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Legislative Summary

BILL C-33:
AN ACT TO AMEND THE CUSTOMS ACT, THE RAILWAY SAFETY ACT, THE TRANSPORTATION OF DANGEROUS GOODS ACT, 1992, THE MARINE TRANSPORTATION SECURITY ACT, THE CANADA TRANSPORTATION ACT AND THE CANADA MARINE ACT AND TO MAKE A CONSEQUENTIAL AMENDMENT TO ANOTHER ACT

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

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

Legislative Summary of Bill C-33
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-33: AN ACT TO AMEND THE CUSTOMS ACT, THE RAILWAY SAFETY ACT, THE TRANSPORTATION OF DANGEROUS GOODS ACT, 1992, THE MARINE TRANSPORTATION SECURITY ACT, THE CANADA TRANSPORTATION ACT AND THE CANADA MARINE ACT AND TO MAKE A CONSEQUENTIAL AMENDMENT TO ANOTHER ACT

1 BACKGROUND

Bill C-33, An Act to amend the Customs Act, the Railway Safety Act, the Transportation of Dangerous Goods Act, 1992, the Marine Transportation Security Act, the Canada Transportation Act and the Canada Marine Act and to make a consequential amendment to another Act (short title: Strengthening the Port System and Railway Safety in Canada Act), was introduced in the House of Commons by the Minister of Transport and received first reading on 17 November 2022.[1]

This proposed legislation amends numerous laws in the rail and marine transport sectors, and it amends legislation related to the transport of dangerous goods. In the rail sector, the bill responds to the 2017–2018 *Railway Safety Act* (RSA) Review by making changes to the RSA and the *Canada Transportation Act* (CTA). According to Transport Canada, the proposed changes aim to:

- improve transparency and efficiency;
- address gaps and emerging challenges; and
- further improve the safety and security of the various modes of movement of dangerous goods throughout Canada.[2]

In the marine transport sector, the bill makes changes to the *Customs Act*, the *Marine Transportation Security Act*, the CTA and the *Canada Marine Act* (CMA), as part of the government's response to the ports modernization review completed in October 2022. The goal of the amendments is to allow Canadian ports to "better respond to an increasingly complex economic, social, and environmental operating environment."[3] When the bill was announced, Transport Canada also published a policy statement on port investment,[4] providing general information on the government's planned approach to port governance. This bill is part of the government's effort to implement that vision.

The bill also amends the *Transportation of Dangerous Goods Act, 1992* (TDGA) "to ensure dangerous goods continue to move safely and securely across Canada."[5] According to Transport Canada, the amendments improve the department's ability

to address ongoing and emergency safety risks, while also strengthening enforcement by creating an administrative monetary penalties regime.[6]

1.1 *RAILWAY SAFETY ACT* REVIEW

Under section 51 of the RSA, the Minister of Transport will have to appoint one or more persons to comprehensively review how the Act operates no later than five years after the section comes into force. The most recent report on a review of the RSA, *Enhancing Rail Safety in Canada: Working Together for Safer Communities*, was published in May 2018. In it, the Review Panel explains that an effective and sustainable rail safety regime has three key features: (1) compliance with regulations and standards; (2) safety management systems; and (3) safety culture. [7]

The Review Panel concluded that Transport Canada has done well with the first part and should "continue to strengthen its capacity and practices to ensure the rail system is safe in Canada." The Review Panel concluded that work on safety management systems "is ongoing and still needs improvement as the Department implements the 2015 safety management system regulations." In terms of safety culture, the Review Panel suggested that "[d]espite some progress by railways in developing a safety culture, there is little capacity or focus on this element of safety within Transport Canada's Rail Safety Program."[8]

The most substantial legislative recommendation made as part of the review involves amendments to Part III of the RSA (Non-railway Operations Affecting Railway Safety) to address the issue of how close residential and commercial land developments are to rail operations. Other legislative changes in the review's 16 recommendations include:

- ensuring that exemptions granted for testing purposes under section 22.1 of the RSA include provisions to share the testing data collected with Transport Canada for regulatory development or additional research;
- amending the RSA so that railways may seek exemptions concerning some requirements of the *Railway Safety Management System Regulations, 2015* where those elements provide limited safety benefits for their operations;
- amending the RSA to allow the Minister of Transport to seek advice from or consult with any relevant party in relation to a proposed rule; and
- addressing gaps and improving the flexibility and efficiency of the RSA in the areas of rail security, decision deadlines of the Transportation Appeal Tribunal of Canada, notification of work near pipelines, compliance agreements and mandatory RSA reviews.

