been approved; the full amount of principal for these loans is due on 31 December 2025.⁴⁴

2.1.15 Expanding Capital Cost Allowance Deductions

Schedule II of the ITR lists the types of properties included in each CCA class. Class 43.1 provides for an accelerated CCA of 30% per year on a declining-balance basis for clean energy and energy conservation equipment. Class 43.2 provides a temporary 50% CCA rate for certain Class 43.1 properties. Clause 44 amends Class 43.1 to expand eligibility to Class 43.1 and 43.2 to certain of the following types of clean energy equipment:

- pumped hydroelectric energy storage installations;
- equipment that generates electricity by diverting or impeding the natural flow of water (or by using physical barriers or dam-like structures);

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- active solar heating equipment, equipment that is part of a ground source heat pump system, and equipment used to produce electrical or heat energy from geothermal energy, that is used to heat water for use in a swimming pool;
- equipment used to convert specified waste material into solid biofuel;
- equipment used to convert specified waste material or carbon dioxide into liquid biofuel;
- equipment used to produce hydrogen by electrolysis of water; and
- hydrogen refuelling equipment.

Clause 44 also amends Class 43.1 to restrict eligibility to Classes 43.1 and 43.2 for certain cogeneration systems, specified wasted-fuelled heat production equipment and producer gas generating equipment.

The amendments to Class 43.1 that expand eligibility to certain types of clean energy equipment apply to property acquired on or after 19 April 2021 that has not been used or acquired before that date. The amendments that restrict eligibility for certain types of equipment apply to property that becomes available for use after 2024, except the amendment to section d(xvi) of Class 43.1 that changes the reference to liquid biofuels to liquid fuels, which applies to property acquired on or after 19 April 2021 that has not been used or acquired before that date.

Clause 45 makes consequential amendments to Class 43.2 as a result of the changes made to Class 43.1, which apply to property that becomes available after 2024. Clause 37 makes consequential amendments to section 1104(13) of the ITR, which sets out definitions relevant to Classes 43.1 and 43.2, as a result of the changes made to these classes. Clause 38 makes consequential amendments to section 1104(17) of the ITR, which contains a requirement for environmental compliance for certain types of properties before they can be included in Classes 43.1 or 43.2, as a result of the changes to Class 43.1. Clauses 37 and 38 apply to property acquired on or after 19 April 2021 that has not been used or acquired before that date.

2.2 PART 2: IMPLEMENTATION OF CERTAIN GOODS AND SERVICES TAX/HARMONIZED SALES TAX MEASURES

2.2.1 Assignment Sales in Respect of Newly Constructed or Substantially Renovated Residential Housing

Clause 52 adds section 192.1 to the ETA to set out how the GST/HST applies when an agreement of purchase and sale with a builder of a new residential home is assigned by the purchaser to a new person. New section 192.1 provides that an assignment sale is taxable supply under the ETA and that the GST/HST applies to the total amount

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paid under the original agreement of purchase and sale excluding the amount of any deposit made by the purchaser to the builder.

Clause 52 applies to assignment sales entered into after 6 May 2022.

2.2.2 Extending Eligibility for the Expanded Hospital Rebate

Clause 53 amends section 259(1) of the ETA, which sets out the rules governing the GST/HST rebate that can be claimed by charities and non-profit organizations that provide health care services. Clauses 53(1) and 53(2) amend the definition of “facility supply” in section 259(1) to remove the requirement that a physician not be readily accessible in a particular geographic area before a nurse practitioner can direct, supervise, or actively be involved in the use of a property or rendering of a service in a facility. Similarly, clauses 53(3) and 53(4) amend the definition of “home medical supply” in section 259(1) to add that a nurse practitioner can also recommend the health care services that are to be provided at an individual’s place of residence or lodging.

Clause 53 applies to claim periods ending after 7 April 2022. For those claim periods that include 7 April 2022, transitional rules are included to address any tax payable, amounts paid or collected, and specific events occurring on or before 7 April 2022.

2.3 PART 3: AMENDMENT OF THE *EXCISE ACT, 2001*, THE *EXCISE ACT* AND OTHER RELATED TEXTS

2.3.1 Division 1: Implementation of a New Federal Excise Duty Framework for Vaping Products

Division 1 of Part 3 amends the *Excise Act, 2001* and other statutes to introduce the federal excise duty framework for domestically manufactured and imported vaping products. The key provisions of the framework are described below.

2.3.1.1 Definitions

Clauses 54(1) to 54(4) amend the definitions for “container,” “excise stamp,” “manufacture,” “packaged,” “stamped,” and “take for use” in section 2 of the *Excise Act, 2001* to add references to vaping products.

Clause 54(5) adds several new defined terms to section 2 of the *Excise Act, 2001* with respect to vaping products, including “vaping duty” and “additional vaping duty.” “Vaping duty” refers to the federal excise duty that is imposed on domestically manufactured and imported vaping products. An “additional vaping duty” will be imposed on domestically manufactured and imported vaping products in those provinces and territories that join a coordinated taxation framework with the federal government.

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Clause 55 makes technical amendments to section 5 of the *Excise Act, 2001*, which sets out how “possession” is determined, to add references to various sections found in the new Part 4.2 of the *Excise Act, 2001* (Vaping Products).

2.3.1.2 Regulating the Manufacturing and Importation of Vaping Products and Introducing an Excise Duty on Vaping Products

Clauses 56 to 58 amend sections 14(1), 19(1) and 23(3)(b) to add references to vaping products in those sections that regulate the issuance of licences to manufacturers and persons operating excise warehouses.

Clause 59 adds Part 4.2 to the *Excise Act, 2001*, which includes provisions that impose an excise duty on vaping products and set out the rules for the manufacture, stamping, warehousing and sale of these products. Part 4.2 consists of 35 new provisions, which are as follows:

- New section 158.35 sets out that only a person with a vaping product licence can manufacture vaping products, except for individuals manufacturing vaping products for personal use.
- New sections 158.36 to 158.41 provide that upon application, the Minister of National Revenue (the Minister) may issue vaping excise stamps to a vaping product licensee or prescribed importer of vaping products. The excise stamps indicate that the vaping duty, and if applicable the additional vaping duty, have been paid on the vaping product. A person that is issued an excise stamp must provide security to the Minister as set out in regulations. These sections also address counterfeit vaping excise stamps, the unlawful possession or supply of vaping excise stamps, the cancellation of vaping excise stamps by the Minister, and the unlawful packaging or stamping of vaping products by unauthorized persons.
- New section 158.42 provides that if a vaping product is intended for the duty-paid market, it cannot be removed from the premise of a vaping product licensee unless it is packaged and appropriately stamped. If the vaping product is not intended for that market, then those products must be appropriately marked. The main exceptions to these rules are if the vaping product is removed from the licensee to be delivered to another licensee, to be exported, to be analyzed or destroyed, or if it is a “vaping product drug” that is a drug that has been assigned a drug identification number under the *Food and Drug Regulations*.
- New sections 158.43 to 158.53 set out the general rules for possession, sale, importation, and destruction of vaping products. They include packaging and stamping conditions under which vaping products can be possessed, sold, and warehoused and how waste vaping products are to be dealt with.

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- New sections 158.54 to 158.56 state that in general, the vaping product licensee and the importer of the vaping product are the persons responsible for the vaping product. They are no longer responsible for the vaping product if certain circumstances listed in section 158.55 take place, for example, it is packaged and stamped and the duty has been paid, it is taken for use and duty has been paid, or it is exported. As well, an individual who imports vaping products for personal use in quantities that do not exceed prescribed limits is not responsible for those vaping products.
- New section 158.57 imposes the vaping duty. For vaping products manufactured in Canada, the duty is payable by the vaping product licensee. For imported vaping products, the duty is payable by the importer, owner, or other person liable under the *Customs Act* to pay duty. The amount of the vaping duty is set out in new Schedule 8 to the *Excise Act, 2001*, which is found in Schedule 1 of Bill C-19. It provides that:
 - if the vaping substance is in liquid form, the amount of duty is \$1.00 per 2 millilitres of vaping substance or fraction thereof for the first 10 millilitres of vaping substance, and \$1.00 per 10 millilitres of vaping substance or fraction thereof for any additional amount; and
 - if the vaping substance is in solid form, the amount of the duty is \$1.00 per 2 grams of vaping substance or fraction thereof for the first 10 grams of vaping substance, and \$1.00 per 10 grams of vaping substance or fraction thereof for any additional amount of vaping substance.
- New section 158.58 provides that an excise duty in respect of a “specified vaping province,” which are those provinces and territories participating in the coordinated taxation framework, is also imposed on vaping products, with the amount of the duty to be determined in regulations.
- New section 158.59 states that the excise duties imposed under sections 158.57 and 158.58 on imported vaping products are to be paid and collected under the *Customs Act*, and new sections 158.6 to 158.66 set out the circumstances for when the excise duty is relieved or payable. Of note, an individual who imports vaping products for personal use is relieved from paying excise duties provided the vaping products were manufactured in Canada and are stamped, or if the individual does not import more than the quantity permitted under the *Customs Tariff*.
- New sections 158.67 to 158.69 set out the restrictions for vaping products entering or leaving excise warehouses.

Clauses 61 and 62 amend sections 180 and 187.2 to indicate that no refunds of duty are provided for vaping products that are exported but may be provided if the product is reworked or destroyed in accordance with new section 158.53.

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Clause 63 amends section 206(1)(d) and adds section 206(2.02) to add references to vaping products with respect to record keeping obligations.

2.3.1.3 Offences and Penalties

The offences and penalties for violating various sections of the *Excise Act, 2001* in relation to vaping products are set out in clauses 64 to 77:

- Clauses 64 and 70 amend sections 214 and 234 to add reference to vaping products with respect to offences related to the unlawful possession of excise stamps and not returning or destroying excise stamps as set out in *Excise Act, 2001*.
- Clause 65 adds section 218.2 to provide that contravention of those sections that regulate the unlawful possession or sale of vaping products is punishable by a fine up to 300% of the duty owing or imprisonment of not more than five years. Clauses 66, 67 and 68 make technical amendments to reference new section 218.2 in sections 230(1)(a), 231(1)(a) and 232(1), respectively.
- Clauses 69, 71, 72 and 73 add sections 233.2 and 234.2, amend section 237(6) and add section 238.01, respectively, to introduce offences and/or to impose penalties of up to 200% of the duty owing for offences related to the unlawful packaging, stamping, warehousing of unstamped vaping products, the unlawful manufacturing, selling, and receiving of vaping products, the unlawful removal of vaping products from an excise warehouse and unaccounted vaping products.
- Clauses 74(1), 75, 76 and 77 make technical amendments to sections 238.1(1), 239, 264 and 266(2) to include reference to vaping products in relation to unaccounted excise stamps, diverted products, seized products and the sale of seized products by the Minister. Also, clause 74(2) adds section 238.1(2)(c) to set out the penalty for unaccounted vaping stamps.

Clause 78 amends various parts of section 304(1) to include reference to vaping products in selected regulations that can be made by the Governor in Council.

Clause 79 adds section 304.3 which governs the system for the payment, collection and remittance of the vaping duty and allows the Governor in Council to make regulations with respect to that system.

Clause 80 adds Schedule 8 to the *Excise Act, 2001*, which sets out the excise duty rate.

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2.3.1.4 Related Amendments

Related amendments, which add references to vaping products, are made to the following statutes and regulations:

- clause 81 amends the definition of “offence” in section 183 of the *Criminal Code (CC)*;
- clause 82 amends the definition of “excisable goods” in section 123(1) of the ETA;
- clauses 83 to 85 amend section 2(1), add sections 8.9, 8.91, 8.92, and amend section 40(d), respectively, of the *Federal-Provincial Fiscal Arrangements Act (FPFAA)* to set out the terms of the coordinated vaping product taxation agreement;
- clauses 86 to 93 amend sections 2(1), 97.25(3), 109.2(2), 117(2), 119.1(1.1), 142(1), 142.1(1), 142.1(2) and 164(1)(h.2), respectively, of the *Customs Act*;
- clauses 94 to 96 amend sections 83(a), 89(2) and 113(2), respectively, of the *Customs Tariff*, while clause 97 amends the Description of Goods in various tariff items;
- clause 98 amends section 3 of *Tariff Item No. 9805.00.00 Exemption Order*;
- clause 99 amends section 2 of the *Postal Imports Remission Order*;
- clause 100 amends section 2 of the *Courier Imports Remission Order*;
- clauses 101 and 102 amend sections 15(4) and 17(a), respectively, of the *Customs Sufferance Warehouses Regulations*;
- clauses 103 and 104 amend sections 2 and 4(1), respectively, of the *Non-residents’ Temporary Importation of Baggage and Conveyances Regulations*;
- clause 105 amends section 2(b) of the *Tariff Item No. 9807.00.00 Exemption Order*;
- clauses 106 to 109 amend sections 2 and 14, add section 16.1, and amend section 18, respectively, of the *Customs Bonded Warehouses Regulations*;
- clauses 110 to 113 amend sections 2(2)(b)(i), 4, 5(1) and 12(1)(e), respectively, of the *Regulations Respecting Excise Licences and Registrations*;
- clauses 114 to 115 amend the title of the Regulation and add section 1.4, respectively, to the *Regulations Respecting the Possession of Tobacco Products or Cannabis Products That Are Not Stamped*; and
- clauses 116 to 127 amend the title of the Regulation and sections 2(c) and 4(1), add sections 4(4), 4.01 and 4.11, amend section 4.2, add section 5.1, add a new title and sections 8 and 9, amend Schedule 7, amend the heading of Schedule 7, amend Schedule 8, and amend the heading of Schedule 8, respectively, of the *Stamping and Marking Tobacco and Cannabis Products Regulations*.

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2.3.1.5 Coming into Force

New sections 158.35, 158.51 to 158.53, 158.68 and 158.69 of the *Excise Act, 2001*, as enacted by clause 59, clauses 64(2), 65 to 69, 70(2) and 70(4), 71, 72 and 75, 81(2), 82, 87 to 105, 115 and 122 come into force on 1 October 2022.

New sections 158.41, 158.57 and 158.58 of the *Excise Act, 2001*, as enacted by clause 59, apply in respect of vaping products manufactured in Canada that are packaged on or after 1 October 2022 and to vaping products that are imported into Canada or released from customs on or after that day.

New sections 158.41, 158.57 and 158.58 of the *Excise Act, 2001* also apply in respect of:

- vaping products manufactured in Canada that are packaged before 1 October 2022 if the vaping products are stamped after the day on which Bill C-19 receives Royal Assent; and
- vaping products that are imported into Canada or released from customs after the day on which Bill C-19 receives Royal Assent but before 1 October 2022 if the vaping products are stamped when they are reported under the *Customs Act*.

New sections 158.42 to 158.47 and 158.49, section 158.5(2), sections 158.54 to 158.56, 158.6 and 158.61 of the *Excise Act, 2001*, as enacted by clause 59, clauses 63(1) and 107 to 109 come into force on 1 October 2022. However, they do not apply before 2023 in respect of:

- vaping products manufactured in Canada that are packaged before 1 October 2022 and that are not stamped; and
- vaping products that are imported into Canada or released from customs before 1 October 2022 and that are not stamped.

Lastly, with respect to vaping products manufactured in Canada that are packaged before 1 October 2022, the excise duties set out in new sections 158.57 and 158.58 of the *Excise Act, 2001*, are payable the later of the beginning of 1 October 2022 and the time they are stamped.

2.3.2 Division 2: Amendment of Wine Provisions in the *Excise Act, 2001*

Wine that is produced in Canada and composed wholly of agricultural or plant product grown in Canada is exempt from the excise duty that is usually applied on wine at the time of packaging. In July 2020, Canada agreed to repeal this excise duty exemption in response to a challenge of the exemption made at the World Trade Organization.

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Clause 132(1) repeals section 135(2)(a) of the *Excise Act, 2001* to remove the excise duty exemption for wine that is produced in Canada and composed wholly of agricultural, or plant product grown in Canada.

Clauses 129, 130 and 131 make consequential amendments to sections 87, 88(2)(i) and 134(3) of the *Excise Act, 2001*, respectively, to remove references to Canadian wine that was exempted from duty.

Clause 132 applies to wine packaged on or after 30 June 2022. Clause 129 comes into force on 30 June 2022. Clause 130 also comes into force on 30 June 2022 but does not apply to wine packaged before that day. Clause 131 applies to wine taken for use on or after 30 June 2022.

2.3.3 Division 3: Amendment of the *Excise Act*

Clause 133(1) amends the definition of “beer or malt liquor” in section 4 of the *Excise Act* so that the definition only refers to products containing more than 0.5% absolute ethyl alcohol by volume, thus eliminating excise duties on low percentage alcohol beer.

Clause 134 makes a consequential amendment to section 170.1(3) of the *Excise Act* to remove reference to beer or malt liquor containing not more than 0.5% absolute ethyl alcohol by volume with respect to excise duties applied on the first 75,000 hectolitres of beer and malt liquor brewed in Canada.

Clauses 133 and 134 come into force on 1 July 2022.

2.4 PART 4: ENACTMENT OF THE SELECT LUXURY ITEMS TAX ACT

2.4.1 Introduction

Budget 2021 proposed the imposition of a tax on the retail sale, lease or importation of certain luxury cars and personal aircraft priced over \$100,000 and boats priced over \$250,000 (the Luxury Tax).⁴⁵ The government launched a public consultation on 10 August 2021 to receive stakeholder feedback on the proposed tax⁴⁶ and released associated draft legislation on 11 March 2022.⁴⁷

Part 4 of Bill C-19 enacts the Select Luxury Items Tax Act (SLITA) to fulfil this policy objective. The SLITA contains 157 sections and is enacted by clause 135 of the bill. In general, the SLITA applies to “subject items” – discussed below – when sold, delivered, or imported in/into Canada. The SLITA comes into force on 1 September 2022; however, a transaction will be exempt from the Luxury Tax

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where a written purchase agreement for the subject item was entered into anytime before 1 January 2022 (clause 135(4)).

2.4.2 Subject Items Taxable Under the Act

Under portions of sections 2, 10, 11, 19, and 21 of the SLITA, subject items and relevant exclusions thereto are as follows, if manufactured after 2018:

- *Aircraft*: aeroplanes, gliders, and helicopters that have capacity for fewer than 40 passengers. Aircraft designed explicitly for military or cargo flights are excluded, as are those purchased predominantly for qualifying purposes or by a “qualifying aircraft user,” which include operating as a commercial flight and other business purposes where there is a reasonable expectation of profit, emergency response and fire management, medical transport, surveying, agricultural, weather services, use by government or Indigenous governing entity, travel to specified remote communities, and flight training.
- *Vehicles*: four-wheeled motor vehicles that are primarily intended to transport up to 10 people on streets and highways with a gross vehicle weight rating of less than or equal to 3,856 kg. Certain vehicles are excluded, including hearses, certain farm equipment, motorcycles, snowmobiles, racing or all-terrain vehicles that are not road legal, emergency response, police, and military vehicles as well as motor homes.
- *Vessels*: boats, ships, or crafts with any form of propulsion, as long as they solely or partly navigate in, on, through, or immediately above water and are intended for leisure, recreation, or sport activities and have sleeping space for fewer than 100 non-crew passengers. Certain vessels, including floating homes, fishing boats, and ferries, are excluded.

Notably, each category of subject items may be expanded by regulation, and the Governor in Council may make any other regulations to carry out the purposes and provisions of the Act (section 154).

Under sections 50(3) and 54 to 59, vendors or importers of subject items are required to register with the CRA, file quarterly returns, collect and remit the tax, as well as provide information regarding the taxable delivery. Generally, no Luxury Tax is applicable in relation to transactions occurring between persons that are registered with the CRA under the Luxury Tax regime, such as manufacturers, wholesalers, and retailers of subject items.

2.4.3 Taxable Amount

Under sections 9 and 18, the Luxury Tax is applied where the sale price of an applicable aircraft or vehicle exceeds \$100,000, and \$250,000 in the case

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of applicable vessel. Under section 34, when the item is purchased from a registered dealer or imported, the Luxury Tax is calculated as the lesser of 10% of the total price of the item, and 20% of the amount by which the taxable amount of the item exceeds \$100,000 for vehicles and aircraft or \$250,000 for vessels. In relation to importations into Canada, the tax applies to the value of the item as determined for the purposes of calculating GST/HST on imported goods at the time of importation.

Under sections 13 to 16, in addition to the sale price, the total price of the item for the purpose of calculating the Luxury Tax includes all charges, fees, duties, or amounts paid in respect of the delivery or importation of the item— other than the applicable GST/HST or provincial levy – as well as the amount paid for any improvements or modifications to the item within the first year of ownership (section 35). Any deduction for a trade-in or down payment does not reduce the total price of a select good for the purposes of determining the applicable Luxury Tax.

Under sections 8(2) to 8(4) and 29 to 31, modifications that repair damage are excluded from the tax's calculations, as are those – for vehicles only – that relate to child safety or accommodating a disability. Generally, if the item is sold at arm's length within the first year of ownership, the tax is not applied to modifications by the subsequent owner. Where the modifications are purchased through a registered vendor in connection with the delivery of the item, the price paid for those modifications is included in the total price for the purposes of calculating the Luxury Tax. For any other modifications in respect of a select good, the consumer is required to self-assess the Luxury Tax on the price paid for those modifications, and the Luxury Tax payable is equal to the amount that would have been payable had those modifications taken place at the time of delivery, less the amount of Luxury Tax already paid.

When aircraft or vessel that was used for a qualifying purpose – and accordingly was not subject to the Luxury Tax – is sold to a consumer for non-qualifying purpose, or the item otherwise ceases to be used for a qualifying purpose, the owner is required to self-assess and pay the Luxury Tax using the fair market value of the specified item at the time.