1.2 PORTS MODERNIZATION REVIEW

In March 2018, the Minister of Transport launched the Ports Modernization Review. The review focused on how ports could make progress on five key goals:

- supporting the competitiveness of Canada's economy by facilitating the movement of goods;
- strengthening relationships with Indigenous peoples and local communities;
- promoting environmentally sustainable infrastructure and operations;
- enhancing port safety and security; and
- optimizing governance and financial management.[9]

The review culminated in Transport Canada's *What we heard report: Ports modernization review* in 2020.[10] Key lessons learned from the department's public consultation include the following, among others:

- Supply chain stakeholders want to promote and invest in new infrastructure and technologies that can help different parts of the supply chain work more effectively together.
- Technology needs to be used to improve the efficiency, capacity, reliability, resiliency and competitiveness of Canada's supply chains.
- Stakeholders highlighted the need to consider Indigenous peoples' interests when planning for the future of ports; some suggested ensuring better Indigenous representation on port authorities' boards.
- Stakeholders recognized the importance of assessing and managing the negative impacts of port development and operations.
- Environmental considerations should be better integrated into the governance of port operations.
- Stakeholders are interested in an updated security framework for ports that includes more collaboration between governments and security partners.
- The mandate of Canada Port Authorities should be reviewed so they can deliver on multiple policy objectives and balance competing interests.
- Given the complexity of large maritime infrastructure projects, stakeholders emphasized the need for both public and private funding sources.

1.3 SUPPLY CHAIN TASK FORCE

In January 2022, the federal Minister of Transport hosted the National Supply Chain Summit, and in March 2022, established the National Supply Chain Task Force. The task force was charged with investigating solutions to Canada's transportation

supply chain challenges which include disruptions caused by the COVID-19 pandemic, the growing impacts of climate change and recent sanctions against Russia. The task force released its *Final Report of The National Supply Chain Task Force 2022* in early October 2022.[11]

Among other things, the task force recommended:

- the creation of a supply chain office to unify the federal government's responsibility for supply chain management across federal departments;
- the development of a long-term transportation supply chain strategy;
- engaging with the United States, as well as the provinces and territories, to develop reciprocal recognition of regulations, policies and processes; and
- a revision of the Canadian Transportation Agency's mandate to include, among others, authority to ensure that "all parties working within Canada's transportation supply chain have balanced negotiating power."[12]

In its backgrounder for Bill C-33, the government explains that

> [w]hile more targeted measures will be brought forward to respond to the Task Force Report, the proposed legislative changes are a demonstration of what the government can do to rejuvenate key modes of the transportation supply chain.[13]

2 DESCRIPTION AND ANALYSIS

2.1 AMENDMENTS TO THE *CUSTOMS ACT* (CLAUSE 2)

The amendments to the *Customs Act*[14] appear to come in response to a recommendation made in *Action. Collaboration. Transformation: Final Report of The National Supply Chain Task Force 2022*. This report noted that container terminals in ports were congested due to insufficient warehousing space for incoming import containers, both at the port and at inland facilities, among other things. These containers must be cleared by customs before they are released. Temporary storage facilities are needed to house at least some import containers at locations away from the port terminals. The task force suggested that the congestion and resulting delays "could be relieved by the Canada Border Services Agency (CBSA) increasing its capacity to conduct inspections and/or clear containers outside of standard locations." In its recommendation, it states that

> [t]he CBSA must permit containers currently being stored at port terminals to be moved in-bond via rail or truck to inland locations for customs clearance. This will create space at the terminals for arriving vessels to be unloaded.[15]

Clause 2 amends provisions of the *Customs Act* by adding sections 19.01 and 19.02 under the heading "Movement and Storage of Goods." It expands the authority of customs officers to require the delivery of containers for inspection. This could include, for example, moving containers to specified locations away from port terminals. Under new sections 19.01 and 19.02, and upon request, any person in possession or control of imported goods is required to make those goods available for examination in a timely manner and to deliver those goods or have them delivered to a secure area that meets the requirements set out in the regulations. These two new provisions also give the Governor in Council the power to make regulations for these purposes.