Once the Luxury Tax is paid on an item or it is deemed to be exempt, the CRA will issue a tax-paid or exemption certificate with the date of a taxable delivery or importation, the item's unique identification number, and an indication that the Luxury Tax has been paid or was exempt (sections 36 to 38). Subsequent sales are then exempt from the tax. Subject items purchased for the purpose of exportation are also exempt, so long as they are not used in Canada any more than reasonably necessary or incidental to their transportation (section 26(3)).

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2.4.4 Leases

Under sections 24 and 25 of the SLITA, a person or business that leases subject items – but does not sell them – will not register under the regime and is liable for the tax upon taking delivery of select goods that they intend to lease out. A person or business that leases subject items as well as sells them – and is therefore required to be registered under the regime – must self-assess and pay the Luxury Tax in respect of that subject item. The price for the purposes of this self-assessment is equal to the fair market value of the select item at the time of transferring physical possession of the item to the lessee.

2.4.5 Administration and Enforcement

The SLITA requires registered vendors to keep books and records sufficient to enable a determination of their compliance with the Luxury Tax regime (sections 88 – 90). The default period for retaining records is six years following the end of the year pertaining to those records. The Act also includes rules related to inquiries (section 81), assessments (sections 92 to 96), objections (sections 97 and 98), appeals (sections 99 to 106), collection (sections 137 to 150), enforcement (sections 130 to 136), penalties (sections 107 to 120), offences (sections 121 to 129), data retention and disclosure (section 91), and other aspects of the administration of the SLITA. In particular, section 122 creates an offence for intentionally making false or deceptive statements under the Act, punishable generally under summary conviction by a fine of not less than 50%, and not more than 200%, of the amount payable that was sought to be evaded, and/or imprisonment for a term not exceeding two years. Under indictment, the penalty increases to not less than 100% and not more than 200%, and/or a maximum of five years imprisonment.

Sections 68 and 69 contain anti-avoidance provisions that are similar to the general anti-avoidance rule of the ITA. A separate anti-avoidance provision in section 150(7) applies to certain transactions between non-arm's length persons that does not require that there be a misuse or abuse of the SLITA to apply.

Clauses 136 to 172 of Bill C-19 make consequential amendments to the following Acts, listed sequentially: the *Access to Information Act*, the *Bankruptcy and Insolvency Act*, the *Criminal Code*, the *Customs and Excise Offshore Application Act*, the *Excise Tax Act*, the *Export Development Act*, the *Financial Administration Act* (FAA), the *Tax Court of Canada Act* (TCCA), the *Customs Act*, the *Income Tax Act*, the *Customs Tariff*, the *Canada Revenue Agency Act*, the *Air Travellers Security Charge Act*, the *Excise Act, 2001*, the *Canada Border Services Agency Act*, and the *Greenhouse Gas Pollution Pricing Act*. Finally, Clause 173 makes coordinating amendments to Bill C-8, An Act to implement certain provisions of the economic and fiscal update tabled in Parliament on December 14, 2021 and other measures.

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2.5 PART 5: IMPLEMENTATION OF VARIOUS MEASURES

2.5.1 Division 1: Amendments to *An Act respecting the Canadian Pacific Railway*

Division 1 of Part 5 of Bill C-19 pertains to a contract which was set out in the schedule to *An Act respecting the Canadian Pacific Railway*.⁴⁸ Specifically, clause 174 of the bill declares clause 16 of said contract to be of no force or effect as of 29 August 1966.

It also extinguishes all obligations and liabilities of the Crown in relation to that clause. Clause 175 of the bill further prevents clause 16 of the contract from forming the basis of any legal action against the Crown, while clause 176 states that the changes made by clause 174 do not entitle anyone to compensation from the Crown.

The contract in question was entered into by the Government of Canada and a railway syndicate for the purpose of establishing a transcontinental railway that would become the Canadian Pacific Railway (CPR). Clause 16 of the contract granted CPR a permanent exemption from federal, provincial, and municipal taxation.

The clause was subsequently included in the *Manitoba Boundaries Act*, as well as in *The Alberta Act, 1905*, and the *Saskatchewan Act, 1905*, which are included in the schedule to the *Constitution Act, 1902*.⁴⁹

On 29 August 1966, the President of CPR, Ian Sinclair, wrote a letter to Minister of Transport Jack Pickersgill, in which he expressed the company's willingness "to forgo voluntarily perpetual exemption from taxation by the local authorities on [CPR's] main line in the prairie provinces." The letter was read by Minister Pickersgill in the House of Commons on 8 September 1966.⁵⁰

The Federal Court, in *Canadian Pacific Railway Company v. Canada*, 2021 FC 1014, found that the term "local authorities" explicitly related to municipal taxes, and therefore that Mr. Sinclair's letter was silent on provincial and federal schemes. The Court also ruled that clause 16 of the contract remained in full effect as Parliament had not exercised its power to unilaterally amend CPR's tax exemption through legislation.⁵¹

2.5.2 Division 2: Amendments to the *Nisga'a Final Agreement Act*

The *Nisga'a Final Agreement* (NFA) is a modern treaty⁵² between the Nisga'a Nation, Canada and British Columbia that came into effect in May 2000.⁵³ Chapter 16 of the NFA focuses on taxation and states that the Parties will enter into a taxation agreement on the effective date of the NFA.⁵⁴ The resulting *Nisga'a Nation Taxation Agreement*⁵⁵ (the Taxation Agreement) does not form part of the NFA and is not a treaty protected under section 35 of the *Constitution Act, 1982*. The Taxation Agreement was the first time a tax treatment agreement concluded between Canada and a self-governing Indigenous group.⁵⁶

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The *Nisga'a Final Agreement Act*⁵⁷ (NFAA) gave effect to the NFA and the Taxation Agreement. Section 14(2) of the NFAA currently provides that only specific paragraphs of the Taxation Agreement have the force of law during the period when the agreement is in force, including matters such as Nisga'a settlement trusts and gifts to the Nisga'a Nation or a Nisga'a Village, among other matters.⁵⁸ Federal legislation implementing modern treaties negotiated following the Nisga'a treaty gives force of law to the entirety of related taxation agreements.⁵⁹

Division 2 of Part 5 amends the NFAA to give force of law to the entire Taxation Agreement during the period when the agreement is in force. This change will give force of law to any amendments made to the Taxation Agreement in the future,

including a forthcoming amendment with respect to an income tax exemption for amounts received by citizens of the Nisga'a Nation from a registered pension plan to the extent that the employment income on which the pension amounts are based was itself exempt from tax.⁶⁰

Amendments to the Taxation Agreement itself need to be agreed to by Canada, British Columbia, and the Nisga'a Nation.

This Division also repeals section 14(5) of the NFAA, which gives force of law to the definitions in the Taxation Agreement only for the purposes of the paragraphs of the Taxation Agreement listed in sections 14(2), 14(3) and 14(4) of the NFAA.⁶¹ Since amended section 14(2) gives the force of law to the entire Taxation Agreement, section 14(5) is no longer needed.

Section 14(3) of the NFAA provides that nothing in the NFAA limits any entitlement of the Nisga'a Nation, a Nisga'a Village, or a Nisga'a government corporation to benefits available to these entities under a federal law of general application. Section 14(4) of the NFAA provides that Nisga'a capital, other than cash, transferred between or among two or more of the Nisga'a Nation, Nisga'a Villages and Nisga'a government corporations is not taxable under a federal law when the Taxation Agreement is in force.

2.5.3 Division 3: Repealing the *Safe Drinking Water for First Nations Act*

Division 3 of Part 5 of Bill C-19 repeals the *Safe Drinking Water for First Nations Act* (SDWFNA)⁶² as part of the terms of an \$8-billion First Nations Drinking Water Settlement Agreement (the Agreement). The Agreement resolves a class action lawsuit led by plaintiffs Curve Lake First Nation, Neskantaga First Nation and Tataskweyak Cree Nation against the Government of Canada.⁶³

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2.5.3.1 Legislative History

The SDWFNA (Bill S-8) came into force on 1 November 2013. Bill S-8 was the second legislative initiative to enable the development of federal regulations with respect to the provision of drinking water, standards for water quality, and the disposal of wastewater in First Nations communities.⁶⁴

The SDWFNA provided for the establishment of regulations in several areas, including training and certification of water operators (section 4(1)(a)), protection of sources of drinking water from contamination (section 4(1)(b)), the distribution of drinking water by truck (section 4(1)(d)), and the collection, treatment, monitoring, sampling, and testing of wastewater (sections 4(1)(f) and 4(1)(g)), amongst others. Section 5 of the SDWFNA set out the areas to which those future regulations would apply, including the powers to: start and cease work to comply with regulations (sections 5(1)(i) and 5(1)(ii)); to appoint an independent manager to oversee drinking water system or waste water system on First Nations lands (section 5(1)(iii)); fix fees for the use of water or wastewater system (section 5(1)(d)); establish monetary penalties when prospective regulations are contravened (section 5(1)(g)); and establish First Nations communities or individuals as the owner of a water system on their lands (section 5(1)(q)), amongst others.

During the study of Bill S-8 and similar to concerns raised during the study of its predecessor, Bill S-11, Safe Drinking Water for First Nations Act, the First Nations leaders emphasized that the lack of clean water for First Nations needed to be addressed urgently. Various concerns were expressed about the bill, including the lack of a statutory funding base to meet the regulatory standards contained in the bill; the possibility that the powers in the SDWFNA and any regulations might derogate from Aboriginal and treaty rights; and the appropriateness of consultations around the bill.⁶⁵

2.5.3.2 Water in First Nations Communities

No regulations were established under the SDWFNA. As a result, there are no federal regulations ensuring that First Nations have safe drinking water on reserve lands.⁶⁶

Funding shortfalls have been frequently raised. For example, in 2021, the Office of the Auditor General of Canada found the operations and maintenance funding formula for First Nations water infrastructure has not been changed since 1998. Recent analysis by the Parliamentary Budget Officer found that the operations and maintenance budget projections for First Nations water had an average funding gap of \$138 million each year.⁶⁷

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2.5.3.3 Resolution of Recent Class Action Settlement

On 23 December 2021, the Federal Court and the Court of Queen’s Bench of Manitoba jointly approved the Agreement to resolve the class action lawsuit.⁶⁸ The Agreement compensates First Nations people who lived under a drinking water advisory for a year or more between 20 November 1995 and 20 June 2021. The settlement provides \$8 billion in compensation and future funding for water infrastructure to support safe drinking water for First Nations.

The Agreement provides that an individual can submit a claim even if their First Nation is not participating in the settlement. The settlement specifically excludes certain First Nations, which are pursuing a different avenue for their claims.⁶⁹

The settlement includes:

- \$1.8 billion in compensation to affected individuals and First Nations;
- \$50 million for eligible individuals who experienced injuries due to a lack of clean, safe drinking water;
- \$6 billion to support the construction, upgrade, operation and maintenance of water infrastructure on First Nations lands between 20 June 2021 and 31 March 2030 at a rate of at least \$400 million a year;
- a commitment to lift all long-term drinking water advisories;
- the “modernization” of federal drinking water legislation;
- the establishment of a First Nations Advisory Committee on Safe Drinking Water; and
- support for First Nations to develop drinking water by-laws.⁷⁰

2.5.4 Division 4: Payments Made Out of the Consolidated Revenue Fund

Division 4 of Part 5 of Bill C-19 authorizes the Minister of Finance to make payments from the Consolidated Revenue Fund in order to address municipal and other transit shortfalls and needs, as well as to improve housing supply and affordability.

Specifically, clause 180(1) allows the minister to make payments to the provinces for the above-mentioned purposes. The clause also specifies that payments must be of an amount determined by the minister and may not exceed \$750 million in total.

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Clause 180(2) indicates that these payments will be made out of the Consolidated Revenue Fund, which is “the account into which the government deposits taxes, tariffs, excises and other revenues, once collected, and from which it withdraws the money it requires to cover its expenditures.”⁷¹ The payments may be paid “at the times and in the manner, and on any terms and conditions” considered appropriate by the minister (clause 180(2)).

This measure was first announced by the Deputy Prime Minister and Minister of Finance, the Honourable Chrystia Freeland, on 17 February 2022. It was noted that funding would be “conditional on provincial and territorial governments matching this federal contribution and accelerating their efforts to improve housing supply, in collaboration with municipalities.”⁷²

2.5.5 Division 5: Amendments to the *Canada Deposit Insurance Corporation Act*

Clause 181 amends section 5(1) of the *Canada Deposit Insurance Corporation Act* (CDICA), which governs the membership of Canada Deposit Insurance Corporation’s board of directors. Clause 181(1) clarifies in section 5(1)(a) that the person appointed as the Chairperson is the person referred to in section 6(1) of the CDICA and adds to the board the person appointed as the President and Chief Executive Officer of the Corporation under subsection 105(5) of the FAA. Clause 181(2) amends section 5(1)(c) to increase from five to six, the number of members that can be appointed to the board, other than those specifically listed in section 5(1).

2.5.6 Division 6: Amendments to the *Federal-Provincial Fiscal Arrangements Act*

Clause 182 adds section 24.73 to the FPFSA, which authorizes the Minister of Finance to make additional payments totalling \$2 billion to the provinces and territories:

- \$775,500,000 for Ontario;
- \$450,006,000 for Quebec;
- \$51,800,000 for Nova Scotia;
- \$41,238,000 for New Brunswick;
- \$72,437,000 for Manitoba;
- \$272,434,000 for British Columbia;
- \$8,574,000 for Prince Edward Island;
- \$61,759,000 for Saskatchewan;
- \$232,332,000 for Alberta;
- \$27,227,000 for Newfoundland and Labrador;

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- \$2,244,000 for Yukon;
- \$2,387,000 for the Northwest Territories; and
- \$2,062,000 for Nunavut.

2.5.7 Division 7: Amendments to the *Borrowing Authority Act* and the *Financial Administration Act*

According to Budget 2022,

the government proposes to introduce administrative amendments to the *Borrowing Authority Act*, and the *Financial Administration Act* (FAA) as required, to roll in extraordinary borrowing from spring 2021 into the borrowing authority maximum amount and no longer treat this amount as extraordinary borrowing for the purpose of reporting requirements. The government also proposes to amend the FAA to simplify the legislative reporting requirements associated with extraordinary borrowing amounts in the annual Debt Management Report to only require that the amounts be reported as at the fiscal year-end.⁷³

The FAA stipulates the framework in which the Minister of Finance can borrow on behalf of the government, while Parliament approves the maximum amount of money that the government is allowed to borrow through the *Borrowing Authority Act* (BAA). Additionally, the FAA requires the Minister to table an annual report on debt management, while the BAA requires a triennial report to Parliament on the maximum borrowing amount.

Sections 46.1(a) to 46.1(c) of the FAA provide the reasons for which the Government in Council may by order authorize the Minister of Finance to borrow money. Section 46.1(c) of the FAA stipulates that the Minister of Finance may borrow money for the payment of any amount in extraordinary circumstances, including in the event of a natural disaster or to promote the stability or maintain the efficiency of the financial system in Canada.

Section 49.1(1) of the FAA requires the Minister of Finance to report extraordinary borrowings to Parliament within the first 30 days on which the House is sitting after the order of the Governor in Council. Section 49(1)(a.1) requires that extraordinary borrowings be also included in the Minister of Finance's annual report on debt management. However, section 5 of the BAA excludes extraordinary borrowings from the calculation of the maximum borrowing amount.

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Finance Canada has tabled the *2021-22 Extraordinary Borrowing Report to Parliament* on 25 May 2021 and the *Debt Management Report 2020–2021* on 25 March 2022, which include information on extraordinary borrowings made under section 46.1(c) of the FAA between 23 March 2021 and 6 May 2021.^{74,75}

The first triennial report on the BAA was published before the extraordinary borrowings under section 46.1(c) of the FAA took place.⁷⁶

Clause 183 amends section 5 of the BAA to include the previously excluded extraordinary borrowings made under section 46.1(c) of the FAA between 23 March 2021 and 6 May 2021 in the calculation of the maximum borrowing amount.

Clause 184 adds a new section 8(3) to the BAA to exclude extraordinary borrowings made between 23 March 2021 and 6 May 2021 from the calculation of the total amount borrowed under sections 46.1(a) to 46.1(c) of the FAA in the subsequent triennial BAA report.

Clause 185 amends section 49(1)(a.1) of the FAA to exclude extraordinary borrowings made under section 46.1(c) between 23 March 2021 and 6 May 2021 from the Minister of Finance’s report on debt management.

2.5.8 Division 8: Amendments to the *Pension Benefits Standards Act, 1985*

Division 8 of Part 5 amends the *Pension Benefits Standards Act, 1985* (PBSA, 1985), which governs private pension plans linked to federally regulated areas of employment, to allow the establishment of solvency reserve accounts in respect of defined benefit pension plans. It also requires the establishment of a governance policy for all types of private pension plans subject to the PBSA, 1985.

2.5.8.1 Solvency Reserve Accounts

In a 2020 consultation paper on proposals for changes to the framework for federally regulated private pension plans, the Department of Finance stated that:

A federal Solvency Reserve Account (SRA) would be a separate or notional account within the [defined benefit] pension fund into which an employer could remit solvency special payments that could later be recovered when the plan is in surplus, subject to certain conditions. In this way, SRAs could provide a greater incentive for employers to pay off pension deficits faster when they have the means, thereby aligning with plan members’ and retirees’ interests. Additionally, SRAs would improve employers’ flexibility in managing their pension funding obligations by lessening the current funding asymmetry.⁷⁷

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Clause 186 adds new section 9.17 to the PBSA, 1985 regarding the proposed solvency reserve accounts for defined benefit plans. New section 9.17(1) provides that a defined benefit plan, other than a negotiated contribution plan, may establish a solvency reserve account in the plan's pension fund. New section 9.17(2) allows an employer to make payments into a solvency reserve account, while new section 9.17(3) prohibits transfers into a solvency reserve account of amounts held in the pension fund outside of that account. New section 9.17(4) allows amounts to be withdrawn from a solvency reserve account despite any terms of the pension plan or any document that creates or supports the plan or the pension fund. New section 9.17(5) provides that the requirements for allowing a refund of surplus to the employer do not apply to withdrawals from a solvency reserve account. The establishment of a solvency reserve account, as well as payments into and withdrawals from that account would be subject to forthcoming regulations.

2.5.8.2 Governance Policy

Clause 187 amends the PBSA, 1985 by adding new sections 10(7) to 10(9) to require an administrator of a pension plan to establish a governance policy for the plan before the plan is filed for registration and ensure that the policy complies with the PBSA, 1985 and the regulations. The administrator is not required to file this policy, or any amendment to it, with the Superintendent of Financial Institutions unlike other documentation that creates or supports the plan or the pension fund. In the case of a plan that is registered or filed for registration before the coming into force of these provisions, an administrator must establish a governance policy within the following year.

2.5.8.3 Regulatory Powers

Clause 188(1) amends section 39(1) of the PBSA, 1985 to allow the Governor in Council to make regulations for enabling the Superintendent to require administrators to provide up-to-date consolidations respecting solvency reserve accounts and respecting the form and manner of those consolidations. Clause 188(2) also amends this section to allow the Governor in Council to make regulations respecting the investment of the assets of a pension fund.

2.5.8.4 Coordinating Amendments and Coming into Force

Clause 189 contains provisions to coordinate the amendments to section 10 of the PBSA, 1985 contained in clause 187 with amendments to that section contained in the BIA 2021, No. 1 that have not yet come into force and that introduce similar requirements for an administrator of a negotiated contribution plan to establish a funding policy and a governance policy. Clause 190 provides that the amendments

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contained in clauses 186, 187 and 188(1) come into force on a day to be fixed by order of the Governor in Council. The amendment contained in clause 188(2) comes into force on Royal Assent.

2.5.9 Division 9: Amendments to the *Special Import Measures Act* and the *Canadian International Trade Tribunal Act*

Clauses 191 to 211 amend the *Special Import Measures Act* (SIMA), while clauses 212 to 219 amend the *Canadian International Trade Tribunal Act* (CITT Act).

2.5.9.1 Amendments to the *Special Import Measures Act*

Clause 191 amends section 2 of the SIMA. In assessing whether the alleged dumping or subsidizing of imported goods has injured a domestic sector or delayed the establishment of a sector, the Canadian International Trade Tribunal (CITT) must consider the impacts on Canadian workers and jobs.⁷⁸

Clause 192 adds section 2.1 to the SIMA to define the term “massive importation” as a series of imports into Canada that are “massive” and occur within “a relatively short period of time.”

Clauses 193 and 194 amend sections 5(a) and 6(a), respectively, to modify the conditions for retroactive application of anti-dumping duties (ADs) and countervailing duties (CVDs) on some imported goods.⁷⁹ The clauses replace the condition that the retroactive application must be needed to prevent or designed to prevent the recurrence of injury to domestic producers with another condition: the imported goods must significantly reduce the effectiveness of non-retroactive application of ADs and CVDs.⁸⁰

Clause 195 amends section 31(6), which outlines the period within which the president of the Canada Border Services Agency (CBSA) must initiate a dumping or subsidy investigation in relation to imported goods. As a result of the amendment, the CBSA president can extend the period without having to notify the government of the imported goods’ country of origin that the period is insufficient.

Clause 196 amends section 32, which identifies actions that the CBSA’s president must take on receiving a written complaint about alleged dumping or subsidizing of imported goods. Among other changes, this clause modifies the timelines for notifying the government of the imported good’s country of origin about having received a “properly documented” complaint.