2.2 AMENDMENTS TO THE *RAILWAY SAFETY ACT*

2.2.1 Definitions (Clauses 5 and 11)

Clause 5(2) amends section 4(1) of the *Railway Safety Act* (RSA)[16] by defining "safety" to include the concept of security, except in the case of a safety management system.

The bill therefore removes the words "and security" in sections 3(b), 3(d), 3.1, 3.1(a) and 6.1(1)(a) of the RSA.

Similarly, clause 11 changes the heading before section 31 of the RSA from "Notices of Railway Safety Inspectors Concerning the Safety or Security of Railway Operations" to "Notices of Railway Safety Inspectors."

Clause 5 also adds the definition of "security management system" to section 4(1) of the RSA and amends the definition of "security document" to include the following, among others:

- an order referred to in section 32 of the RSA that relates to security;
- an order referred to in section 32.01 of the RSA that relates to security; and
- a requirement or authorization contained in a notice, referred to in section 39.1(2) of the RSA.

2.2.2 Ability to Consult (Clause 7)

Under section 19(1) of the RSA, the Minister may, by order, require a railway company to make rules respecting the matters referred to in sections 18(1) and 18(2.1) as they relate to railway safety and security. Under section 19(5), to inform their decision, the Minister may consult with any person or organization having expertise in safe

railway operations. Clause 7 amends section 19(5) of the RSA to allow the Minister to also "consult with any other relevant party."

2.2.3 Exemptions from the Application of Regulations and Rules (Clauses 8 and 9)

Section 22 of the RSA allows the Governor in Council and the Minister of Transport to exempt railway companies from the application of both the regulations made under sections 18(1) and 18(2.1) and the rules in force under sections 19 and 20. This provision also exempts a person from the application of regulations made under section 18(2) with respect to crossing works.

Under section 22(4) of the RSA, a railway company may apply to the Minister for an exemption from the application of the above-mentioned regulations and rules. Clause 8(1) amends section 22 of the RSA by adding section 22(4.1), which states that, where a railway company applies for such an exemption, it must provide any document or information specified by the Minister. Under section 22(7) of the RSA, the Minister has 60 days to grant the application. Clause 8(2) adds section 22(8) to the RSA to allow this period to be suspended until the Minister receives the information or document required under new section 22(4.1). Clause 8(2) of the bill also adds section 22(9) to the RSA to allow the Minister to renew, cancel or amend an exemption granted by the Minister under section 22(2).

Section 22.1 of the RSA provides that a railway company may, by notice, seek an exemption of short duration from the application of regulations or rules. Clause 9(1) amends this section by adding section 22.1(2.1), which provides that when a railway company files notice for other exemptions, it must provide to the Minister any document or information the Minister specifies. Under section 22.1(4) of the RSA, in particular, the Minister has 35 days after receiving the notice seeking an exemption to deny the exemption. Clause 9(2) adds section 22.1(4.1) to the RSA to allow this period to be suspended until the Minister receives the information or document required under new section 22.1(2.1). Clause 9(3) of the bill also adds section 22.1(6) to the RSA, allowing the Minister to renew, cancel or amend an exemption.

2.2.4 Prohibitions (Clause 10)

Clause 10 amends the RSA by adding sections 26.3 and 26.4. Section 26.3 prohibits persons from damaging or destroying any railway work or equipment without a lawful excuse. It also prohibits persons from interfering with railway operations in a manner that threatens railway safety. Section 26.4 prohibits dangerous behaviour that endangers the safety of a station, railway equipment or individuals who are at

the station or on board. It also prohibits unruly behaviour toward employees, agents or mandataries of a railway company.

2.2.5 Ministerial Orders (Clause 12)

Clause 12(1) amends section 32 of the RSA by adding section 32(2.1) which stipulates that, after a regulation is made under section 18(2.1) of the same Act providing regulatory power with respect to safety, the Minister may inform a railway company by notice if deficiencies in the measures taken by the company pursuant to a regulation compromise the security of railway transportation. The Minister may order the company to take corrective measures.

Clause 12(2) amends sections 32(3.1) and 32(3.2) of the RSA to allow the Minister to order corrective measures if a railway company's security management system risks compromising railway safety or railway security. Sections 32(3.1) and 32(3.2) of the RSA currently in force already provide this power, but only in the case of a safety management system.

2.2.6 Transportation Security Clearances (Clauses 14 and 24)

Clause 14 amends the RSA by adding section 39.3(1) to allow the Minister to "grant or refuse to grant a transportation security clearance to any person or suspend or cancel a transportation security clearance." Section 47.2(1) of the RSA provides that the Minister may prescribe any fees or charges to be paid for services or for the use of facilities provided by the Minister in the administration of the RSA (section 47.2(1)(a)) and for the filing of documents or making of applications for and issuance of certificates, exemptions, licences or approvals (section 47.2(1)(b)). Clause 24 amends section 47.2(1)(b) to add transportation security clearances to the list. Section 47.2(2) of the RSA allows exemptions from the application of these fees or charges. Clause 14 also adds section 39.3(2) to the RSA which specifies that these exemptions do not apply to any fees or charges related to transportation security clearances.

2.2.7 Administrative Monetary Penalties (Clauses 15 to 22)

Section 40.1 of the RSA provides that the Governor in Council may make regulations to designate any provision of the Act or regulation, and any rule, standard, order or emergency directive made under the Act "as a provision the contravention of which may be proceeded with as a violation in accordance with sections 40.13 to 40.22." Clause 15 amends section 40.1(a)(ii), adding "security measure" to the list of provisions whose contravention may be subject to sections 40.13 to 40.22 of the RSA.

Clause 16 amends section 40.11 of the RSA to add section 40.11(6) which stipulates that while an enforcement officer designated by the Minister is carrying out their functions, every person must comply with any request of that officer and otherwise not obstruct or hinder the officer.

Under section 40.13(1) of the RSA, every person who contravenes a provision designated under section 40.1(a) commits a violation and is liable to a penalty of up to $50,000 for an individual and $250,000 for a corporation. Section 40.14 of the RSA provides that where an enforcement officer believes on reasonable grounds that a person has committed a violation, the officer may issue a notice of violation and serve it on the person.

Clause 17 adds sections 40.131(1) to 40.131(9) to the RSA. Under new section 40.131(1), if the Minister has reasonable grounds to believe that a person who has not been served with a notice of violation under section 40.14 has committed a violation, the Minister may enter into an assurance of compliance with that person to ensure that they comply with the relevant provision within the period specified in the assurance, and subject to the terms and conditions also specified in the assurance.[17] The Minister may also determine the amount and form of any security that the person must deposit with the Minister, pending compliance with the assurance.

Under new section 40.131(2), the Minister may extend the period for complying with the assurance if the Minister is satisfied that the person is unable to comply within the prescribed period for a reason beyond that person's control. New section 40.131(3) states that a person who enters into an assurance is deemed to have committed the violation, unless they request a review of the facts of the violation.

New section 40.131(4) stipulates that within 48 hours after an assurance is signed, the person concerned may file a request with the Transportation Appeal Tribunal of Canada for a review of the facts of the violation. In that case, the assurance is deemed to be a notice of violation and "a review of the facts of the violation and the amount of the penalty is deemed to have been requested under section 40.16."

New section 40.131(5) states that, if the Minister is satisfied that a person has complied with an assurance of compliance, no further proceedings may be taken against the person in respect of that violation, and any security deposited must be returned to the person. Under new section 40.131(6), if the Minister is of the opinion that a person has not complied with an assurance of compliance, the Minister will have a notice of default served on the person. A notice indicates either that the person is liable to pay twice the amount of the penalty specified in the assurance or that any security deposited under section 40.131(1) is forfeited. New section 40.131(7) states that the notice of default must contain both a date on or before which a request for review may be filed and the address where the request may be filed. It must also include details about how to request a review.