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Clause 198 amends section 71(c) to modify one of three conditions that determine whether traders are circumventing ADs or CVDs. The condition that the ADs and CVDs are “the principal cause” of a “change in trade” pattern after a dumping or subsidy investigation begins is replaced by a condition that the ADs and CVDs cause a “change in trade pattern.” Clause 199 amends section 72(1) to change the standard of evidence that determines whether the CBSA’s president will investigate possible circumvention of ADs and CVDs; “evidence [of] circumvention” is changed to evidence “disclosing a reasonable indication [of] circumvention.”

Clause 201 amends section 76.03, which addresses expiry reviews that the CITT initiates to determine whether an AD or CVD order continues to be needed. Among other changes, expiry reviews are mandatory and the CITT can terminate an expiry review that domestic producers do not support.

Clauses 193, 194, 197, 200 and 202 to 206 amend or repeal sections 5(a), 6(a), 42(1), 76.01(7), 77.01(1), 77.1(1), 88.1, 96.1(1)(d) and 97(1)(a.1)(v), respectively, to ensure consistency with the changes to sections 2.1, 5(a), 6(a), 71(c) and 76.03 that result from clauses 192 to 194, 198 and 201, respectively.

Clauses 207 to 2011 provide transitional provisions in relation to the changes to the SIMA.

2.5.9.2 Amendments to the *Canadian International Trade Tribunal Act*

Clause 212 amends section 2(1) of the CITT Act to add a definition for the term “trade union.”

Clause 214(1) amends section 23(1) to allow trade unions to submit complaints to the CITT requesting that global safeguard measures be imposed in response to an increase in the volume of imported goods that either causes or threatens serious injury to domestic producers of like goods.⁸¹ To submit such a complaint, the trade union’s members must produce those like goods. Clause 214(2) replaces sections 23(2)(b) and 23(2)(c) to identify the information that trade unions must provide in their complaints.

Clause 215 amends section 26(1)(b) to require the CITT to begin an inquiry into a trade union’s complaint regarding global safeguard measures when certain conditions are met. These conditions include that the complaint is supported by domestic firms that produce a “major proportion” of the domestic goods that are like the imported goods mentioned in the complaint.

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Clause 216 amends section 30.04 to allow trade unions to file requests with the CITT to extend safeguard measures in relation to particular imported goods.⁸² To file such a request, a trade union's members must produce goods that are like those goods. Clause 217(1) amends sections 30.05(1)(b) and 30.05(1)(c) to identify the information that trade unions must provide in their requests.

Clause 218 amends section 30.07(1)(b) to require the CITT to begin an inquiry into a trade union's request to extend safeguard measures when certain conditions are met. These conditions include that the request is supported by domestic firms that produce a "major proportion" of the domestic goods that are like the imported goods mentioned in the request.

Clause 219 amends section 39(1)(c) to stipulate that, after consulting the Minister of Finance and with the Governor in Council's approval, the CITT may make certain rules indicating information that must accompany a trade union's request to extend safeguard measures.

Clauses 213, 214(3) and 217(2) amend section 16(b), as well as sections 23(3)(a) and 30.05(2)(a) of the English version of the CITT Act, to ensure that the sections are consistent with the changes to the CITT Act that would result from clauses 214 to 219.

2.5.10 Division 10: Amendments to the *Trust and Loan Companies Act* and the *Insurance Companies Act*

Division 10 updates the corporate governance provisions set out in the *Trust and Loan Companies Act* (TLCA) and the *Insurance Companies Act* (ICA) that regulate proxy solicitation for federally regulated trust and loan companies, insurance companies and insurance holding companies. It also amends certain provisions in *An Act to amend certain Acts in relation to financial institutions*. This statute received Royal Assent in 2005, but certain sections that introduce amendments related to proxy solicitation for federally regulated financial institutions have yet to come into force.

Clause 220 makes amendments to section 160.04(1) of the TLCA, which sets out how a form of proxy is sent to shareholders before a shareholders' meeting. Clause 220 generally updates the language of section 160.04(1) and replaces the words "giving notice" with "sending notice." Clauses 223 and 226 make similar amendments to section 164.03(1) of the ICA for insurance companies and section 788(1) of the ICA for insurance holding companies, respectively, with the only difference being that for insurance companies, a form of proxy must be sent to both shareholders and policyholders.

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Clause 221(1) amends sections 160.05(1), adds sections 160.05(1.1) and 160.05(1.2), and amends section 160.05(2) of the TLCA, which are the main provisions that govern proxy solicitation. Clause 221(1) amends section 160.05(1) to update the language and to clarify to whom proxies must be sent and the type of proxy circulars that can be sent. New section 160.05(1.1) provides that the restrictions on soliciting proxies do not apply when the total number of shareholders being solicited is 15 or fewer, with two or more joint shareholders being counted as one shareholder. New section 160.05(1.2) provides that the restrictions on soliciting proxies do not apply if the solicitation is, in the prescribed circumstances, conveyed by public broadcast, speech or publication. As well, clause 221(1) amends section 160.05(2) to update the language and replace “shall at the same time file” with “concurrently send to.” Clauses 224(1) and 227(1) make similar amendments to update sections 164.04(1) and 164.04(2) of the ICA for insurance companies and sections 789(1) and 789(2) of the ICA for insurance holding companies, respectively, with the only difference being for insurance companies, any reference to shareholders includes shareholders and policyholders.

Clause 221(2) amends section 160.05(4) of the TLCA, which addresses the reporting of proxy exemptions by the Superintendent of Financial Institutions, to state that the Superintendent is not required to publish the exemptions in a “periodical available to the public,” but can publish a notice of a decision made by the Superintendent granting an exemption in a publication generally available to the public. Clauses 224(2) and 227(2) make the same amendments to section 164.04(4) of the ICA for insurance companies and section 789(4) of the ICA for insurance holding companies, respectively.

Clause 222 amends section 160.071 of the TLCA to provide that the Governor in Council can make regulations respecting proxies and the solicitation of proxies. Clauses 225 and 228 make similar amendments to section 164.061 of the ICA for insurance companies and section 791.1 of the ICA for insurance holding companies, respectively, with the only difference being for insurance companies, any reference to shareholders includes shareholders and policyholders.

Clause 229 amends section 239(2) of the English version of *An Act to amend certain Acts in relation to financial institutions*, which proposes an amendment to the definition of “solicitation” in section 164 of the ICA with respect to insurance companies. Clause 229 includes two clarifications for the definition: that the definition includes a request for a proxy that has been included in a form of proxy and that in Quebec, proxies are signed, and not executed. Clauses 230 and 231 make the same amendments to sections 322(2) and 392(2) of the English version of *An Act to amend certain Acts in relation to financial institutions*, but with respect to insurance holding companies and trust and loan companies, respectively.

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Clause 232 provides several coordinating amendments for certain provisions that will be amended by both Bill C-19 and *An Act to amend certain Acts in relation to financial institutions*.

2.5.11 Division 11: Amendments to the *Insurance Companies Act*

Section 476 of the ICA states that property and casualty insurers and marine insurers cannot enter into any debt obligation or issue any share other than a common share, if as a result, the aggregate of the total debt obligations of the company and the stated capital of the company would exceed the percentage of the total assets of the company set out in regulations.

Clause 233 renumbers section 476 as section 476(1) and adds new section 476(2) to provide that a property and casualty insurer or marine insurer, when calculating its total debt obligations, does not need to include the value of any debt obligation if it is already included as part of the regulatory capital of the company.

Clause 233 comes into force on 1 January 2023.

2.5.12 Division 12: Enactment of the Prohibition on the Purchase of Residential Property by Non-Canadians Act

Clause 235 of Bill C-19 enacts new legislation, entitled the Prohibition on the Purchase of Residential Property by Non-Canadians Act, with an aim to prohibit the purchase of certain residential property by non-Canadians. The bill contains a sunset clause: clause 237 of the bill provides that the Purchase of Residential Property by Non-Canadians Act will come into force on a day to be fixed by order of the Governor in Council and will be repealed on its second anniversary.

According to sections 4 and 5 of the Act, the prohibition would not apply to a non-Canadian who becomes liable or assumes liability under an agreement of purchase and sale before the day on which the Act comes into force.

Section 4(1) of the Act specifies that it is prohibited for a non-Canadian to purchase, directly or indirectly, any residential property in Canada. This prohibition is in force despite section 34 of the *Citizenship Act*,⁸³ which provides that non-citizens may own real and personal property “in the same manner in all respects” as a citizen may. Section 34 of the *Citizenship Act*’s applicability is subject to section 35(1), which indicates that authority may be granted to prohibit or restrict acquisitions of property in a province by non-Canadians.

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Section 2 of the Act defines a “non-Canadian” as an individual who is neither a Canadian citizen, nor a person registered under the *Indian Act*,⁸⁴ nor a permanent resident under the *Immigration and Refugee Protection Act (IRPA)*⁸⁵.

A non-Canadian also includes certain foreign corporations and entities:

- any corporation that is not incorporated under the *Canada Business Corporations Act*⁸⁶ (CBCA) or under a provincial or territorial statute;
- a corporation incorporated under federal or provincial law, the shares of which are not listed on a designated Canadian stock exchange and which is controlled by a non-Canadian individual or corporation; or
- “a prescribed person or entity,” set out in regulations. The Governor in Council may, then, in accordance with section 8(1), prescribe what constitutes a non-Canadian for the purposes of the Act.

The bill covers the following types of residential properties:

- detached houses or “similar” buildings containing fewer than three dwelling units (a dwelling unit has a private kitchen, private bath and private living area);
- semi-detached homes, row houses, residential condominiums or similar portions of buildings that are intended to be separately owned; and
- other types of residential property to be set out in regulations.

The legislation does not apply to larger multi-unit residential buildings or to commercial properties. Recreational properties are not specifically mentioned in the bill, but some such properties may fall within the bill’s definition of residential properties unless exempted by future regulations.

Section 4(2) of the Act outlines exceptions to the prohibition on non-Canadians purchasing residential property. This list includes:

- temporary residents within the meaning of the IRPA⁸⁷ who satisfy prescribed conditions (section 4(2)(a));
- persons on whom refugee protection is conferred and whose claim or application has not subsequently been deemed to be rejected as per section 95(2) of the IRPA (section 4(2)(b)); and
- non-Canadian spouses of citizens, permanent residents, individuals with status under the *Indian Act*, or the temporary residents and refugees listed in sections 4(2)(a) and 4(2)(b) who are purchasing property with their spouse (section 4(2)(c)).
Section 4(2)(d) allows additional classes of persons to be added in regulations.

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Section 4(4) indicates that nothing in the Act prevents or hinders a foreign state from purchasing residential property for diplomatic or consular purposes. As is typical practice, foreign states intending to establish diplomatic or consular premises in Canada would need to obtain written approval from the Government of Canada, and follow the guidelines outlined in section 3 of Global Affairs Canada's policy on foreign states acquiring real property in Canada.⁸⁸

Section 6(1) of the Act provides that the offence created in section 4 is punishable on summary conviction by a fine of up to \$10,000. The provision also prohibits counselling, inducing, aiding, or abetting, or attempting to counsel, induce, aid, or abet the offence. In instances where the offence is committed by a corporation, officers, directors, agents, mandataries, senior officials, and individuals authorized to exercise managerial or supervisory functions will be party to the offence if they directed, authorized, assented to, acquiesced, or participated in the offence.

A residential property sale made in violation of the provisions of the Act is still valid (section 5); however, the Act gives the minister the power to order the sale of the property following conviction (section 7(1)).

If a non-Canadian is convicted of an offence under the Act, the superior court of the province in which the residential property in question is situated may order the property to be sold (section 7(2)). The manner and conditions of such a sale are to be set out in regulations, but the Act provides that convicted persons and entities may receive no more than the purchase price from such sales (section 8(2)). The Act does not clarify who is to receive any excess proceeds of sale.

Section 8(1) of the Act sets out regulation-making powers, including the power to define "control" for the purposes of the Act, what amounts to a purchase under the Act and orders relating to judicial sales under section 7(2).

2.5.13 Division 13: Amendments to the *Parliament of Canada Act*

Division 13 of Part 5 of Bill C-19 amends portions of the *Parliament of Canada Act* (POCA)⁸⁹ to reflect changes in the composition of the Senate, including the growing number of senators who are affiliated with recognized parliamentary groups.⁹⁰ Presently, the POCA does not recognize the presence of these groups or their leadership.

Clause 238 replaces section 19.1(3) of the POCA to provide that the Government Representative in the Senate and the leader or facilitator of every other recognized party or parliamentary group in the Senate may also change the membership of the Standing Senate Committee on Internal Economy, Budgets and Administration.

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Clause 239 replaces section 20.1 of the POCA to provide that, before appointing a Senate Ethics Officer, the Governor in Council must consult with the Leader of the Government in the Senate or Government Representative in the Senate, the Leader of the Opposition in the Senate and the leader or facilitator of every other recognized party or parliamentary group in the Senate.

Clause 240 amends the POCA by adding new section 62.4, which stipulates that, beginning on 1 July 2022, additional annual allowances will be paid to senators occupying the following positions in the Senate:

- the Leader of the Government or the Government Representative (\$90,500), the Leader of the Opposition (\$42,800), and the leader or facilitator of the largest (\$42,800), second-largest and third-largest recognized party or parliamentary group (\$21,300 each);⁹¹
- the Deputy Leader of the Government or Legislative Deputy to the Government Representative (\$42,800), the Deputy Leader of the Opposition (\$27,000), and the Deputy Leader or Deputy Facilitator of the largest (\$27,000), second-largest and third-largest recognized party or parliamentary group (\$13,400 each);
- the Government Whip in the Senate or Government Liaison (\$12,900), Opposition Whip (\$7,400), and Whip or Liaison of the largest (\$7,400), second-largest and third-largest recognized party or parliamentary group (\$3,700 each);
- the Deputy Government Whip or Deputy Government Liaison (\$6,400), the Deputy Opposition Whip (\$3,200) and the Deputy Whip or Deputy Liaison of the largest (\$3,200), second-largest and third-largest recognized party or parliamentary group (\$1,500 each); and
- the Chair of the Caucus of Government (\$7,400) and the Chair of the Caucus of the Opposition (\$6,400).

Clause 241 replaces sections 67 and 67.1 of the POCA to ensure that the amounts set out in section 62.4(1) are adjusted annually, in keeping with the index of the average percentage increase in base-rate wages published annually by Employment and Social Development Canada.

Clause 242 replaces a portion of section 71.1(1) of the POCA to include the new additional annual allowances in the calculation of annual disability allowances for senators who resign for reasons of disability.

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Clause 243 replaces section 79.1(1)(a) of the POCA to incorporate the terminology that groups in the Senate have chosen, namely “Leader or Facilitator” of a recognized party or parliamentary group in the Senate, in a provision stipulating that the Governor in Council must consult with the Leader of the Government in the Senate, the Leader of the Opposition in the Senate and the leader of every caucus and of every recognized group in the Senate before appointing a Parliamentary Budget Officer.

Clause 244 makes a consequential amendment to section 2(1) of the *Members of Parliament Retiring Allowances Act* to provide that the new additional annual allowances in the bill are included in the calculation of senators’ pensionable earnings, and the amount they are required to contribute to the Plan is adjusted accordingly.

Clauses 245 to 253 of the bill make related amendments to the *Access to Information Act*, the *Auditor General Act*, the *Privacy Act*, the *Emergencies Act*, the *Official Languages Act*, the *Lobbying Act*, the *Public Servants Disclosure Protection Act*, the *National Security and Intelligence Committee of Parliamentarians Act*, and the *National Security and Intelligence Review Agency Act*. These amendments require the Governor in Council to consult with Senate leadership before making an appointment.

Clause 254 brings these changes into force on a day to be fixed by order of the Governor in Council.

2.5.14 Division 14: Amendments to the *Financial Administration Act*

Division 14 of Part 5 of Bill C-19 introduces amendments to section 7 of the FAA, which outlines the responsibilities and powers of the Treasury Board. Clause 255(4) adds that the Treasury Board may provide services to departments, to Crown corporations, and, with the authorization of the Governor in Council, to other entities (i.e., a provincial government, a municipality in Canada, a provincial or municipal public body or any other public body performing a function of government in Canada).

Clauses 255(5) and 255(6) specify that for the purpose of the *Access to Information Act* and the *Privacy Act*, the records of an entity to which the Treasury Board provides services and the personal information collected by that entity that are contained in or carried on the Treasury Board’s information technology systems are not under the control of the Treasury Board.

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2.5.15 Division 15: Amendments to the *Competition Act*

Division 15 of Part 5 of Bill C-19 makes several substantive and technical amendments to the *Competition Act*, aimed at “fixing loopholes; tackling practices harmful to workers and consumers; modernizing access to justice and penalties; and adapting the law to today’s digital reality.”⁹² Clause 257 creates a new criminal offence which prohibits employers from conspiring, agreeing, or arranging to (1) fix, maintain, decrease, or control wages or terms and conditions of employment, or (2) not solicit or hire each other’s employees. The new offence incorporates the relevant pre-existing defence, penalty, and evidentiary provisions of section 45 of the *Competition Act* (conspiracies, agreements, or arrangements between competitors). Clause 275 states that the new offence will come into force on the first anniversary of Bill C-19 receiving Royal Assent.

Clauses 258 and 259 insert clarification statements for the criminal offence of false or misleading representations (section 52), and the civilly reviewable matter of misrepresentations to the public (section 74.01), which deal with substantially similar conduct.⁹³ The new sections clarify that “drip pricing” – advertising a price that is unattainable due to obligatory charges or fees – constitutes a misrepresentation unless the charges or fees are imposed by federal or provincial legislation.

Clauses 260 and 262(2) amend the maximum administrative monetary penalty which a court may order for deceptive marketing practices under Part VII.1 and the Competition Tribunal may order for abuse of dominant position under section 79. The clauses provide an alternative maximum penalty equal to three times the value of benefit derived from the conduct, where that value is greater than the existing limits. Where such a value cannot be determined, it is replaced by a value equal to 3% of the person’s annual worldwide gross revenue (for deceptive marketing practices, the alternative maximum penalty based on gross revenue only applies to corporations).

Clause 261 amends section 78 of the *Competition Act* to add a definition of “anti-competitive act” to the existing non-exhaustive list of examples of such acts found in the section. The clause clarifies that the effect of an anti-competitive act can be on either a competitor or competition within a market.⁹⁴ Engaging in a practice of anti-competitive acts in one of three requirements is necessary for the Competition Tribunal to consider conduct an abuse of dominant position under section 79.

Clauses 262(3), 263 and 264 provide additional factors that the Competition Tribunal may consider when determining if conduct is preventing or lessening competition substantially in a market, as required for findings related to abuse of dominant position under section 79, agreements or arrangements that prevent or lessen competition substantially under section 90.1 and mergers under section 92.

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Clause 266 expands the types of conduct for which private individuals may apply to the Competition Tribunal for leave to make an application to include abuse of dominant position under section 79. The existing section allowed for applications regarding conduct considered refusal to deal under section 75, price maintenance under section 76 and exclusive dealing, tied selling and market restriction under section 77.⁹⁵

Clause 270 inserts an interpretative section into Part IX (Notifiable Transactions) specifying how time periods referenced in the part should be calculated. Clause 271 adds an anti-avoidance section to the same part, stating that sections 114 to 213.1 apply to transactions or proposed transactions “designed to avoid the application of this Part.” Clause 272 amends section 114(3) to clarify that the section deals with proposed transactions which are an “unsolicited or hostile take-over bid.”

2.5.16 Division 16: Amendments to the *Copyright Act*

Division 16 of Part 5 of Bill C-19 amends the *Copyright Act*⁹⁶ to extend the term of copyright protection and, in doing so, implement Canada’s obligations under the *Canada–United States–Mexico Agreement* (CUSMA).⁹⁷

CUSMA establishes a legal framework of minimum standards for the protection and enforcement of intellectual property rights in North America. CUSMA requires a general term of copyright protection on the basis of the life of a natural person, plus 70 years. Currently, several sections of the *Copyright Act* establish a general term of copyright protection of the life of a natural person, plus 50 years.

Clauses 276 to 279 of the bill extend the general term of copyright in sections 6, 7 and 9 as well as in subsection 6.2(2) of the *Copyright Act* so that it subsists for the life of the author, the remainder of the year in which the author dies, and a period of 70 years following the year of death of the author or of the author who dies last in the case of a work of joint authorship.

Clause 278 of the bill amends copyright in posthumous works, provided for in section 7 of the *Copyright Act*, to extend it to the longer of the following two periods: 50 years following the date of the first publication, performance in public or communication to the public by telecommunication of the work; or 70 years following the year of death of the author or of the author who dies last.

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Clause 278 provides an exception for works that were published, performed in public or communicated to the public by telecommunication before 31 December 1998 and a transitional provision for works that were not published, performed in public or communicated to the public by telecommunication before 31 December 1998 and whose author has died in order to protect copyright until 31 December 2048 or until the seventieth year following the death of the author or of the author who dies last.

Clause 279 of the bill replaces section 9 of the *Copyright Act* to provide that, in the case of a work of joint authorship, copyright subsists during the life of the author who dies last, for the remainder of the calendar year in which that author dies, and for a period of 70 years following the end of that calendar year. Clause 279 thereby repeals subsection 9(2) of the *Copyright Act*, which provided that authors who are nationals of any country, other than a country that is a party to CUSMA, that grants a term of protection shorter than that mentioned in former subsection 9(1) are not entitled to claim a longer term of protection in Canada.

Clause 280 provides that amendments to the *Copyright Act* by clauses 276 to 279 of the bill do not have the effect of reviving the copyright in any work in which the copyright had expired before these provisions came into force.