New section 40.131(8) provides that a person who receives a notice of default "has no right of set-off or compensation against any amount that they spent under the assurance of compliance." Under new section 40.131(9), any security deposited under section 40.131(1) is returned to the person, if after receiving a notice of default, the person pays double the amount of the penalty set out in the assurance of compliance or the Tribunal determines that the person has complied with the assurance.

Clause 18 amends the RSA by adding sections 40.151, 40.152 and 40.153 to the RSA. Under new section 40.151, instead of paying a penalty, the person served with a notice of violation may ask to enter into a compliance agreement with the Minister pursuant to new section 40.152.

Under new section 40.152(1), following a request made under section 40.151, the Minister may enter into a compliance agreement with a person who has received a notice of violation, on any terms and conditions that are satisfactory to the Minister. The terms and conditions may include a provision for the deposit of security as a guarantee that the person will comply with the compliance agreement, or they may provide for a penalty reduction, in whole or in part. Under new section 40.152(2), a person who enters into a compliance agreement is deemed to have committed the violation. New section 40.152(3) states that any security deposited is to be returned to the person, if the Minister issues a notice that the person has complied with a compliance agreement.

Under new section 40.152(4), if the Minister finds that a person has not complied with the compliance agreement, the Minister issues a notice of default to be served on the person, informing them that they are liable to pay twice the amount of the original penalty or forfeit any security deposited. New section 40.152(5) states that the person served with a notice of default "has no right of set-off or compensation against any amount that they spent under the compliance agreement." New section 40.152(6) states that, when the amount set out in the notice of default is paid, the Minister must accept that payment and no further proceedings may be taken against the person under the RSA in respect of that violation.

New section 40.153(1) provides that if the Minister refuses to enter into a compliance agreement under new section 40.151, the person requesting it may either pay the amount of the original penalty or file a request for review under section 40.16(1). New section 40.153(2) specifies that the Minister must accept payment of the amount set out in the notice of violation, and that no further proceedings under the RSA may be taken against the person in respect of that violation.

Clause 19(1) amends section 40.16 of the RSA by adding section 40.16(1.1), which states that a person served with a notice of default under new section 40.131(6) because the Minister considers that the person has not complied with the assurance of compliance may file a request for a review of the Minister's decision with the Tribunal by the date specified in the notice, or within any further time that the Tribunal may allow. Clause 19(4) adds new section 40.16(6), under which filing a request for review does not give a person a defence by reason that the person exercised due diligence to comply with the assurance of compliance.

Section 40.18 of the RSA states that when the Tribunal concludes its review, the Tribunal member who conducted the review must inform the Minister and the person alleged to have committed a violation of their determination. Sections 40.18(a) and 40.18(b) of the RSA describe what happens after the member makes a determination in the matter.

Clause 20 amends section 40.18 of the RSA by adding sections 40.18(c) and 40.18(d). New section 40.18(c) states that, in the absence of an appeal, if the member determines that the person has complied with the assurance of compliance, no proceedings may be taken against the person in respect of the alleged violation under the RSA. New section 40.18(d) provides that if the member determines that the person has not complied with the assurance of compliance, the member confirms the decision made by the Minister under new section 40.131(6).

Under section 40.19 of the RSA, a determination made under section 40.18 in a judicial review can be appealed to the Tribunal.

Clause 21 amends sections 40.19(3) and 40.19(4) of the RSA. To take into account the concept of the assurance of compliance added to the RSA by Bill C-33, amended section 40.19(3) of the RSA specifies that the Tribunal can dismiss or allow compliance appeals and violation appeals. Section 40.19(4) of the RSA is also amended to include the terms and conditions for informing the person of the Tribunal's decision.

Under section 40.2 of the RSA, the Minister may obtain a certificate from the Tribunal or the Tribunal member who conducts the review, which sets out a penalty amount to be paid by a person who fails to pay the penalty amount set out in a notice of violation within the time required.

Clause 22 amends sections 40.2(a) and 40.2(b) of the RSA to include failure-to-pay penalties for failing to comply with an assurance of compliance.

2.2.8 Regulations: Security Management Systems (Clause 23)

Clause 23 amends section 47.1 of the RSA by adding section 47.1(1.1) which allows the Governor in Council to make regulations respecting security management systems. Currently, section 47.1(1)(a) of the RSA states that the Governor in Council may make regulations respecting "safety management systems," but it does not mention "security management systems."

2.2.9 Review of the Act (Clause 25)

Clause 25 amends section 51(1) of the RSA and requires the Minister to appoint one or more persons to carry out a comprehensive review of the RSA's operation every five years after the amendment comes into force.

2.3 AMENDMENTS TO THE *TRANSPORTATION OF DANGEROUS GOODS ACT, 1992*

2.3.1 Definitions (Clause 26)

Clause 26 amends the definitions set out in section 2 of the *Transportation of Dangerous Goods Act, 1992* (TDGA).[18] Clause 26(1) repeals the definition of "handling." Clauses 26(2) amends the definitions of "safety standard" to include safety standards for the requalification of means of containment to be used for transporting dangerous goods and clause 26(3) amends the definition of "prescribed" in the English version only. Clause 26(4) amends paragraph (b) of the definition of "safety requirement" in section 2 to include the requirements for persons engaged in requalifying means of containment for transporting dangerous goods. Clause 26(5) adds the definition of "enforcement officer," which is a person who is designated as an enforcement officer under new section 32.12(1) of the TDGA.

2.3.2 Authorizations (Clauses 27 and 29 to 32)

Clause 27 amends the scope of the TDGA by adding section 3.1 which allows the Minister to designate and authorize any person to exercise any of the Minister's powers and duties, either generally or as otherwise provided in the instrument of delegation.

Clauses 29 and 30 address prohibitions on means of containment. Although both clauses amend section 5.1 of the TDGA, the date the amendments come into force differs. Current section 5.1 of the TDGA prohibits a person from designing, manufacturing, repairing, testing or equipping a means of containment used in

importing, offering for transport, handling, or transporting dangerous goods, unless the person complies with all safety requirements that apply under the regulations.

Clause 29 of the bill adds "requalify" to the list of prohibited acts that concern a means of containment, while clause 30 adds the requirement, subject to the regulations, that the person hold a certificate of registration issued under new section 6.2 of the TDGA. Under clause 125(3) of the bill, clause 30 will replace the change made by clause 29 on a date to be fixed by order.

Clause 31 of the bill, concerning compliance marks, amends section 6 of the TDGA by prohibiting any person from affixing or displaying a compliance mark on a means of containment, as required or authorized under various regulations, particularly the requirements for requalifying means of containment, except where the requirements and safety standards applicable to the compliance mark have been followed in requalifying these means of containment.

Clause 32 concerns dangerous goods marks and adds sections 6.11 to the TDGA. As part of these new provisions, any application for a registration number, necessary under the safety requirements and security requirements that apply under the regulations, must be made to the Minister of Transport. The Minister may assign a registration number to an applicant and may collect any personal information or confidential business information that an applicant provides. A registration number assigned on or before the day on which this section comes into force is deemed to be assigned to the applicant by the Minister.

2.3.3 Registration (Clauses 33)

Clauses 33 to 46 set out new requirements concerning the registration of any person who imports, offers for transport, handles or transports dangerous goods in Canada. The purpose of the proposed amendments is to eliminate gaps in the TDGA with respect to information about persons who conduct activities associated with dangerous goods.

Clause 33 amends the TDGA by adding section 6.2. Under this new section, an application must be made to the Minister to obtain a certificate of registration for a means of containment to transport dangerous goods. The Minister may amend, suspend or revoke a certificate or impose any terms and conditions on the certificate. The Minister may collect any personal information or confidential business information that an applicant provides. The Minister may also disclose any information about the certificate of registration, except personal information.