Clause 281 provides that the measures provided for in Division 16 of Part 5 of the bill come into force on a day to be fixed by order of the Governor in Council.

2.5.17 Division 17: Amendments to the *College of Patent Agents and Trademark Agents Act*

The *College of Patent Agents and Trademark Agents Act*⁹⁸ (CPATAA) was adopted in 2018 to establish the College, which began operation in 2021. Among other things, Clauses 282 to 293 of Bill C-19 amend the CPATAA to ensure an independent and flexible exercise of the College's corporate functions; provide statutory immunity to certain persons involved in the regulatory activities of the College; and improve the efficiency of the College's complaints and discipline process.

Clause 282 of the bill replaces section 5(2) to allow the application of *Canada Not-for-profit Corporations Act* (NFP Act) to the College, only where a regulation to that effect has been made by the Governor in Council under new section 76(1)(a.1). New section 76(1)(a.1) is created by Clause 292 to allow regulation respecting the application of any provisions of the NFP Act to the College.

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Clause 283 of the bill replaces section 8 to specify some of the College's powers (e.g., the power to purchase, acquire or lease any real or personal property and the power to borrow money). Clause 284 adds new section 15(5) to allow the Board of Directors to fill vacancies left by a director. Clause 285 adds new section 20.1 to allow the Board or others (through by-laws) to act on the College's behalf. Clause 286 adds new section 22(2) to allow the Registrar to delegate their powers, duties, and functions.

Clause 287 of the bill adds new provisions 23.1 to 23.3. New section 23.1 provides statutory immunity to certain people involved in the regulatory activities of the College (e.g., current or former: directors of the Board, members of a committee, Registrars, investigators, officers, or employees). It protects them against actions or proceedings in damages for actions or omissions they have committed in good faith. New section 23.2 provides to the persons referred to in new section 23.1 the right to be indemnified for all costs, charges, and expenses incurred as a result of a legal proceeding described in that section. New section 23.3 grants immunity to members of the public who, in good faith, disclose information to the College or to an investigator or make a complaint.

Clause 288 of the bill adds new sections 37.1 and 37.2. New section 37.1 clarifies the process under which the Investigations Committee can take provisional actions to protect the public (e.g., suspension of a license during an investigation). It also enumerates the circumstances under which provisional actions cease to have effect. New section 37.2 describes the review process of the Discipline Committee where a licensee appeals the Investigations Committee's decision to impose a provisional action.

Clause 289 of the bill replaces section 39 with new sections 38.1 and 39. Among other things, these sections govern the process by which the Registrar of the College may dismiss or refer a complaint to the Investigations Committee. Clause 290 amends section 63 to give the Investigations Committee powers identical to those of the Discipline Committee.

Clause 291 of the bill adds new matters for which the Board can make by-laws under section 75(1) and makes consequential amendments to section 75.

Finally, Clause 293 adds new sections 87 and 88. New section 87 specifies that all by-laws made by the College before the coming into force of that section are deemed made by the Board. New section 88 provides that all regulations authorizing the College to make by-laws are deemed to authorize the Board to make by-laws.

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2.5.18 Division 18: Enactment of the Civil Lunar Gateway Agreement Implementation Act

Division 18 of Part 5 of Bill C-19 comprises five clauses and establishes the provisions of An Act to Implement the Memorandum of Understanding⁹⁹ between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway and to make related amendments to other Acts (CLGA Implementation Act).¹⁰⁰

The CLGA Implementation Act protects confidential information shared under the Memorandum of Understanding (the Agreement), amends the CC to extend its application to activities related to the Lunar Gateway and amends the *Government Employees Compensation Act* (GECA) to implement the cross-waiver of liability contained within the Agreement.

Clause 294 of the bill enacts the CLGA Implementation Act. Sections 1 to 6 establish the short title, definitions, purpose of the Act and the delegation of powers.

2.5.18.1 Communication of Information

Sections 7(1) and 7(2) of the CLGA Implementation Act authorize the minister¹⁰¹ to require, by order, any person to provide information relevant to the administration or enforcement of the CLGA Implementation Act. Section 7(3) establishes that the *Statutory Instruments Act* does not apply to any such order.

Sections 8(1) and 8(2) of the CLGA Implementation Act prohibit the communication of information that has been designated as confidential without the written consent of the person who provided it, unless the following exceptions apply:

- (a) the public interest in the communication or access in relation to public health or public safety outweighs in importance any financial loss or prejudice to the competitive position of any person or any harm to the privacy interests, reputation or human dignity of any individual likely to be caused by that communication or access; or
- (b) the communication or access is necessary for the purpose of the administration or enforcement of this Act or any other Act of Parliament or the Agreement.

Section 8(3) establishes that despite any other Act or law, a person is not to be compelled to give or produce evidence relating to confidential information that has been provided under this Act or the Agreement unless the proceeding in which the evidence is sought to be compelled relates to the enforcement of this Act or another Act of Parliament.

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Section 9 of the CLGA Implementation Act establishes that despite any other Act or law, any person who receives goods or data referred to in Article 19.4 of the Agreement must, upon completion of the activities to which they relate, destroy, or return them in accordance with the instructions of the party that provided them.

Section 10 establishes that if the minister believes that someone who has received information under the Agreement is contravening, or is likely to contravene, section 8 or 9, the minister may, by order, require them to return it to the person who provided it or dispose of it as directed.

2.5.18.2 Regulations

Clause 12 establishes that the Governor in Council may make regulations that it deems necessary for carrying out the purposes of the CLGA Implementation Act or the Agreement.

2.5.18.3 Related Amendments

Clauses 295 and 296 amend the CC to extend the scope of its application to all extraterrestrial activities involving the Lunar Gateway.

Clause 295 amends the definition of the Attorney General in section 2.3(1)(a) of the CC to establish that the Attorney General of a province and the Attorney General of Canada have the requisite jurisdiction to lay charges for any offence committed by Canadian crew members or crew members of Partner States.

Clause 296(4) adds the following definitions to Part I of the CC:

- “Agreement” has the same meaning as in section 2 of the CLGA Implementation Act.
- “Canadian crew member” means a crew member of the Lunar Gateway who is a Canadian citizen; or a citizen of a foreign state, other than a Partner State, who is authorized by Canada to act as a crew member for a space flight.
- “Crew member of a Partner State” means a citizen of a Partner State or a citizen of another country authorized by a Partner State to act as a crew member for a space flight.
- “Flight element” means a Lunar Gateway element provided by Canada or by a Partner State under the Agreement.
- “Lunar Gateway” means the multi-use facility in orbit around the Moon, with flight elements and dedicated ground elements provided by Canada or the Partner States.
- “Partner State” means a State, other than Canada, that is a Gateway Partner.

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- “Space flight” means a flight that spans the period beginning with the launching of a crew member of the Lunar Gateway, continuing during their stay in orbit around or on the surface of the Moon and ending with their landing on earth.

Clause 296(4) also establishes that if a Canadian crew member commits an act or omission – that if committed in Canada would constitute an indictable offence – on, or in relation to, a flight element of the Lunar Gateway, on any means of transportation to or from the Lunar Gateway, or on the surface of the Moon, that act, or omission is deemed to have been committed in Canada. If that act or omission is committed by a crew member of a Partner State, it is deemed only to have been committed in Canada if it threatens the life or security of a Canadian crew member or is committed on or in relation to, or damages, a flight element provided by Canada. These provisions already exist for crew members of the International Space Station.

Similarly, clause 297 establishes that GECA provisions apply for crew members of the Lunar Gateway in the same way as they apply for crew members of the International Space Station. The GECA establishes that compensation shall be awarded to an employee who experiences a workplace accident or to the dependants of a deceased employee. If the employee or their dependants choose to receive this compensation, clause 297 establishes that the employer shall be subrogated to the rights of the employee or their dependants and can maintain an action, against the third party, in its own name or in the name of the employee or their dependants. However, this subrogation is subject to the Agreement implemented by the CLGA Implementation Act, which establishes that partners waive the right to legal recourse against other partners, as is the case in the International Space Station. Therefore, Canada cannot pursue legal recourse against partner countries under the GECA.

Clause 298 establishes that Division 18 of Part 5 comes into force on a day to be fixed by order of the Governor in Council.

2.5.19 Division 19: Amendments to the *Corrections and Conditional Release Act*

Clause 299 amends section 51 of the *Corrections and Conditional Release Act* (CCRA), which concerns the use of “dry cells” in the federal correctional system.¹⁰² Dry cells are cells with no plumbing facilities in which inmates suspected of hiding contraband in their bodies are placed. They are used to prevent illegal substances and other contraband from entering correctional institutions. These inmates are monitored 24 hours a day until the contraband is expelled in their bodily waste or fluids. The amendment to section 51 of the CCRA eliminates the option of using dry cells where the institutional head has reasonable grounds to believe that a female inmate has hidden contraband in her vagina. The use of this search procedure is now limited to men and women who are suspected of having ingested contraband or of carrying it in their rectum.

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The proposed amendment is designed to address the trial decision of the Supreme Court of Nova Scotia,¹⁰³ which ruled on 25 June 2021 that the use of dry cells has a disproportionate impact on women and contravenes section 15 of the *Canadian Charter of Rights and Freedoms*.¹⁰⁴ Among the reasons set out in paragraph 142 of its decision, the court found that section 51(b) of the CCRA imposes an additional discriminatory burden on women reasonably suspected of carrying contraband in their vagina. The court noted that women may be subjected to longer periods of dry cell detention because the essentially involuntary menstrual process that expels bodily fluids or waste through the vagina is not as frequent as the process that expels waste through the digestive tract. The court further noted that, with menopause, the risk of prolonged dry cell detention is significantly higher and potentially indeterminate.

The court had suspended its declaration of invalidity for six months to give Parliament time to reform the CCRA.

New section 51(2) of the CCRA provides that an inmate detained in a dry cell must be visited by a registered health professional at least once every day. Note that a daily visit from a health professional is already provided for in Annex E of Commissioner's Directive 566-7, entitled "Searching of Offenders."¹⁰⁵

Section 51(3) of the CCRA is also amended to maintain the ability of the institutional head to authorize the use of an X-ray machine if there are reasonable grounds to believe that an inmate has ingested contraband or is carrying contraband in a body cavity (rectum or vagina),¹⁰⁶ if the consent of the inmate and of a qualified medical practitioner is obtained.

Finally, the amendment to section 65(1) of the CCRA reflects the changes to section 51, without, however, changing the powers of staff members to seize contraband or evidence relating to a disciplinary or criminal offence.

2.5.20 Division 20: Amendments to the *Customs Act*

The amendments to the *Customs Act* essentially achieve two objectives: permit the *Customs Act* to be administered and enforced by electronic means; and make the importer of record also liable for the payment of duties on imported goods.

Clause 304 replaces section 8.1 of the *Customs Act* and its heading so that any person on whom powers, duties or functions are conferred under the *Customs Act* can exercise any of those powers, or perform any of those duties or functions, through electronic means.

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The new section specifies that, under certain conditions, information, or security that the *Customs Act* requires to be provided – in any form or manner, or by any means – can be provided electronically; information includes a signature, as well as serving, filing, and providing a record or document. Two requirements must be met:

- The electronic version must be provided by the electronic means made available or designated by the Minister of Public Safety and Emergency Preparedness.¹⁰⁷
- The information or security provided through the electronic means must meet the *Customs Act* requirements regarding electronic communications or electronic means.

The new section also allows the Governor in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, to make regulations concerning requirements for electronic communications, electronic means or any other technology used in administering and enforcing the *Customs Act*.

Clause 307 amends section 17(3) of the *Customs Act* to expand the entities liable for the payment of duties on imported goods. With the change, the importer of record for goods on which duties are payable under the *Customs Act* is – along with the importer or person authorized to account for the goods, as the case may be, and the owner of such goods – jointly and severally liable to pay these duties. The term “importer of record” is added to the *Customs Act* and is “the person identified as the importer when goods are accounted for under subsection 32(1), (2), (3) or (5)” of the *Customs Act*.

Clause 314 amends section 35.02(2) of the English version of the *Customs Act*, which relates to the notice that requires the marking of imported goods or their compliance with marking regulations, by adding certified mail as one of the means of serving such a notice.

Clause 324 amends section 97.211(1)(a) of the *Customs Act* to enable the Minister of National Revenue to use electronic means to exercise ancillary powers for the collection of debts due to the Government of Canada.

Clause 328 amends section 150 of the *Customs Act* to expand the range of duly certified copies of documents that are admissible as evidence in any *Customs Act*-related proceeding. In particular, electronic documents are added.

Clause 329 amends section 164 of the *Customs Act* to allow the regulations that the Governor in Council may make regarding payments under the *Customs Act* to distinguish among sums according to their amount and the class of goods to which those sums relate.

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Clauses 302, 303, 305, 306, 308 to 313, 315 to 323, 325 to 327 and 330 make technical amendments to the *Customs Act*.

Clause 331 states that clauses 302 to 330 will come into force on a day or days to be stipulated by order of the Governor in Council.

2.5.21 Division 21: Amendments to the *Criminal Code*

Clause 332 amends section 319 of the CC¹⁰⁸ by adding a new offence that criminalizes the wilful promotion of antisemitism by condoning, denying, or downplaying the Holocaust, except in private conversation. It also adds a definition of the “Holocaust” to section 319(7), which is “the planned and deliberate state-sponsored persecution and annihilation of European Jewry by the Nazis and their collaborators from 1933 to 1945.”¹⁰⁹

Various federal, provincial, and territorial laws across Canada target hate promotion and crimes motivated by hatred, including human rights laws and the CC.¹¹⁰ Canadian courts have examined and largely supported the constitutionality of restricting the right to free expression found in section 2(b) of the *Canadian Charter of Rights and Freedoms*¹¹¹ in order to address the harms of hate promotion, so long as this right is minimally impaired, among other things.¹¹² The Supreme Court of Canada has also examined what constitutes “hate” for the purposes of these laws, which among other things centres on the detestation or vilification of an identifiable group of individuals.¹¹³

Recent discussions, forums, and studies have raised concerns about the spread of hatred targeting various groups in Canadian society, including antisemitism.¹¹⁴ Statistics Canada reported that hate crimes against the Jewish population in Canada rose in 2020 and it was the second most targeted group, after the Black population.¹¹⁵

Sections 318 to 320.1 of the CC set out the various criminal offences targeting hate propaganda and procedural considerations that apply when investigating or prosecuting them. These offences include a prohibition against advocating or promoting genocide (section 318(1)); a prohibition against communicating statements in a public place that incite hatred against any identifiable group where such incitement is likely to lead to a breach of the peace (section 319(1)); and a prohibition against communicating, except in private conversation, statements that wilfully promote hatred against an identifiable group (section 319(2)). Spreading hatred against persons based on their Jewish ancestry or religion is therefore covered by these sections, though they do not specifically target the promotion of Holocaust denial.

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As with the three offences mentioned above, a person found guilty of committing the new offence in section 319(2.1) may be punished with a sentence of up to two years on indictment and up to two years less a day and/or a fine of up to \$5,000 on summary conviction.¹¹⁶

Four defences are included with the new antisemitism offence. Three of these are identical to the first three existing defences that apply to section 319(2), whereas the fourth is specific to the new offence. The Supreme Court has noted that the inclusion of such defences helps protect the right of free expression when criminalizing hate speech and addressing the harms it causes.¹¹⁷ New section 319(3.1) adds that no person shall be convicted under 319(2.1) if they can establish that:

- “the statements communicated were true”;
- they expressed or attempted to establish in good faith “an opinion on a religious subject” or that is “based on a belief in a religious text”;
- “the statements were relevant to any subject of public interest, the discussion of which was for the public benefit, and if on reasonable grounds they believed them to be true”; or
- they intended, in good faith, to point out for the purpose of removal, “matters producing or tending to produce feelings of antisemitism toward Jews.”

Sections 319(4) to 319(6) are amended to add new section 319(2.1) into existing provisions concerning the seizure of items in the execution of search warrants; permitting judicial orders for the forfeiture of “anything” used in the commission of the offence; and, requiring that the consent of the attorney general be obtained to initiate proceedings for these offences.

2.5.22 Division 22: Amendments to the *Judges Act*, the *Federal Courts Act*, the *Tax Court of Canada Act* and Certain Other Acts

2.5.22.1 Amendments to the *Judges Act*

The *Judges Act* sets out the compensation and benefits provided to federally appointed judges and prothonotaries.¹¹⁸ The *Judges Act* also requires the independent Judicial Compensation and Benefits Commission to review and make recommendations on the adequacy of judicial compensation and benefits every four years.¹¹⁹ The Commission published its most recent report in 2021.¹²⁰ Clauses 335 to 352 of Bill C-19 implement recommendations from that report, including salary increases and changes to certain benefits. Under these amendments, judges’ salary raises range from \$24,700 for superior judges of provincial and territorial courts (annual salary increasing from \$314,100 to \$338,800) to \$31,800 for the Chief Justice of Canada (annual salary increasing from \$403,800 to \$435,600).

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These raises follow the existing judicial salary adjustment formula set out in section 25(2) of the *Judges Act*. The salary adjustments are retroactive to April 2020 (the Commission's inquiry was delayed several months due to the COVID-19 pandemic). The previous judicial salary adjustment took effect in April 2016.

Clause 356 amends section 27 to increase incidental expenditure allowances to \$7,500, rising from \$5,000 for judges and \$3,000 for prothonotaries. The allowances cover costs incurred in the execution of their office, such as technology expenses and continuing education. The types of expenditures covered by the allowances are the same for both judges and prothonotaries; Bill C-19 makes the amount of the allowances the same for both. Clause 356 also creates a judicial allowance for required medical or dental treatment that is not locally available. The allowance is available for judges residing in Labrador or the territories, and covers reasonable costs incurred while travelling for treatment. There is no similar allowance for prothonotaries as there are none in Labrador or any of the territories. Lastly, clause 356 increases the representational allowance, which reimburses judges for costs incurred when representing their court by giving lectures, etc. The increase reflects the effect of inflation since the allowance amounts were set approximately 20 years ago.

Bill C-19 increases the number of regular superior court judges in certain provinces: an extra nine in Ontario (clause 341), one in Quebec (clause 342), one in New Brunswick (clause 344), three in British Columbia (clause 346), two in Saskatchewan (clause 348), two in Alberta (clause 349), and one in Nunavut (clause 351). It also creates the positions of Associate Chief Justice in New Brunswick and in Saskatchewan. Most other provinces already have an office of Associate Chief Justice.

By law, superior court judges and prothonotaries must retire by age 75.¹²¹ Judges later in their career can also opt for supernumerary status, which comes with a reduced workload.¹²² Clause 358 creates an identical option for prothonotaries to opt for supernumerary status.

2.5.22.2 Amendments to the *Federal Courts Act*

Clause 365 adds an additional judge to the Federal Court of Appeal, increasing the number of judges from 13 to 14, in addition to a chief justice. Similar to amendments under the *Judges Act* related to prothonotaries of provincial superior courts, clause 366 amends the *Federal Courts Act* (FCA) to allow prothonotaries of the Federal Court to opt for supernumerary status once certain conditions related to age and years in office are met.

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2.5.22.3 Amendments to the *Tax Court of Canada Act*

Clause 367 adds an additional judge to the Tax Court of Canada.

The Tax Court of Canada does not currently include prothonotaries. Clause 368 creates the position of prothonotary of the Tax Court of Canada, with the number of prothonotaries to be fixed by regulation. It also allows for supernumerary prothonotaries, with a reduced workload as determined by regulation. The salaries and benefits of these new prothonotaries are the same as those provided under the *Judges Act*.

2.5.22.4 Other Amendments

Clause 371 replaces references to “prothonotary” with “associate judge” in legislation including the FCA, the *Judges Act*, and the TCCA. The responsibilities and duties of the position do not change.

Clause 375 makes coordinating amendments to ensure that the use of the terms “prothonotary” and “associate judge” are consistent throughout the *Judges Act*.

2.5.22.5 Coming into Force

Clause 376 provides that provisions of Bill C-19 related to replacing the term “prothonotary” with “associate judge” come into force on a day to be fixed by Order in Council.

2.5.23 Division 23: Amendments to the *Immigration and Refugee Protection Act*

Division 23 of Part 5 of the Bill C-19 amends the IRPA with provisions related to Express Entry and fees that are exempt from the *Service Fees Act*.¹²³ Clauses 377 and 378 amend Express Entry, the two-step application management system for key economic immigration programs. Clause 380 adds new information to be included regarding Express Entry in the Minister of Immigration, Refugees and Citizenship’s annual report to Parliament. Clause 379 relates to fees under IRPA and clause 381 specifies the coming into force of this provision.

2.5.23.1 Express Entry

Since its implementation in January 2015, Express Entry has undergone several adjustments in order to ensure the delivery of expected outcomes, by ministerial instructions. One measure that has changed is the Comprehensive Ranking System, which is used to score individuals in a pool and rank them relative to each other. Through regularly issued ministerial instructions, top ranking candidates’ expressions of interest are pulled from the pool, and they are invited to complete an immigration

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application. All major economic immigration programs are covered by Express Entry, including the Canadian Experience Class, the Federal Skilled Worker Program, the Federal Skilled Trades Program, and a portion of the Provincial Nominee Program.

Clause 377 amends sections 10.3(1)(h) to 10.3(1)(j) of IRPA to add to ministerial instructions, which are the basis for the rounds of invitations, further filters to the pool based on groupings and categories, and not simply immigration class.

Clause 377(2) sets out new section 10.3(1)(h.2), whereby categories can be established for the purpose of ranking, with eligibility criteria. New section 10.3(j.1) indicates that if a foreign national is eligible to be a member of more than one class, the invitation to apply for permanent residence must specify in which stream they must make their application.