2.3.4 Emergency Response Assistance Plan (Clauses 34 and 35)

Clause 34 amends sections 7.1(a) and 7.1(b) of the TDGA. It states that if the Minister believes it is necessary to implement an approved emergency response assistance plan to uphold public safety, the Minister may direct the person who has this plan to implement it. The Minister may impose any terms or conditions on the implementation of this plan that the Minister considers appropriate.

Clause 35 amends the TDGA by adding section 7.11 which provides that every person who implements an approved emergency response assistance plan must report the implementation to the Minister and to any prescribed person, and include any prescribed information in the report.

2.3.5 Administrative Monetary Penalties (Clauses 47 to 49)

Clauses 47 to 49 provide for administrative monetary penalties to address gaps in the TDGA relating to the transportation of dangerous goods. Section 33 of the TDGA provides that failure to comply with the provisions of the Act, its regulations, an order made under certain provisions of the Act, a security measure or an interim order may result in fines and a term of imprisonment.

Clause 47 amends the TDGA by adding sections 32.1 to 32.28. These sections give the Minister of Transport and inspectors new powers to manage risks related to dangerous goods.

2.3.5.1 Regulatory Powers

Under new section 32.11, the Minister of Transport may impose penalties on any person who contravenes the TDGA or its regulations. For each violation, the maximum amount payable is $50,000 in the case of an individual and $250,000 in the case of an organization. The Minister may also establish what constitutes a related series or class of violations and prescribe the total maximum amount payable.

2.3.5.2 Designation and Powers of Enforcement Officers

New section 32.12(1) provides that the Minister may designate persons or classes of persons as enforcement officers. Under the powers granted to them, enforcement officers may enter any place, including a means of transport relating to dangerous goods activities, to determine whether a violation has been committed (new section 32.13(1)). However, an officer may not enter a dwelling-place without the occupant's consent (new section 32.13(2)), unless the officer has a warrant issued by a justice (new section 32.13(3)).

To determine whether a violation has been committed, an enforcement officer may order a person to provide them with any document, information or electronic data as they may specify (new section 32.13(11)). If an enforcement officer believes on reasonable grounds that a person has committed a violation, the officer may issue a notice of violation and cause it to be served on the person. The notice of violation names the person and identifies the violation, and it sets out the associated penalty and the time and manner in which the penalty is to be paid (new section 32.16). It also establishes the procedure for requesting a review (new section 32.21(1)).

2.3.5.3 Offences and Punishment

Clause 48 amends section 33(2) of the TDGA and provides that in the case of an individual who commits an offence, the person is liable on indictment to imprisonment for a term of up to three years or a fine of up to $500,000, and on summary conviction, to imprisonment for a term of up to two years less a day or a fine of up to $250,000.

In the case of an organization, the maximum fine is $10 million on indictment and $5 million on summary conviction.

Clause 49 repeals section 34(3) of the TDGA, which provides that the total value of what the person may be required to do by court order, when convicted of an offence, cannot exceed $1 million per offence. The same clause amends section 34(4)(a) by specifying the total potential fines issued on summary conviction: a fine of up to $250,000 in the case of an individual and up to $5 million in the case of an organization.

2.4 AMENDMENTS TO THE *MARINE TRANSPORTATION SECURITY ACT*

2.4.1 Definitions (Clauses 50 and 51)

Bill C-33 amends the *Marine Transportation Security Act* (MTSA)[19] to authorize the Minister of Transport to make interim orders and give emergency directions relating to the security of marine transportation. Accordingly, clause 50(1) adds "interim order" and "emergency direction" to the MTSA's definitions of "authorized screening" and "restricted area" set out in section 2 of the MTSA.

Clause 50(2) amends the MTSA's definition of a "marine facility" by replacing "*Canadian Laws Offshore Application Act*" with "*Oceans Act*." Consequently, clause 51 amends section 4(1)(c) of the Act so that it applies to marine installations and structures in accordance with section 20 of the *Oceans Act*.