Clause 377(3) adds new section 10.3(1.1), establishing that the Minister must set out in the instruction the economic goal that the category created under new section 10.3(1)(h.2) will support.

Clause 378 creates exceptions that allow permanent resident visas to be issued under Express Entry for candidates who have received an invitation to apply who would otherwise have lost eligibility under section 11.2(1)(a) because their circumstances have changed. These amendments are consequential to those of clause 377.

A candidate who has aged and lost points, or lost a qualification, but overall has maintained a score that is equal to the minimum required rank in the round they had received an invitation may still be issued a visa or other document under section 11.2(2).

Clause 380 adds that any instructions given under new section 10.3(1)(h.2) that establishes a category of foreign nationals for Entry Express, the economic goal it supports, and the number of invitations sent under this category must be published in the minister's annual report to Parliament (new section 94(2)(a.1)).

2.5.23.2 Fees Collected for Citizenship and Immigration Services

Clause 379 relates to fees under IRPA, identifying which additional services are to be exempted from the *Service Fees Act*, which provides a strict mechanism, including a parliamentary review, before fees can be changed. Immigration fees are usually set out in regulations, published in the *Canada Gazette*, and therefore undergo a regulatory impact analysis statement and consultation with stakeholders prior to implementation. There are already a number of fees for services exempt from the *Service Fees Act* – processing applications for a temporary resident visa, a permanent resident visa, a work permit, a study permit, an extension of an authorization to remain in Canada as a temporary resident, and to remain

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in Canada as a permanent resident. Other fees for services are exempt, such as those related to the processing of applications based on humanitarian and compassionate considerations, including applications made under public policy, and services to obtain travel documents for permanent residents, including permanent resident cards, and services related to the processing of applications to sponsor a member of the family class. The new service fees that would be exempt, through amendments to section 89(1.2) of IRPA are:

- authorization to return to Canada for a permanent resident;
- determination of rehabilitation (criminality and serious criminality);
- restoration of temporary resident status; and
- temporary resident permit.

Division 23 comes into force upon Royal Assent of Bill C-19. However, clause 381 specifies that clause 379 with these new fees exempt from the *Service Fees Act*, is deemed to come into force on 22 June 2017, when the *Service Fees Act* received Royal Assent and came into force.

2.5.24 Division 24: Amendments to the *Old Age Security Act*

Division 24 of Part 5 of the bill corrects a reference error resulting from the passage of the BIA 2021, No. 1. Subparagraph (c)(i.1) of the definition of income in section 2 of the *Old Age Security Act* (OASA) currently reads “the amount of the payment under the program referred to in section 276¹²⁴ of the *Budget Implementation Act, 2021, No. 1*,” referring to one of the amounts “deducted from the person’s income for the year, to the extent that those amounts have been included in computing that income.” It should refer to section 275 instead, which addresses the one-time payment of \$500 paid to pensioners aged 75 and older in the summer of 2021. The correction made in clause 382 of the bill ensures that this payment will be excluded for the purpose of computing income for the Guaranteed Income Supplement and allowances payable under the OASA. This Division is deemed to have come into force on 29 June 2021.

2.5.25 Division 25: Amendments to the *Canada Emergency Response Benefit Act*, the *Canada Emergency Student Benefit Act* and the *Employment Insurance Act*

Division 25 of Part 5 makes amendments to the *Canada Emergency Response Benefit Act* (CERBA), the *Canada Emergency Student Benefit Act* (CESBA) and the *Employment Insurance Act* (EIA) pertaining to the repayment of pandemic-related emergency benefits.

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2.5.25.1 Amendments to the *Canada Emergency Response Benefit Act* and the *Canada Emergency Student Benefit Act*

The CERBA authorized the payment of the Canada Emergency Response Benefit (CERB), an income support benefit available between 15 March 2020 and 3 October 2020 to workers (including self-employed persons) whose employment or income was directly impacted by the COVID-19 pandemic, and who were not eligible for Employment Insurance (EI).¹²⁵ During this period, a similar benefit (the EI Emergency Response Benefit, or EI ERB) was available to individuals who were eligible for EI.¹²⁶

The CESBA authorized the payment of the Canada Emergency Student Benefit (CESB), an emergency income support benefit available between 10 May 2020 and 29 August 2020, to students and recent graduates who had lost work and income opportunities due to the COVID-19 pandemic.¹²⁷ The CERB, the CESB and the EI ERB were all paid in respect of four-week periods.

Section 6 of the CERBA sets out the terms of eligibility for CERB payments. Under section 6(1)(b)(ii), applicants must not have received EI benefits for the same eligibility period for which they are applying. Clause 384 of Bill C-19 amends section 6(1)(b)(ii) to specify that applicants must also not have received the EI ERB during that period. This clause is deemed to have come into force on 15 March 2020 (clause 388).

Bill C-19 also adds new sections to the CERBA and CESBA introducing formulas to calculate the repayment¹²⁸ amount for individuals who received either the CERB or the CESB in respect of a four-week period, but who were ineligible due to having received EI benefits, the EI ERB, or provincial benefits for pregnancy or in respect of the care of a newborn or newly adopted child,¹²⁹ during the same period (clauses 385 and 386, adding new section 15(1) to the CERBA and new section 15.1(1) to the CESBA). These new formulas appear to result in a lower amount owing for persons who must repay the CERB or CESB, as it requires them to repay only the amount of a CERB or CESB payment that corresponds to the number of weeks in respect of which they received EI benefits, the EI ERB, or certain provincial benefits, rather than requiring them to repay the full CERB or CESB payment they received in respect of a four-week period.

However, in the case of both the CERB and the CESB, repayment is not required if the Canada Employment Insurance Commission (CEIC)¹³⁰ informs the Minister of Employment and Social Development that a worker's receipt of the EI ERB should not render them ineligible for the benefit, and if they were otherwise eligible to receive it (clauses 385 and 386, adding new section 15(2) to the CERBA and new section 15.1(2) to the CESBA).

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2.5.25.2 Amendments to the *Employment Insurance Act*

Section 153.9 of the EIA sets out the terms of eligibility for the EI ERB.¹³¹ It also describes the conditions under which a person is not eligible, including if they receive a CERB or CESB payment in respect of the period for which they are making a claim.¹³²

Clause 387 of Bill C-19 amends section 153.9 of the EIA by adding new sections 153.9(5) and 153.9(6). These new sections specify that a person who received an EI ERB payment for which they were not eligible due to having also received a CERB or CESB payment is, in fact, deemed to be eligible for the EI ERB (meaning they will have to repay the CERB or CESB). However, this repayment obligation does not apply if the CEIC has informed the Minister that a worker's receipt of the EI ERB should not render them ineligible for the CERB or CESB. As a result, the worker will be required to repay the EI ERB. This measure appears to allow the CEIC to exercise some discretion pertaining to the repayment of pandemic benefits.

2.5.26 Division 26: Amendments to the *Employment Insurance Act*

Division 26 of Part 5 amends interventions under Part II of the EIA¹³³, which are interventions funded under Labour Market Development Agreements with the provinces and territories to help participants obtain and keep employment, notably to broaden their eligibility.

Clause 389 replaces the definition of “employment benefits” in section 2(1) of the EIA with the definition of “employment support measure” to reflect the new name for the interventions under section 59 of the EIA.

Clauses 390, 391, 393, 397, 398, 399(1), 403, 405, 406 and 407 make this name change in the various sections of the EIA that refer to the interventions under section 59: sections 5(1)(e), 5(6)(f), 8(2)(c), 25, 56, 57(1), 62, 64, 75 and 77(1)(b).

Clause 390 amends section 5 of the EIA, which defines insurable employment, to exclude “employment in Canada of an individual as the sponsor or co-ordinator” from the definition of insurable employment (section 5(1)(e)) as part of an employment support measure under new sections 59(c) and 59(d). The support measures in these sections are, respectively, “to provide workers with employment assistance services” and “to support research, innovation or partnerships related to helping workers to prepare for, obtain or keep employment and to be productive participants in the labour market.” Clause 390 also specifies that among the types of employment that may be excluded from insurable employment is “any employment provided under ... an employment support measure other than one referred to in [section] 59(c) or (d)” (section 5(6)(f)).

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Clause 391 amends section 8(2)(c) of the EIA to add to the reasons for extending a qualifying period for receiving unemployment benefits: the fact that a person was not employed for one or more weeks in insurable employment because they were receiving assistance under an employment support measure other than one referred to in new section 59(c) or 59(d).

Clause 392 states that “earnings from employment under an employment support measure other than one referred to in [section] 59(c) or (d)” during the waiting period shall not be deducted from benefits for the first three weeks except in accordance with the regulations, as is the case for earnings and allowances received for any course or program of instruction or training (section 19(4) of the EIA).

Clause 394 provides that for the purposes of unemployment benefits under Part I of the EIA, a claimant is considered “unemployed and capable of and available for work” when the claimant is

- attending a course or program of instruction or training under an employment support measure under new section 59(a); or
- participating in any other employment activity for which assistance has been provided for the claimant under an employment support measure – other than under new sections 59(a) or 59(c) – similar to what was provided for the former “employment benefits” (section 25(1) of the EIA).

Clause 395 ensures that, for the purposes of parts I and IV of the EIA, the ITA and the *Canada Pension Plan*, benefits paid to a claimant while employed under an employment support measure other than one referred to in new sections 59(c) or 59(d) are not earnings from employment (section 26 of the EIA).

Clause 396 clarifies that, as was the case for “employment benefits,” a claimant is disqualified from receiving unemployment benefits under Part I¹³⁴ if, with their agreement, the claimant was referred to a course or program of instruction or training or to any other employment activity under an employment support measure and has, without good cause, not attended, has withdrawn or was expelled from the course or program, except with respect to the measure set out in new section 59(c), employment assistance services (section 27(1.1)(a) of the EIA).

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Clause 399(2) amends, with respect to interventions to help participants obtain and keep employment under Part II of the EIA, the provisions relating to working in concert and entering into agreements with the provinces in existing sections 57(2) and 57(3) of the EIA. The current wording provides that the CEIC shall

work in concert with the government of each province in which employment benefits and support measures are to be implemented in designing the benefits and measures, determining how they are to be implemented and establishing the framework for evaluating their success ...

and

invite the government of each province to enter into agreements for the purposes of [section] (2) or any other agreements authorized by this Part.

These are replaced by: “the Commission shall work in concert with provincial governments and consult with workers and employers to align employment support measures with labour market needs.” The proposed changes reduce the level of detail regarding what is expected when working in concert and entering into agreements with the provinces, but they do introduce the duty to consult with workers and employers.

Clause 400 amends section 58(a) of the EIA to define an insured participant in interventions to help participants obtain and keep employment as a person who has paid employee’s premiums in at least three of the last ten years, instead of five of the last ten years as was previously the case. Also, in sections 58(a) and 58(b) of the EIA, the term “unemployed person” is replaced with “person” and the term “claimant” is replaced with “insured person,”¹³⁵ in part to reflect the fact that Part II interventions will no longer be called “employment benefits” but rather “employment support measures.”

Clause 401 replaces section 59 of the EIA, which deals with employment support measures, formerly known as “employment benefits.” It adds “other workers, including workers in groups underrepresented in the labour market” to individuals eligible for these measures and clarifies that the measures include not just those that help people obtain employment, but also those that help them keep it.

The description of the new employment support measures under section 59 of the EIA differs from the description of the former employment benefits, which were designed to

- (a) encourage employers to hire participants;
- (b) encourage participants to accept employment by offering incentives such as temporary earnings supplements;

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- (c) help them start businesses or become self-employed;
- (d) provide them with employment opportunities through which they can gain work experience to improve their long-term employment prospects; and
- (e) help them obtain skills for employment, ranging from basic to advanced skills.

The new employment support measures in Bill C-19 are designed to

- (a) provide insured participants with courses or programs of instruction or training;
- (b) provide insured participants with employment opportunities or provide employment support;
- (c) provide workers with employment assistance services; and
- (d) support research, innovation or partnerships related to helping workers to prepare for, obtain or keep employment and to be productive participants in the labour market.

Consequently, the new employment support measures no longer mention employer incentives, participant incentives such as temporary earnings supplements, or assistance to start businesses or become self-employed.

Clause 402 repeals sections 60(4) and 60(5) of the EIA, which dealt with what used to be called “support measures” to support

- (a) organizations that provide employment assistance services;
- (b) employers, employee or employer associations, community groups and communities in developing and implementing strategies for dealing with labour force adjustments and meeting human resource requirements; and
- (c) research and innovative projects to identify better ways of helping persons prepare for, return to or keep employment and be productive participants in the labour force.

Clause 403 amends section 61 of the EIA, which concerns the financial assistance provided by the CEIC for employment support measures (formerly employment benefits or support measures). Until now, section 61(1) of the EIA specified the forms of financial support available:

- (a) grants or contributions;
- (b) loans, loan guarantees or suretyships;

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- (c) payments for any service provided at the request of the Commission; and
- (d) vouchers to be exchanged for services and payments for the provision of the services.

This list is replaced simply by “financial assistance.”

In addition, section 61(2) of the EIA stated that the CEIC would not provide any financial assistance in a province in support of employment benefits mentioned in section 59(e) (help obtaining skills for employment, ranging from basic to advanced skills) without the agreement of the government of the province. This section is repealed. It should be noted that the benefits provided under former section 59(e) are also no longer included in the EIA under clause 401.

In addition, section 61(3) of the EIA is repealed. It dealt with transitional payments that it was stipulated were not to be made more than three years after the section of the EIA relating to the provision of a course or program by an educational institution came into force.

Clause 404 amends section 63(1)(a) of the EIA, which deals with agreements for paying costs of similar benefits and measures provided by a government or government agency in Canada or any other organization. It replaces the words “benefits or measures...that are similar to employment benefits or support measures under this Part” with “measures implemented by the government, government agency or organization.”

Clause 408 provides that the EIA continues to apply as it read previously to agreements or arrangements entered into under Part II that are in force on the day that Division 26 of Part 5 comes into force.¹³⁶

Lastly, clause 409 makes a consequential amendment to the ITA.

2.5.27 Division 27: Amendments to the *Employment Insurance Act* and the *Budget Implementation Act, 2021, No. 1*

Division 27 of Part 5 makes amendments to section 12 and Schedules V and VI of the EIA, which set out requirements related to the availability of additional weeks of regular EI benefits for certain seasonal workers. These largely replicate amendments included in Bill C-8,¹³⁷ which at the time of writing has not received Royal Assent.

In addition, Division 27 adds a transitional measure to the 2021 BIA, No. 1 and makes coordinating amendments with respect to the coming into force or repeal of certain provisions in Bill C-19 and Bill C-8.

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2.5.27.1 Provisions Related to Additional Weeks of Benefits for Seasonal Workers

Clause 410 of Bill C-19 amends sections 12(2.3) to 12(2.5) of the EIA.¹³⁸

Clause 410 specifies

the maximum number of weeks for which [EI] regular benefits may be paid to certain seasonal workers in regions with very seasonal economies. Under the EI program, regular benefits are available to eligible persons who lose their jobs through no fault of their own and are able and available to work.¹³⁹

Section 12(2.3) of the EIA sets out the maximum number of weeks for which certain seasonal workers may receive regular benefits. Under a pilot project introduced in 2018 entitled *Pilot Project Relating to Increased Weeks of Benefits for Seasonal Workers* (“the pilot project”),¹⁴⁰ seasonal workers in certain regions are eligible for up to five additional weeks of benefits.¹⁴¹ The pilot project was developed in light of the challenge many seasonal workers face related to seasonal income gaps. The Canadian Employment Insurance Commission explains:

If the number of weeks of EI benefits for which a seasonal worker qualifies is not sufficient to bridge the period between the seasonal layoff and the return to their seasonal work, and the seasonal worker is unable to find other work, they are said to be experiencing an income gap or “trou noir.” The frequency and duration of income gaps can be impacted by the cyclical nature of seasonal jobs and weather patterns as well as by the EI economic region’s rate of unemployment, which affects the duration of EI benefits.¹⁴²

While the pilot project was initially scheduled to end on 30 May 2020, it was extended by amendments to the *Employment Insurance Regulations* (EIR).¹⁴³ The [2021 BIA, No. 1] replicated the parameters of the pilot project in the EIA and extended the measures to 29 October 2022, with these changes coming into force on 26 September 2021.¹⁴⁴ [Employment and Social Development Canada (ESDC)] indicated that extending the pilot project’s parameters would allow the government time to “[examine] the effectiveness of the approach used in the pilot project.”¹⁴⁵

Currently, sections 12(2.3)(a) to 12(2.3)(d) of the EIA require that, [for seasonal claimants to] be eligible for [...] additional weeks of benefits [...] (specified in Schedule V of the EIA based on hours of insurable employment and regional unemployment rate), [they] must be ordinarily resident¹⁴⁶ of one of the regions [with very seasonal economies listed in Schedule VI of the EIA] and have benefit periods

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established between 26 September 2021 and 29 October 2022. In the five years (260 weeks) before this benefit period, claimants must have been seasonal workers. Claimants demonstrate that they were seasonal workers if they had at least three benefit periods established in the last five years during which regular benefits were paid or payable, and at least two of these benefit periods must have begun around the same time of year¹⁴⁷ as their benefit period starting between 26 September 2021 and 29 October 2022.¹⁴⁸ Note that the Canada Emergency Response Benefit and the Canada Recover Benefit are not considered EI benefits, and that periods for which they were received do not qualify as EI benefit periods.¹⁴⁹

[Bill C-19] move[s] the contents of sections 12(2.3)(a) to 12(2.3)(d) of the EIA into sections 12(2.3)(a)(i) to 12(2.3)(iv) and add new section 12(2.3)(b). Section 12(2.3)(b) allows benefit periods that fall within the period beginning 5 August 2018 and ending 25 September 2021 to be counted towards eligibility for the pilot project, provided that three conditions are met:

1. the claimant met the requirements laid out in the EIR for participation in the pilot during that time;
2. the claimant also has an established benefit period beginning between 26 September 2021 and 29 October 2022; and
3. the claimant is ordinarily resident of one of the regions covered by the pilot at the beginning of the benefit period (clause [410 of Bill C-19]).¹⁵⁰

The 2022 federal budget stated the government’s intention to “maintain a recently introduced legislative fix to ensure that the timing of COVID-19 benefits¹⁵¹ does not affect future EI eligibility under the rules of [the program offering additional weeks of benefits for eligible seasonal workers].”¹⁵² As the legislative summary of Bill C-8 notes in relation to a similar amendment¹⁵³ in that bill,

[i]ndeed, the addition of new section 12(2.3)(b) allows seasonal workers who qualified for the pilot project between 5 August 2018 and 25 September 2021 to qualify [for additional weeks of benefits] again for the period starting 26 September 2021 and ending [28 October 2023], without needing to demonstrate that they had at least three eligible benefit periods in the past five years. This facilitates [receipt of additional weeks of benefits] for seasonal workers whose employment was disrupted by the pandemic.

Since the addition of new section 12(2.3)(b) of the EIA changes the numbering used within section 12(2.3)(a), Bill [C-19] makes corresponding changes to sections 12(2.4), 12(2.5), and Schedule VI of the EIA (clauses 410 and 412).¹⁵⁴

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Further, clause 410 of Bill C-19 amends section 12(2.3) of the EIA to extend the range of time during which a seasonal worker must have a benefit period established in order to obtain additional weeks of benefits (the original period was from 26 September 2021 to 29 October 2022; the new, extended period is from 26 September 2021 to 28 October 2023). Clause 415(2)(b) is a relevant coordinating amendment ensuring that the new, extended period still applies should Bill C-8 come into force before Bill C-19. This change allows eligible seasonal workers to access additional weeks of benefits for another year. Indeed, the 2022 federal budget document stated the government's intention to "extend [this measure] until October 2023 as the government considers a long-term solution that best targets the needs of seasonal workers," citing an estimated cost of \$110.4 million over three years starting in 2022–2023.¹⁵⁵

Finally, Schedule V of the EIA details the weeks of benefits available to seasonal workers depending on the number of hours of insurable employment they have obtained during the qualified period. Currently, Schedule V includes at least 19 weeks of benefits for workers in all regions with at least 420 hours of insurable employment, reflecting a universal 420-hour entrance requirement for EI benefits introduced on a temporary basis by the 2021 BIA, No. 1.¹⁵⁶ Bill C-19 amends Schedule V by eliminating benefits for certain seasonal workers with between 420 and 699 hours of insurable employment, depending on the rate of unemployment in their region (clause 411, coming into force on 25 September 2022, per clause 416(1)). However, clause 413 specifies that for individuals whose benefit period begins before 25 September 2022, the version of Schedule V included in the EIA prior to 25 September 2022 continues to apply (coming into force on 25 September 2022, per clause 416(1)).

2.5.27.2 Transitional Provisions

Clause 414 adds transitional provisions to the 2021 BIA, No. 1, which made temporary amendments to the EIR enabling claimants with money paid on separation (e.g., severance and vacation pay) to receive EI benefits at the same time. These amendments came into effect on 26 September 2021 and will be repealed on 25 September 2022.

By adding new section 350.1(1) to the 2021 BIA, No. 1 (clause 414(1)), Bill C-19 confirms that, in cases where a claimant's money paid on separation would, once the amendments are repealed, be allocated as earnings for a period starting between 26 September 2021 and 24 September 2022, the amendments in the 2021 BIA, No. 1 will continue to apply. This will allow these claimants to receive EI benefits while also receiving separation monies.

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In addition, clause 414(2) of Bill C-19 adds new section 350.1(2) to the 2021 BIA, No. 1, which provides definitions for terms used in new section 350.1(1).

Clause 414 comes into force on the day that Bill C-19 receives Royal Assent, or if the bill receives Royal Assent later than 25 September 2022, then the clause is deemed to have come into force on 25 September 2022 (clause 416(2)).

2.5.27.3 Coordinating Amendments

Clause 415 makes coordinating amendments that apply in the event that Bill C-8 receives Royal Assent (clause 415(1)). The coordinating amendments ensure that, whether Bill C-8 or Bill C-19 comes into force first, the same legal regime will apply to seasonal workers.

Specifically, clause 415(2) stipulates that if clause 47 of Bill C-8 comes into force before clause 410 of Bill C-19, then clauses 410 and 412 of Bill C-19, dealing with benefits for seasonal workers, are deemed never to have come into force and are repealed (clause 415(2)(a)). Clause 415(2) also amends section 12(2.3) of the EIA to extend the range of time during which a seasonal worker must have a benefit period established in order to obtain additional weeks of benefits from 26 September 2021 to 29 October 2022, to 26 September 2021 to 28 October 2023 (clause 415(2)(b)).

However, if clause 410 of Bill C-19 comes into force before clause 47 of Bill C-8, then clauses 47 and 48 of Bill C-8 are deemed never to have come into force and are repealed (clause 415(3)).

Finally, if clause 47 of Bill C-8 and clause 410 of Bill C-19 come into force on the same day, then clauses 47 and 48 of Bill C-8 are deemed never to have come into force and are repealed (clause 415(4)).

2.5.28 Division 28: Amendments to the *Canada Pension Plan*

The Canada Pension Plan (CPP)¹⁵⁷ Post-Retirement Disability Benefit (PRDB) has been available since January 2019 to CPP retirement pension beneficiaries who have not reached 65 years of age, are disabled but are not eligible to a CPP Disability Pension as a result of being a recipient of a CPP retirement pension for more than 15 months.¹⁵⁸ In Budget 2022, the government proposed to amend the CPP legislation to:

ensure the correct calculation of eligibility and benefits for a small number of individuals qualifying for the Post-Retirement Disability Benefit and the child-rearing and disability drop-ins. These changes will ensure that the eligibility and calculation of these benefits are consistently applied for all individuals.¹⁵⁹

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Section 44(1)(h) of the CPP generally provides that a PRDB must be paid to a beneficiary who has not reached 65 years of age and is disabled if that person has made base contributions during at least the minimum qualifying period. Section 44(4), which defines this minimum qualifying period, states that base contributions on earnings that are at least the contributor's basic exemption must have generally been made for:

- at least four of the last six years; or
- at least 25 years of which at least three are in the last six years.

Clause 418(1) amends section 44(1)(h) to state that the minimum qualifying period must end in 2019 or later, after the coming into force of the PRDB.

Clause 418(3) adds new section 44(5), which, for the purpose of section 44(4), defines the PRDB contributory period as the period commencing when a contributor reaches 18 years of age and ending when that person becomes disabled for the purpose of section 44(1)(h), but excluding any month excluded from the contributory period as a result of that person's disability or that person's receipt of a family allowance in years of low earnings, include the CCB. Clause 418(2) amends section 44(4) so that the base contributions must have been made during the contributor's contributory period and to allow for contribution years to be included partially in the contributory period.

Clauses 420 and 421 amend sections 51.1 and 51.2, which are related to the calculation of additional CPP benefits for individuals who are disabled (disability drop-in provisions). Clauses 420(1) and 420(2) amend the formula contained in section 51.1 to include the month in which a contributor becomes disabled in that person's first additional contributory period. Clause 420(3) adds new section 51.1(2) so that if the disabled contributor's first additional contributory period begins in the six-year period before the year in which that person becomes disabled, the Year's Maximum Pensionable Earnings used in the formula for that year is prorated to the number of months of that year included in the period. Clause 421 makes similar amendments to 51.2 in respect of a disabled contributor's second additional contributory period.

Sections 53.3 and 53.4 are related to the calculation of additional CPP benefits for parents with lower earnings during child-rearing years (child-rearing drop-in provisions). Clause 422 add new sections 53.3(5) so that if the contributor's first additional contributory period begins in the five-year period before the year in which that person becomes a family allowance recipient (including the CCB), the Year's Maximum Pensionable Earnings used in the formula for that year is prorated to the number of months of that year included in the period. Clause 423 adds new section 53.4(4), which makes similar changes in respect of a family allowance recipient second additional contributory period.

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Clauses 417 and 419 make consequential amendments to the definition of contributory period contained in section 2(1) and to section 49(b) as a result of the new definition for contributory period for the PRDB in new section 44(5).

Clause 424 states that section 114(2) of the CPP, which is related to the effective date of major amendments, does not apply in respect of Division 28 and that this Division comes into force on a day to be fixed by order of the Governor in Council in accordance with section 114(4), which requires provincial approval of major amendments.

2.5.29 Division 29: Amendments to *An Act to amend the Criminal Code and the Canada Labour Code*

Division 29 of Part 5 amends *An Act to amend the Criminal Code and the Canada Labour Code* (ACCLC)¹⁶⁰ (Bill C-3, *An Act to amend the Criminal Code and the Canada Labour Code*),¹⁶¹ specifically, the provisions that amend the *Canada Labour Code*¹⁶² (CLC) to create medical leave with pay.

Clause 425(1) of Bill C-19 amends section 7(1) of the ACCLC to replace section 239(1.2) of the CLC, which deals with how employees earn medical leave with pay. The purpose of Bill C-19's new provisions is to make this process simpler and more accessible. According to the current wording, employees earn three days of medical leave with pay after completing 30 days of continuous employment. After 60 days of continuous employment, they earn one day of medical leave with pay at the beginning of each month after completing one month of continuous employment. According to the proposed changes, employees would start earning one day of paid leave per complete month of employment immediately after the initial 30-day period. The number of days that an employee is entitled to remains capped at 10 per year.

Clause 425(2) amends section 7(1) of the ACCLC to replace section 239(1.4) of the CLC to specify that the provisions on the annual carrying forward of medical leave with pay are subject to the regulations.

Clause 425(3) amends section 7(1) of the ACCLC to replace sections 239(1.6) and 239(2) of the CLC with new section 239(2), which standardizes the provisions that enable an employer to request a certificate issued by a health care practitioner for medical leave both with and without pay. In both cases, the employer may ask for the certificate, in writing and no later than 15 days after the return to work, only in cases where the employee has taken leave of at least five consecutive days. According to the current rules and prior to this amendment, the employer may ask for the certificate after three or more days of medical leave without pay, whereas they can only ask for it after five days of leave if the employee takes a medical leave with pay.

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Clause 425(4) amends section 7(2) of the ACCLC to replace section 239(13)(b) of the CLC, which deals with potential regulations. It specifies that regulations could modify section 239(1.2), 239(1.21) or 239(1.4) of the CLC if “employees or classes of employees will, despite the modification, earn periods of medical leave of absence with pay that are substantially equivalent to the period provided for in subsection (1.21).” It therefore removes the requirement that these modifications would only occur if “the application of the provision without the modification would be unreasonable or inequitable in respect of the employees in that class or their employers, due to the work practices of that class.”

Clause 425(5) adds section 239(14) to the CLC. This section sets out that section 189 applies for the purposes of the division on medical leave. Section 189 of the CLC sets out the terms and conditions for an employee’s deemed continuous employment for a single employer for the purposes of calculating annual leave, in the case of the transfer of one federal work, undertaking or business to another or when an employer carries out the relevant federal work, undertaking or business upon retendering. Currently, employees in these situations are not considered as being in a period of continuous employment, which means that they are not entitled to carry over unused medical leave with pay from their former employer. This is incompatible with other benefits granted under the CLC, such as annual leave.

Clause 426 adds new section 239.001 to the CLC, which sets out that the section’s provisions on medical leave with pay apply to employers with 100 or more employees and continue to apply even if that number falls below 100. This new section will come into force on a day to be fixed by order of the Governor in Council, without however setting a maximum delay (clause 427(2)).

Clause 427(1) sets out that sections 6 and 7 of the ACCLC come into force on a day to be fixed by order of the Governor in Council, but no later than 1 December 2022.

Clause 429 relates to a transitional provision setting out that section 206.6(1)(a) of the CLC, which relates to personal leave for the purposes of treating an illness or injury,¹⁶³ continues to apply to employers and their employees to whom section 239.001 of the CLC (i.e., employers with fewer than 100 employees) does not apply, until the day on which clause 428 comes into force.¹⁶⁴ Clauses 426, 428, 429 and 431 therefore create a temporary system for employers with fewer than 100 employees, to whom the provisions on medical leave with pay do not apply for the time being. This temporary system could give small-scale employers more time to implement the requisite pay changes within their organizations to comply with the new requirements. That way, all the government will have to do is adopt coming-into-force regulations to repeal the temporary system, without the need for drafting new legislation.

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Clause 430 sets out coordinating amendments to create an alternative procedure for the provisions of Division 29 of Part 5 to come into force, barring the exemption for employers of fewer than 100 employees. Therefore, if the ACCLC, as adopted under Bill C-3, came into force before Division 29 of Bill C-19, the changes proposed by that bill would take effect, barring the exemption for small-scale employers. Therefore, all employees of the federally regulated private sector would have access to the new medical leave with pay provisions as soon as clause 430 comes into force.

2.5.30 Division 30: Amendments to the *Canada Business Corporations Act*

Division 30 of Part 5 makes amendments to the CBCA's beneficial ownership registry.

Clause 432 makes a technical amendment to section 21.1(7) of the CBCA, which sets out the corporations not required to maintain a beneficial ownership registry.

Clause 432 clarifies that it is the securities of a corporation that are listed and posted for trading on a designated stock exchange, and not the corporation itself.

Clause 433 adds section 21.21 to the CBCA to require corporations that maintain a beneficial ownership registry to send to the Director appointed under the CBCA on an annual basis, the information in its registry regarding individuals with significant control over the corporation, and within 15 days, any updates to that information. Corporations must also send this information to the Director after the issuance of certificates of incorporation, amalgamation, or continuance under the CBCA. New section 21.21 also provides that the Director is not required to keep or produce any of the information received under this section longer than six years.

Clause 434 adds section 21.301 to the CBCA to state that the Director may provide all, or part of the information received under section 21.21 to an investigative body referred to in section 21.31(2) of the CBCA, the Financial Transactions and Reports Analysis Centre of Canada or any prescribed entity.

Clause 435 amends section 266(1) of the CBCA to exclude information sent to the Director under new section 21.21 from being examined by persons who have paid the required fee to examine documents as set out under the CBCA. As well, clause 435 amends 266(2) to state that the Director will not provide copies of that information.

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Clause 436 provides a coordinating amendment where on the first day in which section 44 of *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 in 2018, and clause 435 of Bill C-19 are in force, section 266 of the CBCA will be amended, but it will still exclude information received under new section 21.21 and investigation reports sent under section 230(2) of the CBCA, from being examined and copied.

All clauses in Division 30, except for clauses 432 and 436, come into force on a day to be fixed by order of the Governor in Council.

2.5.31 Division 31: Amendments to the *Special Economic Measures Act*, the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* and the *Seized Property Management Act*

Division 31 of Part 5 of Bill C-19 amends the *Special Economic Measures Act* (SEMA) and the *Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)* (Sergei Magnitsky Law), with a single consequential amendment to the *Seized Property Management Act*.¹⁶⁵ The primary purpose of the amendments is to allow for the forfeiture of property subject to a seizure or restraint order (asset freeze) made under either the SEMA or the Sergei Magnitsky Law, the legislation under which the Government of Canada imposes unilateral economic sanctions. As such, identical, or substantially the same, amendments are made to both the SEMA and the Sergei Magnitsky Law in many instances. Other amendments amend one of the Acts to make its provisions substantially the same as those already present in the other Act.

Clauses 438 and 446(2) amend the existing definition of property in the SEMA and add the same definition to the Sergei Magnitsky Law. The new definition covers “any type of property,” including “digital assets and virtual currency.” Clauses 440(1) and 448 state that Governor in Council orders made under section 4(1)(b) of either Act may call for the seizure or restraining of property situated in Canada that is “owned – or that is held or controlled, directly or indirectly” by the target of the sanctions measure.

Clauses 441 and 449 introduce a new heading to each Act entitled Forfeiture Orders. New sections under the heading allow the minister to apply to a court requesting the forfeiture of property seized or restrained by an order under section 4(1)(b).¹⁶⁶ Before a forfeiture order can be made, notice must be provided to any person with an interest or right in the property. Any person with such an interest or right – other than the person(s) targeted by the sanctions measure – may apply to the court to receive the value of that interest or right paid to them by the minister following forfeiture of the property. Where all shares of a corporation are forfeited, the corporation in question will not be considered a Crown corporation under the FAA.

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New section 5.6 of the SEMA authorizes the minister to pay out the net proceeds of forfeited property for the purpose of (1) reconstructing a foreign state, or (2) compensating victims, affected by a grave breach of international peace and security, or (3) restoring international peace and security. New section 7.1 of the SEMA authorizes the minister to enter into an agreement with the government of a foreign state to facilitate such payouts. New section 4.4 of the Sergei Magnitsky Law allows for similar payouts, but for the purpose of compensating victims of behaviour targeted by sanctions under the Act.¹⁶⁷ New section 13.2 of the Sergei Magnitsky Law allows the minister to enter into an agreement with any person to facilitate such payouts. An amendment is also made to the *Seized Property Management Act* to allow payouts made under either Act to be charged to the Proceeds Account of the Government of Canada's Consolidated Revenue Fund.¹⁶⁸

New section 5.1 in the SEMA and revised section 8 in the Sergei Magnitsky Law allow owners of property subject to an order under section 4(1)(b), but not subject to a forfeiture order, to apply to the minister requesting that the seizure or restraint of the property cease. On receipt of an application, the minister must decide whether reasonable grounds exist to recommend to the Governor in Council that the order be amended or repealed.¹⁶⁹

Clauses 443 and 450 introduce identical new sections into both Acts authorizing nine federal departments and agencies to cooperate and share information in the administration and enforcement of orders made under the Acts, with the Royal Canadian Mounted Police being given specific authority to assist with the seizure, restraint, or forfeiture of property. The clauses also provide the minister with authority to compel information from any person for the purposes of making, administering, or enforcing orders made under section 4(1).

Clauses 444 and 449 amend tabling requirements for orders under both Acts, limiting orders which must be tabled in Parliament to those made under section 4(1)(a). Clause 441 replaces existing provisions in the SEMA regarding the recuperation of government costs for the administration of orders under section 4(1)(b) and the ranking of interests and rights in concerned property. Clause 452 inserts substantially the same sections into the Sergei Magnitsky Law, replacing the existing ranking of interests and rights section and introducing a costs section.

Clause 439 introduces a purpose section to the SEMA, summarizing the circumstances under which the Government of Canada may implement sanctions measures. Clause 440(3) allows the Governor in Council to authorize the minister to issue both specific and general permits, which exclude persons or activities from prohibitions made under the SEMA. This clause amends the existing section to make it consistent with the corresponding section in the Sergei Magnitsky Law.¹⁷⁰

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Clauses 446(1) and 447 remove the existing definition of minister in the Sergei Magnitsky Law and replaces it with a section identical to the ministerial authority section found in the SEMA.

2.5.32 Division 32: Amendments to the Department of Employment and Social Development Act

Among other things, the *Department of Employment and Social Development Act* (DESDA)¹⁷¹ sets out the powers of the Minister of Employment and Social Development and the CEIC. Part of CEIC's role is to the CEIC monitor and assess the EI program.

Part 5 of the DESDA relates to the Social Security Tribunal, an independent administrative tribunal for social security appeals. The Tribunal consists of a General Division and an Appeal Division (section 44). The General Division currently has two parts: the Income Security Section and the EI Section.

Division 32 of Part 5 of Bill C-19 amends DESDA to establish an Employment Insurance Board of Appeal (Board of Appeal). This Board of Appeal will replace the EI Section of the General Division, providing a new first-level process for hearing appeals from a reconsideration decision.

In August 2019, the federal government announced that it would create the new Board of Appeal as part of a suite of changes to make the EI appeals process more responsive to Canadians' needs, building on recommendations from a 2017 review of the Social Security Tribunal. At the time, the federal government indicated that this new decision-making body would be tripartite (i.e., would represent the interests of workers, employers, and government), would be overseen by the CEIC, and would handle the first level of appeal following a request for reconsideration. The second level of appeal would still be handled by the Appeal Division of the Social Security Tribunal.¹⁷² While the Board of Appeal was initially scheduled to launch in April 2021, the launch was delayed due to the COVID-19 pandemic.¹⁷³

Currently, if a claimant or other person who is the subject of a decision of the CEIC, or the employer of the claimant, is dissatisfied with a reconsideration decision, they can appeal the decision to the Social Security Tribunal. The first level of appeal is to the General Division, and the appeal must be brought within 30 days of when the decision is communicated (section 52(1) of the DESDA). If the General Division believes that the appeal has no reasonable chance of success, it must summarily dismiss the appeal (meaning that there is no hearing) (section 53). The summary dismissal can be appealed to the Appeal Division in accordance with the process established by the *Social Security Tribunal Regulations*¹⁷⁴ (sections 34 to 38). The provisions relating to summary dismissal of an appeal from the EI Section were to be repealed by clause 224 of the

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BIA 2021, No. 1¹⁷⁵ (former Bill C-30), but that repeal provision (and other amendments relating to the Social Security Tribunal contained in the BIA 2021, No. 1 had not been brought into force at the time Bill C-19 was introduced.¹⁷⁶

Instead of being heard by the EI Section of the General Division, appeals will be heard by the Board of Appeal, which is established by clause 456 of Bill C-19 (new section 43.01(1) of the DESDA). The Chairperson of the CEIC is responsible for the Board of Appeal's performance (new section 43.01(2)), and the Governor in Council will appoint an Executive Head of the Board of Appeal (new section 43.02). The Executive Head's responsibilities including training members of the Board of Appeal and evaluating their performance (new section 43.04(1)). Instead of being heard by members exclusively appointed by the Governor in Council, the Board of Appeal will include full-time Governor in Council appointees as well as part-time members appointed by the CEIC who are either employers or insured persons, as defined in the EIA, or representatives of employers or insured persons (often referred to as employers' and workers' representatives) (new section 43.03(1)). The Executive Head and members of the Board of Appeal all hold office during pleasure. If a member of the Board of Appeal is removed, they may not complete matters they were working on (new section 43.03(3)). Currently, members of the Social Security Tribunal can only be removed for cause during their term (section 45(5)).

As much as possible, members of each of those three groups (Governor in Council appointees, and employers and workers' representatives appointed by the CEIC) are to be appointed in equal numbers (new section 43.03(2)). One member from each group will form a panel to hear an appeal (new section 43.05(1)). One Governor in Council appointee can make decisions in relation to extending the time to bring an appeal, deciding if an appeal has been abandoned, or hearing an application to reopen an appeal that was deemed to be abandoned (new section 43.05(2)). The criteria relating to determining that an appeal was abandoned and reopening an abandoned appeal is set out in new section 43.19.

The Executive Head's and Members' remuneration is fixed by the Governor in Council, and they are entitled to travel and living expenses according to Treasury Board guidelines (new section 43.06). A civil proceeding cannot be brought against the Executive Head or Board of Appeal members "for anything done or said in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a duty or function of the Board of Appeal" (new section 43.09), nor are they "competent or compellable to appear as a witness in any civil proceedings in respect of any matter coming to their knowledge" in those same circumstances (new section 43.1).

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The time within which to bring an appeal is still the same under the new process (30 days) (new section 43.11(1)); the time to bring an appeal can be extended by no more than one year (new section 43.11(2)). As is currently the case with appeals to the General Division, the Board of Appeal can dismiss the appeal, or confirm, rescind, or vary the CEIC's decision in whole or in part. It can also substitute its own decision (new section 43.13(1)). The decision, which can be given orally or writing, must include reasons, and copies of the decision must be sent to the appellant, the CEIC, and any other parties (new section 43.13(2)).

The Board of Appeal can determine any question of law or fact that must be considered to decide an application or appeal (new section 43.18(1)) unless it is a question of constitutional law (new section 43.12). If an appeal to the Board of Appeal involves a question of constitutional law, that is grounds for appeal to the Appeal Division of the Social Security Tribunal (new section 54.3(d)).

There are a number of other amendments to the DESDA contained in clauses 468 to 475 of Bill C-19 to make provisions consistent with the new Board of Appeal, such as removing references to the EI Section and the CEIC from the sections that relate to the General Division, since the General Division will no longer hear employment insurance appeals.

Clause 467 establishes the process for appealing a Board of Appeal decision to the Appeal Division of the Social Security Tribunal. The time within which to bring an appeal to the Appeal Division is also 30 days (new section 54.2(1)); the time to bring an appeal can be extended by no more than one year (new section 54.2(2)).

With the exception of the addition of a question of constitutional law needing to be determined, the grounds for appealing a decision of the Board of Appeal to the Appeal Division are the same grounds as appealing a decision from the EI Section of the General Division (new section 54.3). There is no requirement to seek leave to appeal from a Board of Appeal decision. The Appeal Division can:

- dismiss the appeal;
- give the decision that the Board of Appeal should have given;
- refer the matter back to the Board of Appeal for reconsideration in accordance with any directions that the Appeal Division considers appropriate; or
- confirm, rescind or vary the decision of the Board of Appeal in whole or in part (section 54.5).

Unlike the Board of Appeal, the Appeal Division can determine a question of constitutional law. If the appeal relates to a question of constitutional law, new evidence can be introduced (new section 54.4).

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Clauses 470 to 473 relate to amendments to the DESDA for leave to appeal from a General Division Income Security Section decision made by the *Budget Implementation Act, 2021, No. 1* that have not yet come into force.

Clause 474(1) amends section 59(1) of the DESDA to address the situation where an appeal had been made to the Appeal Division from the EI Section, but the decision had not been rendered prior to the coming into force of the provisions establishing the Board of Appeal to specify that an appeal that had been made to the Appeal Division from the EI Section can be referred back to the Board of Appeal.

Clause 477 adds regulation-making authorities for the CEIC (with the approval of the Governor in Council) relating to certain aspects of the Board of Appeal (new section 68.2).

To support the creation of the Board of Appeal, consequential amendments will be made to related legislation, including the *Federal Courts Act*,¹⁷⁷ the *Labour Adjustment Benefits Act*,¹⁷⁸ the *Income Tax Act*,¹⁷⁹ and the *Employment Insurance Act*.¹⁸⁰ These amendments are elaborated upon in clauses 479 to 486.

Clause 479 provides the Federal Court with jurisdiction to judicially review decisions of the Board of Appeal and Appeal Division, except for decisions on requests to extend the time limit for bringing appeals and leave to appeal decisions made by the Appeal Division in relation to decisions of the Income Security Section, amongst other grounds. Clauses 488 to 501 contain transitional provisions. They address, for example, circumstances relating to current members of the Social Security Tribunal who hear matters in the EI Section who then become members of the Board of Appeal.

Clause 502 sets out two coming-into-force dates for these amendments. The first date, in clause 502(1), relates to provisions that come into force only after the DESDA amendments contained in BIA 2021, No. 1 come into force. The second date, in clause 502(2), relates to provisions that come into force after that first date (i.e., after the coming into force date for the provisions listed clause 502(1)).

NOTES

* This Preliminary Legislative Summary was prepared by the following authors:

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- Andrew Barton, Sections [2.1.6](#), [2.1.7](#), [2.1.11](#) and [2.5.6](#);
- Brett Capwell, Section [2.4](#);
- Sabrina Charland, Section [2.5.16](#);
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- Alexandre Lafrenière, Section [2.5.1](#);

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- Michaël Lambert-Racine, Sections [2.1.4](#), [2.1.14](#), [2.1.15](#), [2.5.8](#) and [2.5.28](#);
 - Joëlle Malo, Sections [2.1.3](#), [2.1.5](#), [2.1.8](#), [2.1.10](#), [2.1.12](#) and [2.1.13](#);
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 - Simon Richards, Section [2.5.9](#);
 - Alexandra Savoie, Section [2.5.17](#);
 - Dillan Theckedath, Section [2.5.18](#);
 - Adriane Yong, Sections [2.2](#), [2.3](#), [2.5.5](#), [2.5.10](#), [2.5.11](#) and [2.5.30](#);
 - Julie Béchard, Section [2.5.23](#);
 - Lyne Casavant, Section [2.5.19](#);
 - Brittany Collier, Section [2.5.2](#);
 - Stephanie Feldman, Section [2.5.13](#);
 - Sylvain Fleury, Sections [2.1.1](#), [2.1.2](#), [2.1.3](#) and [2.1.9](#);
 - Sara Fryer, Section [2.5.3](#);
 - Eleni Kachulis, Sections [2.5.4](#), [2.5.25](#) and [2.5.27](#);
 - Michaela Keenan-Pelletier, Section [2.5.22](#);
 - Isabelle Lafontaine-Émond, Sections [2.5.24](#), [2.5.26](#) and [2.5.29](#);
 - Allison Lowenger, Section [2.5.12](#);
 - Emilie Luson, “[Appendix – Acronyms, Initialisms and Short Forms](#)” section;
 - Marlisa Tiedemann, Section [2.5.32](#); and
 - Julian Walker, “[Background](#)” section and Section [2.5.21](#).
1. [Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures](#), 44th Parliament, 1st Session.
 2. Department of Finance Canada, [Budget 2022: A Plan to Grow Our Economy and Make Life More Affordable](#), 7 April 2022.
 3. [Excise Act, 2001](#), S.C. 2002, c. 22.
 4. [Excise Act](#), R.S.C., 1985, c. E-14.
 5. [Income Tax Regulations](#), C.R.C., c. 945.
 6. Coordinating amendments are made in clauses 49 and 50 of the bill. They provide that, if bills [C-222, An Act to amend the Income Tax Act \(deduction of travel expenses for tradespersons\)](#), or [C-241, An Act to amend the Income Tax Act \(deduction of travel expenses for tradespersons\)](#), receive Royal Assent before or on the same day as Bill C-19, those acts are deemed never to have come into force and are repealed.
 7. The term is defined in section 248(1) of the [Income Tax Act](#) (ITA), R.S.C. 1985, c. 1 (5th Supp.), and includes natural persons and corporations.
 8. This term is defined in section 125(7) of the [Income Tax Act](#), R.S.C. 1985, c. 1 (5th Supp.).
 9. In this case, new section 1104(3.3) of the [Income Tax Regulations](#) allows the limit to be allocated among eligible persons or partnerships by sending the Minister of National Revenue the prescribed form, failing which the Minister of National Revenue may, in certain circumstances, allocate the limit to any of them under new section 1104(3.4) of the [Income Tax Regulations](#).
 10. [Children’s Special Allowances Act](#), S.C. 1992, c. 48, Sch.
 11. Government of Canada, [Children’s special allowances](#).

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12. [An Act respecting First Nations, Inuit and Métis children, youth and families](#), S.C. 2019, c. 24. See also Sara Fryer and Marisa Tiedemann, [Legislative Summary of Bill C-92: An Act respecting First Nations, Inuit and Métis children, youth and families](#), Publication no. 42-1-C92-E, Library of Parliament, 7 November 2019.
13. Government of Canada, "[Amendments to the Children's Special Allowances Act and to the Income Tax Act](#)," *Budget 2022 – Tax Measures: Supplementary Information*.
14. [Unofficial English Translation of the Opinion of the Court, Renvoi à la Cour d'appel du Québec relatif à la Loi concernant les enfants, les jeunes et les familles des Premières Nations, des Inuits et des Métis](#), 2022 QCCA 185, para. 34. In February 2022, the Court of Appeal of Quebec ruled on a constitutional challenge to *An Act respecting First Nations, Inuit and Métis children, youth and families* brought by the province of Quebec. The Government of Quebec argued that the entire Act is unconstitutional because its provisions are beyond the legislative authority of Parliament and infringe impermissibly on provincial jurisdiction (*Ibid.*, paras. 282–291). In its judgment, the Court of Appeal upheld the validity of the Act, but held that two provisions are unconstitutional: section 21, providing that the laws of Indigenous groups related to child and family services – which meet specific criteria under the Act – have the force of law as federal laws; and, section 22(3), providing that these Indigenous laws will override conflicting or inconsistent provincial legislation (*Ibid.*, paras. 282–291). Both the Government of Canada and the Government of Quebec appealed to the Supreme Court of Canada (*Ibid.*, paras. 282–291). See Supreme Court of Canada, "[Docket 40061, Attorney General of Québec, et al. v. Attorney General of Canada, et al. \(Québec\) \(Civil\) \(As of Right\)](#)," *SCC Case Information*; Indigenous Services Canada, [The Government of Canada appeals the Quebec Court of Appeal's opinion on the Act respecting First Nations, Inuit and Métis children, youth and families](#), Statement, 14 March 2022.
15. See Government of Canada, "[Notices of intention to exercise legislative authority](#)," *Notices and requests related to An Act respecting First Nations, Inuit and Métis children, youth and families*.
16. [Children's Special Allowance Regulations](#), SOR/93-12.
17. Department of Finance, [Report on Federal Tax Expenditures – Concepts, Estimates and Evaluations 2022: part 4](#), 1 March 2022.
18. Government of Canada, [Income Tax Folio S1-F1-C2, Disability Tax Credit](#).
19. This term is defined in section 118.4(1)(c) of the ITA.
20. The Disability Advisory Committee (DAC) had underlined in its first and second reports that "there are serious questions about the empirical basis for the 14-hour minimum weekly time requirement, in particular." Government of Canada, "[Life-sustaining therapy](#)," *2019 First Annual Report of the Disability Advisory Committee: Enabling access to disability tax measures*; and Government of Canada, "[Recommendation #14](#)," *2020 Second Annual Report of the Disability Advisory Committee*. However, the DAC noted that replacing this eligibility criteria was "a complex recommendation that will require significant work over time."
21. This change is in line with Recommendations n° 1 and n° 2 of the DAC's first report, which noted that the requirement that problem solving, goal setting and judgment be taken together "reflect[ed] a lack of parity between the treatment of impairment in physical and in mental conditions." Government of Canada, "[Definition of mental functions](#)," *2019 First Annual Report of the Disability Advisory Committee: Enabling access to disability tax measures*. In its second report, the DAC noted that "[t]he CRA is actually interpreting this clause disjunctively through its administrative practice." Government of Canada, "[Review of Recommendations](#)," *2020 Second Annual Report of the Disability Advisory Committee*.
22. Government of Canada, "[Part 3: A Resilient and Inclusive Recovery – Chapter 7: A More Equal Canada – Improving Access to the Disability Tax Credit](#)," *A Recovery Plan for Jobs, Growth, and Resilience*, Budget 2021.
23. Government of Canada, "[Part 3: A Resilient and Inclusive Recovery – Chapter 7: A More Equal Canada – Improving Access to the Disability Tax Credit](#)," *A Recovery Plan for Jobs, Growth, and Resilience*, Budget 2021.
24. The benefit year "refers to the year for which the credit is issued. The benefit year runs from July to June, spanning two calendar years." Canada Revenue Agency (CRA), [GST/HST Credit Statistics – 2020–2021 Benefit Year](#).
25. Department of Finance Canada, [Economic and Fiscal Snapshot 2020](#), 2020, p. 132.

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26. [COVID-19 Emergency Response Act](#), S.C. 2020, c. 5, s. 2.
27. Government of Canada, [Background: Canada's COVID-19 Economic Response Plan: Support for Canadians and Businesses](#).
28. Government of Canada, "[Overview](#)," *Application guidelines – Canadian Film or Video Production Tax Credit (CPTC)*.
29. Department of Finance Canada, [Explanatory Notes Relating to the Income Tax Act and Other Legislation](#), p. 65.
30. Department of Finance Canada, [Explanatory Notes Relating to the Income Tax Act and Other Legislation](#), p. 65.
31. This credit is set out in section 125.5 of the ITA.
32. Government of Canada, "[Annex 6: Tax Measures – Supplementary Information](#)," *A Recovery Plan for Jobs, Growth, and Resilience*, Budget 2021.
33. The CRA has already been accepting late-filed applications in exceptional circumstances. Therefore, this change is "is intended to confirm their existing practice." House of Commons, Standing Committee on Finance, [Evidence](#), 3 May 2022, 1320 (Lindsay Gwyer, Director General, Legislation, Tax Legislation Division, Tax Policy Branch, Department of Finance).
34. Government of Canada, "[Chapter 8: Safe and Inclusive Communities](#)," *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022. It has been expressed, however, that "[t]he proposed language does not reflect the spirit of Bill S-216 ... (House of Commons, Standing Committee on Finance, [Evidence](#), 16 May 2022, 1125 (Bruce MacDonald, President and Chief Executive Officer, Imagine Canada))".
35. [Bill S-216, An Act to amend the Income Tax Act \(use of resources of a registered charity\)](#), 44th Parliament, 1st Session (Bill S-216). It should be noted that a coordinating amendment is made in clause 51 of Bill C-19. It provides that, if Bill S-216 receives Royal Assent before or on the same day as Bill C-19, that act is deemed never to have come into force and is repealed.
36. House of Commons, Standing Committee on Finance, [Evidence](#), 3 May 2022, 1300 (Blaine Langdon, Director, Charities, Personal Income Tax Division, Tax Policy Branch, Department of Finance).
37. House of Commons, Standing Committee on Finance, [Evidence](#), 3 May 2022, 1325 (Blaine Langdon, Director, Charities, Personal Income Tax Division, Tax Policy Branch, Department of Finance).
38. House of Commons, Standing Committee on Finance, [Evidence](#), 3 May 2022, 1250 (Blaine Langdon, Director, Charities, Personal Income Tax Division, Tax Policy Branch, Department of Finance).
39. House of Commons, Standing Committee on Finance, [Evidence](#), 3 May 2022, 1325 (Blaine Langdon, Director, Charities, Personal Income Tax Division, Tax Policy Branch, Department of Finance). The Advisory Committee on the Charitable Sector has noted, as part of its recommendations, that the direction and control "requirements create overly intrusive and hierarchical relationships that cannot be described as partnerships and that create administrative headaches." Government of Canada, "[1. Examining the regulatory approach to charitable purposes and activities](#)," *Report #1 of the Advisory Committee on the Charitable Sector – January 2021*. The "direction and control requirement" is an administrative requirement related to the obligation that a charitable organization devote all of its resources to charitable activities carried on by the organization itself, pursuant to section 149.1(1) of the ITA. It generally "means the charity must make decisions and set parameters on significant issues related to the activity, on an ongoing basis." Government of Canada, "[4. What is direction and control?](#)," *Using an intermediary to carry out a charity's activities within Canada*.
40. Department of Finance Canada, [Explanatory Notes Relating to the Income Tax Act and Other Legislation](#), April 2022, p. 39.
41. Department of Finance Canada, [Explanatory Notes Relating to the Income Tax Act and Other Legislation](#), April 2022, p. 39.
42. Section 149.1(1) of the ITA defines this term as an entity that is a "listed entity," as defined in section 83.01(1) of the [Criminal Code](#), R.S.C. 1985, c. C-46.
43. [Budget Implementation Act, 2021, No. 1](#), S.C. 2021, c. 23, s. 45. For more information, see Government of Canada, "[Registration and Revocation Rules Applicable to Charities](#)," *A Recovery Plan for Jobs, Growth, and Resilience*, Budget 2021.

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44. Government of Canada, [Canada Emergency Business Account \(CEBA\)](#).
45. Department of Finance Canada, [A Recovery Plan for Jobs, Growth, and Resilience](#), Budget 2021.
46. Department of Finance Canada, [Government of Canada launches consultations on proposed Luxury Tax](#), News Release, 10 August 2021.
47. Department of Finance Canada, [Legislative Proposals Relating to the Select Luxury Items Tax Act](#), 11 March 2022.
48. *An Act respecting the Canadian Pacific Railway*, 44 Vict., S.C. 1881, c. 1.
49. *An Act to provide for the extension of the Boundaries of the Province of Manitoba*, 44 Vict., S.C. 1881, c. 14; *The Alberta Act, 1905*, 4–5 Edw. VII, c. 3 (Can.); and *Saskatchewan Act, 1905*, 4–5 Edw. VII, c. 42 (Can.)
50. House of Commons, *Debates*, 8 September 1966, p. 8210.
51. *Canadian Pacific Railway Company v. Canada*, 2021 FC 1014, at paras. 704–705.
52. Modern treaties are signed where pre-1975 treaties or other legal mechanisms have not addressed Indigenous peoples' land rights. Modern treaties are negotiated, constitutionally-protected agreements between the federal, provincial/territorial governments and Indigenous groups. They cover matters such as jurisdiction over land and resources, land, and resource management, and, since 1995, self-government arrangements. For more information, please see Government of Canada, [Treaties and agreements](#).
53. [Nisga'a Final Agreement](#), signed on 27 April 1999.
54. [Nisga'a Final Agreement](#), signed on 27 April 1999, c. 16, s. 21.
55. [Nisga'a Nation Taxation Agreement](#), 11 May 2000.
56. Government of Canada, "[Amendments to the Nisga'a Final Agreement Act to Advance Tax Measures in the Nisga'a Nation Taxation Agreement](#)," *Tax Measures: Supplementary Information*.
57. [Nisga'a Final Agreement Act](#), S.C. 2000, c. 7.
58. Section 14(2) of the [Nisga'a Final Agreement Act](#) read that: "Paragraphs 1, 4 to 15, 28 to 32 and 34 to 36 of the Taxation Agreement have the force of law during the period that the Agreement, by its terms, is in force." [Nisga'a Final Agreement Act](#), S.C. 2000, c. 7, s. 14.
59. For example, please see [Maanulth First Nations Final Agreement Act](#), S.C. 2009, c. 18, s. 8; and [Labrador Inuit Land Claims Agreement Act](#), S.C. 2005, c. 27, s. 8.
60. Government of Canada, "[Amendments to the Nisga'a Final Agreement Act to Advance Tax Measures in the Nisga'a Nation Taxation Agreement](#)," *Tax Measures: Supplementary Information*.
61. Section 14(5) of the [Nisga'a Final Agreement Act](#) provides: "For the purposes of subsections (3) and (4) and the paragraphs of the Taxation Agreement referred to in subsection (2), the definitions in the Taxation Agreement have the force of law."
62. [Safe Drinking Water for First Nations Act](#), S.C. 2013, c. 21.
63. Indigenous Services Canada, [Courts approve settlement agreement to resolve class action litigation related to safe drinking water in First Nations communities](#), News release, 23 December 2021.
64. A previous iteration of Bill S-8, Bill S-11, had been introduced in the Senate on 26 May 2010. Bill S-11 did not proceed to third reading in the Senate, and it died on the *Order Paper* when the 40th Parliament was dissolved on 26 March 2011. Refer to LEGISinfo, Historical Information for: Bill S-8, [Safe Drinking Water for First Nations Act](#), 2013 and Bill S-11, [Safe Drinking Water for First Nations Act](#). In addition, a detailed summary of the history and differences in the provisions of both bills can be found in the Legislative Summaries produced by the Library of Parliament: Tonina Simeone and Shauna Troniak, [Legislative Summary of Bill S-8, The Safe Drinking Water for First Nations Act](#), Publication no. 41-1-S8-E, Library of Parliament, 19 April 2012; and Nicholas Auclair and Tonina Simeone, [Legislative Summary of Bill S-11, The Safe Drinking Water for First Nations Act](#), Publication no. 40-3-S11-E, Library of Parliament, 7 June 2010.

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65. Senate, Standing Committee on Aboriginal Peoples (APPA), [Evidence](#), 8 May 2012 (Eric Morris, Regional Chief, Council of Yukon First Nations); APPA, [Evidence](#), 9 May 2012 (Chief Robert Chamberlin, Vice-President, Union of British Columbia Indian Chiefs); APPA, [Evidence](#), 16 May 2012 Kevin McKay, Chairperson, Nisga'a Lisims Government).
66. Under section 91(24) of the *Constitution Act, 1867*, the federal government has exclusive jurisdiction over First Nations and lands reserved for First Nations.
67. Office of the Auditor General of Canada, [Access to Safe Drinking Water in First Nations Communities – Indigenous Services Canada](#), Report 3 of the 2021 Reports of the Auditor General of Canada; and Office of the Parliamentary Budget Officer, [Clean Water for First Nations: Is the Government Spending Enough?](#), 1 December 2021.
68. [Tataskweyak Cree Nation et al. v. Canada \(A.G.\)](#), 2021 MBQB 275 (CanLII).
69. These First Nations include: Tsuu T'ina Nation; Sucker Creek First Nation; Ermineskin Cree Nation; Kainai Nation; and the Okanagan Indian Band. First Nations Drinking Water Settlement, [Frequently Asked Questions](#).
70. First Nations Drinking Water Settlement, [Documents](#).
71. Marc Bosc and André Gagnon, eds., "[Chapter 18: Financial Procedures](#)," *House of Commons Procedure and Practice*, 3rd ed., 2017.
72. Deputy Prime Minister of Canada, Chrystia Freeland, [Federal government announces an investment in public transit systems across Canada](#), News release, 17 February 2022.
73. Finance Canada, [Budget 2022](#), 2022.
74. Finance Canada, [2021–22 Extraordinary Borrowing Report to Parliament](#), 2021.
75. Finance Canada, [Debt Management Report 2020–2021](#), 2022.
76. Finance Canada, [Borrowing Authority Act – Report to Parliament 2020](#), 2022.
77. Department of Finance, [Strengthening Canadians' Retirement Security – Proposals to Support the Sustainability of and Strengthen the Framework for Federally Regulated Private Pension Plans](#), November 2020.
78. Dumping occurs when the Canadian price of an imported good is unprofitable or lower than the price of comparable goods in the country of production. Canadian producers might be injured if the dumping or subsidization reduces their profits, market share, sales, and prices. See Canada Border Services Agency, [Overview of Canada's Anti-Dumping and Countervailing Investigative Processes](#).
79. The Canada Border Services Agency collects countervailing duties (CVDs) on imports of subsidized goods.
80. To avoid paying antidumping duties (ADs) and CVDs on a dumped or subsidized good, a trader might import a large volume of that good prior to the day that the duties begin to be applied. This situation might cause a "massive importation" that prevents the duties from counteracting the injurious effects of dumped and subsidized goods on domestic producers. A government might adopt retroactive ADs and CVDs to address a "massive importation."
81. Canada's safeguard measures comprise surtaxes, tariff-rate quotas and quotas. Global safeguards apply to goods regardless of their country of origin, with possible exceptions being granted for some trade partners that have a trade agreement with Canada. See Bennett Jones LLP, [Canadian Safeguard Measures: Executive Summary](#), September 2018.
82. Unless the Government of Canada decides that an extension is warranted, safeguard measures expire automatically when their term expires. See Bennett Jones LLP, [Canadian Safeguard Measures: Executive Summary](#), September 2018.
83. [Citizenship Act](#), R.S.C. 1985, c. C-29.
84. Indian status is the legal standing of a person who is registered under the [Indian Act](#), R.S.C. 1985, c. I-5.
85. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27.
86. Part II of the [Canada Business Corporations Act](#), R.S.C. 1985, c. C-44 outlines federal incorporation rules.
87. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27, s. 22(1).

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88. Global Affairs Canada, [Property: acquisition, disposition and development of real property in Canada](#), Section 3: Policy requirements (foreign states).
89. [Parliament of Canada Act](#), R.S.C. 1985, c. P-1.
90. Division 13 of Part 5 of Bill C-19 is identical to [Bill C-7, An Act to amend the Parliament of Canada Act and to make consequential and related amendments to other Acts](#). For a more detailed explanation of these provisions, please see Isabelle Brideau and Stephanie Feldman, [Legislative Summary of Bill C-7: An Act to amend the Parliament of Canada Act and to make consequential and related amendments to other Acts](#), Publication no. 44-1-C7-E, Library of Parliament, 10 December 2021.
91. For the purpose of section 62.4(1) of the POCA, the size of a recognized party or parliamentary group is determined by the number of senators who are members of each party or group.
92. [Competition Act](#), R.S.C. 1985, c. C-34; and Government of Canada, “[Chapter 2: A Strong, Growing and Resilient Economy](#),” *A Plan to Grow Our Economy and Make Life More Affordable*, Budget 2022.
93. The criminal offence requires that the misrepresentation be made “knowingly or recklessly.” The Competition Commissioner has the discretion to pursue misrepresentations through either the criminal or civil provisions of the Act. Bill Hearn, “Misleading Advertising and Marketing Practices,” in James B. Musgrove, ed., *Fundamentals of Canadian Competition Law*, 3rd ed., 2015, pp. 321–353.
94. The scope of anti-competitive acts under section 78 was discussed in decisions by the Federal Court of Appeal and the Competition Tribunal in *The Commissioner of Competition v. Toronto Real Estate Board*. [Commissioner of Competition v. Toronto Real Estate Board](#), 2014 FCA 29 (CanLII); and [The Commissioner of Competition v The Toronto Real Estate Board](#), 2016 CACT 7 (CanLII).
95. Clauses 267, 268, 269 and 274 amend related sections to account for the addition of section 79 to private causes of action.
96. [Copyright Act](#), R.S.C. 1985, c. C-42.
97. Government of Canada, [Canada–United States–Mexico Agreement \(CUSMA\) – Chapter 20 – Intellectual Property Rights](#).
98. [College of Patent Agents and Trademark Agents Act](#), S.C. 2018, c. 27, s. 247.
99. Global Affairs Canada, [Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway](#).
100. The Memorandum of Understanding was entered into on 15 December 2020. The United States–led Lunar Gateway is a small space station that will orbit the moon and represents a major international collaboration in human space exploration. See Canadian Space Agency, [The Lunar Gateway](#).
101. The Governor in Council may, by order, designate one or more members of the Privy Council for Canada as the Minister or Ministers (sections 2 and 5 of the CLGA Implementation Act).
102. [Corrections and Conditional Release Act](#) (CCRA), S.C. 1992, c. 20.
103. [Adams v. Nova Institution](#), 2021 NSSC 313 (CanLII).
104. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11. Section 15 protects equality rights.
105. Correctional Service Canada, [Searching of Offenders](#), Commissioner’s Directive, No. 566-7, 2 July 2015.
106. The definition of “body cavity” in section 46 of the CCRA includes the rectum and vagina.
107. The [Customs Act](#) references “Minister of Public Safety and Emergency Preparedness.” However, on [26 October 2021](#), a Minister of Public Safety and a Minister of Emergency Preparedness were sworn into Cabinet.
108. [Criminal Code](#), R.S.C. 1985, c. C-46.
109. For more, see Adara Goldberg and Andrew McIntosh, “[Canada and the Holocaust](#),” *The Canadian Encyclopedia*, 19 January 2022.
110. For more on this topic, see Julian Walker, [Hate Speech and Freedom of Expression: Legal Boundaries in Canada](#), Publication no. 2018-25-E, Library of Parliament, 29 June 2018.

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111. [Canadian Charter of Rights and Freedoms](#), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.
112. Relevant jurisprudence concerning Canada's anti-hate laws include: [Regina v. Buzanga and Durocher](#), 1979 CanLII 1027 (ON CA); [R. v. Keegstra](#), [1990] 3 SCR 697; [Canada \(Human Rights Commission\) v. Taylor](#), [1990] 3 SCR 892; [R. v. Harding](#), 2001 CanLII 21272 (ON CA); Canadian Human Rights Tribunal, [Citron and Toronto Mayor's Committee v. Zundel](#), T.D. 1/02, 18 January 2002; [R. v. Krymowski](#), 2005 SCC 7; [Mugesera v. Canada \(Minister of Citizenship and Immigration\)](#), 2005 SCC 40; [Saskatchewan \(Human Rights Commission\) v. Whatcott](#), 2013 SCC 11; and [R. v. Sears](#), 2021 ONCA 522 (CanLII).
113. See in particular [R. v. Keegstra](#), [1990] 3 SCR 697; [Canada \(Human Rights Commission\) v. Taylor](#), [1990] 3 SCR 892; and [Saskatchewan \(Human Rights Commission\) v. Whatcott](#), 2013 SCC 11.
- See also Julian Walker, [Hate Speech and Freedom of Expression: Legal Boundaries in Canada](#), Publication no. 2018-25-E, Library of Parliament, 29 June 2018, s. 5.
- Note: Identifiable group is defined in section 318(4) of the Criminal Code as "any section of the public distinguished by colour, race, religion, national or ethnic origin, age, sex, sexual orientation, gender identity or expression, or mental or physical disability."
114. See for instance Canadian Heritage, [The Government of Canada Concludes National Summit on Antisemitism](#), News release, 21 July 2021; Canadian Heritage, [Government of Canada announces expert advisory group on online safety](#), News release, 30 March 2022; and, B'nai Brith Canada League for Human Rights, [Annual Audit of Antisemitic Incidents 2021](#), 2022.
115. Jing Hui Wang and Greg Moreau, Canadian Centre for Justice and Community Safety Statistics, ["Police-reported hate crime in Canada, 2020"](#), *Juristat*, 17 March 2022.
116. Section 787 of the *Criminal Code* sets out the general penalty for offences that are punishable on summary conviction.
117. [R. v. Keegstra](#), [1990] 3 SCR 697.
118. Federally appointed judges include judges of: the Supreme Court of Canada, the Federal Court of Appeal, the Federal Court of Canada, the Court Martial Appeal Court of Canada, the Tax Court of Canada, and the courts of appeal and superior courts of each province and territory. Prothonotaries are judicial officers appointed by the Governor in Council who exercise some of the powers and functions of a federal court judge, including mediation and case management duties. Prothonotaries are removable only for cause, have the same immunities as a judge and the same requirement of judicial independence. The office of prothonotary currently exists in the Federal Court.
119. [Judges Act](#), R.S.C. 1985, c. J-1, s. 26.
120. Judicial Compensation and Benefits Commission, [Report and Recommendations](#), 30 August 2021. See also Government of Canada, [Response of the Government of Canada to the Report of the 2021 Judicial Compensation and Benefits Commission](#), 29 December 2021.
121. [Constitution Act, 1867](#), s. 99.
122. [Judges Act](#), R.S.C. 1985, c. J-1, s. 28.
123. [Immigration and Refugee Protection Act](#), S.C. 2001, c. 27; and [Service Fees Act](#), S.C. 2017, c. 20, s. 451.
124. Section 276 of the *Budget Implementation Act, 2021, No. 1* does not address the *Old Age Security Act*; rather, it covers amendments to the preamble of the *Public Service Employment Act*.
125. Government of Canada, [Canada Emergency Response Benefit \(CERB\) with CRA](#).
126. While the Canada Emergency Response Benefit (CERB) was administered under the *Canada Emergency Response Benefit Act* (CERBA), the Employment Insurance (EI) Emergency Response Benefit (ERB) was administered under the *Employment Insurance Act* (EIA). See [Canada Emergency Response Benefit Act](#), S.C. 2020, c. 5, s. 8; and [Employment Insurance Act](#), S.C. 1996, c. 23, Part VIII.4. Note that while the CERB and the EI ERB were distinct benefits, they are generally collectively referred to as the CERB.
127. Government of Canada, [Canada Emergency Student Benefit \(CESB\) – Closed](#).

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128. Both the CERBA and the *Canada Emergency Student Benefit Act* contain provisions stating that “[t]he amount of the erroneous payment or overpayment, as determined by the Minister, constitutes a debt due to Her Majesty in right of Canada, as of the day on which it was paid, that may be recovered by the Minister.” The *Financial Administration Act* also includes powers associated with the recovery of debts due to Her Majesty. See [Canada Emergency Response Benefit Act](#), S.C. 2020, c. 5, s. 12(2); [Canada Emergency Student Benefit Act](#), S.C. 2020, c. 7, s. 13(2); and [Financial Administration Act](#), R.S.C. 1985, c. F-11, ss. 155–156.
129. This includes Québec Parental Insurance Plan (QPIP) payments. Since 2006, the QPIP has provided maternity, parental, paternity and adoption benefits to eligible workers (including self-employed workers). Benefits can cover up to 70% or 75% of average weekly insurable earnings, with maximum annual insurance earnings of \$88,000 for 2022. See Government of Québec, [“About the Plan,” Québec Parental Insurance Plan](#); Government of Québec, [“Tables of Benefits,” Québec Parental Insurance Plan](#); and Government of Québec, [“Premiums and Maximum Insurable Earnings,” Québec Parental Insurance Plan](#).
130. The Canada Employment Insurance Commission is the body responsible for overseeing the EI program. It is comprised of a chairperson (the Deputy Minister of Employment and Social Development Canada or ESDC), a vice-chairperson (the Senior Associate Deputy Minister of ESDC), Commissioner for Workers, and a Commissioner for Employers. See Government of Canada, [Canada Employment Insurance Commission \(CEIC\)](#).
131. [Employment Insurance Act](#), S.C. 1996, c. 23, s. 153.9(1).
132. [Employment Insurance Act](#), S.C. 1996, c. 23, ss. 153.9(2)(c) and 153.9(2)(d).
133. [Employment Insurance Act](#), S.C. 1996, c. 23.
134. Benefits under Part I of the EIA include regular benefits, special benefits, and work-sharing benefits.
135. In the EIA, “insured person” is defined as “a person who is or has been employed in insurable employment,” whereas “claimant” means “a person who applies or has applied for benefits under this Act.”
136. The current Labour Market Development Agreements with the provinces and territories, which govern interventions under Part II of the EIA, can be found on the ESDC webpage [About the Labour Market Development Agreements program](#).
137. [Bill C-8, An Act to implement certain provisions of the economic and fiscal update tabled in Parliament on December 14, 2021 and other measures](#), 44th Parliament, 1st Session. See also Andrew Barton et al., *Legislative Summary of Bill C-8: An Act to implement certain provisions of the economic and fiscal update tabled in Parliament on December 14, 2021 and other measures*, Preliminary (unedited) version, Library of Parliament, 12 January 2022.
138. [Employment Insurance Act](#), S.C. 1996, c. 23.
139. ESDC, [EI Regular Benefits: What these benefits offer](#).
140. [Regulations Amending the Employment Insurance Regulations \(Pilot Project No. 21\)](#), SOR/2018-228, 2 November 2018, in *Canada Gazette*, Part II, 14 November 2018.
141. Government of Canada, [Additional Employment Insurance regular benefits for seasonal workers in targeted regions](#). See also [Employment Insurance Act](#), S.C. 1996, c. 23, Schedule V.
142. [Regulations Amending the Employment Insurance Regulations \(Pilot Project No. 21\)](#), SOR/2018-228, 2 November 2018, in *Canada Gazette*, Part II, 14 November 2018.
143. See [Regulations Amending the Employment Insurance Regulations](#), SOR/2020-111, 20 May 2021, in *Canada Gazette*, Part II, 10 June 2021; and [Employment Insurance Regulations](#), SOR/96-332.
144. [Budget Implementation Act, 2021, No. 1](#), S.C. 2021, c. 23, ss. 308(1), 331, 340(1), 351 and 352(1).
145. ESDC, [“Improving access to EI and simplifying the rules for workers and employers,” Reforming Canada’s Employment Insurance program](#).

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146. The concept of ordinary residence for the purposes of EI is explained in ESDC, [“1.2.5 Ordinary residence,” Digest of Benefit Entitlement Principles Chapter 1 – Section 2:](#)
- The expression “ordinarily resident” is not defined in the legislation. Taking the meaning of the word “resident,” it refers to the place in which a claimant has settled ([EI Regulations 17\(1\) and 17\(2\)](#)). The modifier “ordinarily” clearly excludes from the definition, any location in a place in which a person has no permanent residence, or places where a person only occasionally or periodically stays.
147. Specifically, a benefit period is considered to have begun around the same time of year as another benefit period if it began within eight weeks of the beginning or end of that period during a different year. [Employment Insurance Act](#), S.C. 1996, c. 23, s. 12(2.5).
148. Government of Canada, [Additional Employment Insurance regular benefits for seasonal workers in targeted regions](#).
149. Government of Canada, [Additional Employment Insurance regular benefits for seasonal workers in targeted regions](#).
150. Andrew Barton et al., *Legislative Summary of Bill C-8: An Act to implement certain provisions of the economic and fiscal update tabled in Parliament on December 14, 2021 and other measures*, Preliminary (unedited) version, Library of Parliament, 12 January 2022, pp. 16–17.
151. See, for example, Government of Canada, [Canada Emergency Response Benefit \(CERB\): Closed](#), [Canada Recovery Benefit \(CRB\) – Closed](#), [Canada Recovery Sickness Benefit \(CRSB\)](#), and [Canada Recovery Caregiving Benefit \(CRCB\)](#).
152. Government of Canada, [A Plan to Grow Our Economy and Make Life More Affordable](#), Budget 2022.
153. [Bill C-8, An Act to implement certain provisions of the economic and fiscal update tabled in Parliament on December 14, 2021 and other measures](#), 44th Parliament, 1st Session, cl. 47.
154. Andrew Barton et al., *Legislative Summary of Bill C-8: An Act to implement certain provisions of the economic and fiscal update tabled in Parliament on December 14, 2021 and other measures*, Preliminary (unedited) version, Library of Parliament, 12 January 2022, p. 18.
155. Government of Canada, [A Plan to Grow Our Economy and Make Life More Affordable](#), Budget 2022.
156. [Budget Implementation Act, 2021, No. 1](#), S.C. 2021, c. 23, s. 303(1).
157. [Canada Pension Plan](#), R.S.C. 1985, c. C-8.
158. ESDC, [Canada Pension Plan Post-Retirement Disability Benefit](#).
159. Department of Finance, [A Plan to Grow Our Economy and Make Life More Affordable](#), Budget 2022, p. 277.
160. [An Act to amend the Criminal Code and the Canada Labour Code](#), S.C. 2021, c. 27.
161. [Bill C-3, An Act to amend the Criminal Code and the Canada Labour Code](#), 44th Parliament, 1st Session, (S.C. 2021, c. 27). At the time of writing (11 May 2022), the sections of Bill C-3 amending the *Canada Labour Code* (CLC) are still not in force (see sections 8(2) and 8(3) of Bill C-3).
162. [Canada Labour Code](#), R.S.C. 1985, c. L-2.
163. This leave offers fewer protections than the new medical leave with pay: under the former, employees can take a maximum of five days of leave each year (that can also be used for five other reasons), and the three first days are paid if the employee has been working for the employer on a continuous basis for at least three months.
164. Clause 428 provides for a consequential amendment to the CLC by repealing section 239.001. This clause will come into force on a day to be fixed by order of the Governor in Council (clause 431 of Bill C-19).
165. [Justice for Victims of Corrupt Foreign Officials Act \(Sergei Magnitsky Law\)](#) (Sergei Magnitsky Law), S.C. 2017, c. 21; [Seized Property Management Act](#), S.C. 1993, c. 37; and [Special Economic Measures Act](#) (SEMA), S.C. 1992, c. 17.
166. New section 2.1 in the Sergei Magnitsky Law and existing section 6 in the SEMA state that the Minister of Foreign Affairs is responsible for administering and enforcing the Act unless otherwise specified in a Governor in Council Order.

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167. The Sergei Magnitsky Law allows the Government of Canada to impose sanctions against foreign nationals who commit gross violations of internationally recognized human rights against government whistleblowers or human rights defenders, as well as foreign public officials and their associates who engage in acts of significant corruption.
168. The crediting of proceeds of forfeiture to the Proceeds Account is already authorized under the Act. *Seized Property Management Act*, ss. 4(1)(b.01), 13(2).
169. The amended section 8 of the Sergei Magnitsky Law effectively maintains the existing application procedure with the addition of excluding property subject to forfeiture. No corresponding section previously existed in the SEMA, though sanctions regulations made under section 4(1)(a) generally include a similar application section. For example, see [Special Economic Measures \(Burma\) Regulations](#), SOR/2007-285, s. 16.
170. The existing section in the SEMA only allowed the authorization of specific permits.
171. [Department of Employment and Social Development Act](#), S.C. 2005, c. 34.
172. ESDC, [Helping middle-class Canadians with the support they need](#), News release, 15 August 2019.
173. CEIC, [2019/2020 Employment Insurance Monitoring and Assessment Report](#), 2021, p. 365.
174. [Social Security Tribunal Regulations](#), SOR/2013-60.
175. [Bill C-30, An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures](#), 43rd Parliament, 2nd Session (S.C. 2021, c. 23). See Economics, Resources and International Affairs Division and Legal and Social Affairs Division, [Legislative Summary of Bill C-30: An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures](#), Publication no. 43-2-C30-E, Library of Parliament, 16 July 2021.
176. *Department of Employment and Social Development Act*, S.C. 2005, c. 34, "[Amendments not in Force.](#)"
177. [Federal Courts Act](#), R.S.C. 1985, c. F-7.
178. [Labour Adjustment Benefits Act](#), R.S.C. 1985, c. L-1.
179. [Income Tax Act](#), R.S.C. 1985, c. 1 (5th Supp.).
180. [Employment Insurance Act](#), S.C. 1996, c. 23.

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APPENDIX – ACRONYMS, INITIALISMS AND SHORT FORMS

Title or Term	Acronym, Initialism or Short Form
<i>An Act respecting the Canadian Pacific Railway</i>	–
<i>An Act to amend the Criminal Code and the Canada Labour Code</i>	ACCLC
An Act to Implement the Memorandum of Understanding between the Government of Canada and the Government of the United States of America concerning Cooperation on the Civil Lunar Gateway and to make related amendments to other Acts	CLGA Implementation Act
anti-dumping duties	ADs
<i>Borrowing Authority Act</i>	BAA
<i>Budget Implementation Act, 2021, No. 1</i>	BIA 2021, No. 1
Canada Border Services Agency	CBSA
<i>Canada Business Corporations Act</i>	CBCA
Canada Child Benefit	CCB
<i>Canada Deposit Insurance Corporation Act</i>	CDICA
Canada Emergency Business Account	CEBA
Canada Emergency Response Benefit	CERB
<i>Canada Emergency Response Benefit Act</i>	CERBA
Canada Emergency Student Benefit	CESB
<i>Canada Emergency Student Benefit Act</i>	CESBA
Canada Emergency Wage Subsidy	CEWS
Canada Employment Insurance Commission	CEIC
<i>Canada Labour Code</i>	CLC
<i>Canada Not-for-profit Corporations Act</i>	(NFP Act)
Canada Pension Plan (federal program)	CPP
Canada Revenue Agency	CRA
<i>Canada–United States–Mexico Agreement</i>	CUSMA
Canadian-controlled private corporation	CCPC
Canadian International Trade Tribunal	(CITT)
<i>Canadian International Trade Tribunal Act</i>	CIIT Act

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Title or Term	Acronym, Initialism or Short Form
Canadian Pacific Railway	CPR
<i>Children's Special Allowances Act</i>	CSAA
<i>College of Patent Agents and Trademark Agents Act</i>	CPATAA
<i>Corrections and Conditional Release Act</i>	CCRA
<i>Criminal Code</i>	CC
<i>Department of Employment and Social Development Act</i>	DESDA
disability tax credit	DTC
Employment Insurance	EI
<i>Employment Insurance Act</i>	EIA
<i>Employment Insurance Regulations</i>	EIR
<i>Excise Tax Act</i>	ETA
<i>Federal Courts Act</i>	FCA
<i>Federal-Provincial Fiscal Arrangements Act</i>	FPFAA
<i>Financial Administration Act</i>	FAA
Goods and Services Tax/Harmonized Sales Tax	GST/HST
<i>Government Employees Compensation Act</i>	GECA
Home Accessibility Tax Credit	HATC
<i>Immigration and Refugee Protection Act</i>	IRPA
<i>Income Tax Act</i>	ITA
<i>Income Tax Regulations</i>	ITR
<i>Insurance Companies Act</i>	ICA
<i>Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law)</i>	Sergei Magnitsky Law
<i>Nisga'a Final Agreement</i>	NFA
<i>Nisga'a Final Agreement Act</i>	NFAA
<i>Old Age Security Act</i>	OASA
<i>Parliament of Canada Act</i>	POCA
<i>Pension Benefits Standards Act, 1985</i>	PBSA, 1985
Post-Retirement Disability Benefit	PRDB
<i>Safe Drinking Water for First Nations Act</i>	SDWFNA
Select Luxury Items Tax Act	SLITA
<i>Special Economic Measures Act</i>	SEMA
<i>Special Import Measures Act</i>	SIMA

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Title or Term	Acronym, Initialism or Short Form
<i>Tax Court of Canada Act</i>	TCCA
<i>Trust and Loan Companies Act</i>	TLCA