2.4.2 Purpose of the Act and Ministerial Authorization (Clause 52)

Clause 52 adds new section 4.1 to the MTSA, outlining the purpose of the Act, namely, to promote the security of marine transportation by enhancing the resiliency of Canada's marine transportation system. Clause 52 also adds new section 4.2 of the MTSA, which authorizes the Minister of Transport to enter into agreements or arrangements to administer and enforce the Act or its regulations.

2.4.3 Regulations (Clauses 53 and 54)

Section 5 of the MTSA authorizes the Governor in Council to make regulations respecting the security of marine transportation. Clause 53(1) amends section 5(1) to include regulations "respecting the establishment of exclusion zones for vessels."

Clause 53(2) amends section 5(2) of the MTSA, giving the Governor in Council additional regulation-making powers with respect to

> threats or direct or indirect risks to the security of marine transportation including the security of people, goods, vessels and marine facilities and to the health of persons involved in the marine transportation system

and "fees and charges to be paid in relation to the administration and enforcement" of the MTSA.

Clause 54 adds section 5.1 to the MTSA. It authorizes the Governor in Council to make regulations respecting the Minister of Transport's disclosure of information to federal, provincial and municipal departments or agencies.

Under current section 5(2) of the MTSA, any person who contravenes a regulation under section 5(1) of that Act is guilty of an offence punishable on summary conviction and liable, in the case of an individual, to a fine of up to $5,000 or imprisonment for a term of up to six months or both, and in the case of a corporation, a fine of up to $100,000.

To strengthen compliance with the regulations, clause 53(2) introduces a new penalty scheme for indictable offences and increases the limit on fines and terms of imprisonment for summary conviction offences. Under new sections 5(4) and 5(5), every person who contravenes a regulation under new sections 5(1) or 5(2) of the MTSA is guilty of an offence and liable to a fine upon conviction on indictment or upon summary conviction. Individuals found guilty of an offence and liable upon conviction on indictment are subject to a fine of up to $1 million or imprisonment for a term of up to five years or both, whereas corporations are subject to a fine of up to $2 million. Individuals found guilty of an offence and liable on summary conviction

are subject to a fine of up to $500,000 or imprisonment for a term of up to two years less a day or both, whereas corporations are subject to a fine of up to $1 million.

In recent years, developments in maritime autonomous surface ships have had legal implications as regards liability regimes in which these ships would operate.[20] Clause 53(2) is the first in the bill to distinguish liability for vessels. Any vessel that contravenes a regulation made under amended sections 5(1) or 5(2) of the MTSA is guilty of an offence and liable upon summary conviction to a fine of up to $1 million.

2.4.4 Interim Orders (Clauses 55 and 58)

Clause 55 adds section 6.1 and 6.2 to the MTSA. New section 6.1 allows the Minister of Transport to make interim orders to immediately address threats or risks to the security of marine transportation or to the health of persons involved in the marine transportation system. The effective date of an interim order made under this section may be extended for up to one year by the Minister or for up to two years by the Governor in Council. New section 6.2 concerns contraventions of interim orders and uses the same penalty scheme for indictable and summary offences as the scheme set out in clause 53(2).

Clause 58 amends section 12 of the MTSA to allow the Minister to exempt any person, vessel or marine facility from the application of an interim order.

2.4.5 Security Measures and Security Rules (Clauses 56, 57 and 59)

Clauses 56 and 57 increase the penalty thresholds set out in sections 9 and 11 of the MTSA, respectively, for contraventions to security measures and security rules, respectively; these new thresholds are consistent with the provisions in clause 53(2). Likewise, clause 59 increases the penalty thresholds in section 13 of the MTSA on summary conviction for disclosing the substance of security measures or security rules without authorization.

2.4.6 Directions (Clauses 61 and 62)

Clause 61(1) amends section 16(1) of the MTSA to broaden the grounds for which the Minister of Transport may direct a vessel. Specifically, the Minister may do so if a vessel "poses a direct or indirect risk to the security of marine transportation, including … to the health of persons involved in the marine transportation system." Clause 61(1) also adds section 16(1)(a.1) to extend vessel exclusion zones beyond Canadian boundaries by requiring a vessel "to remain outside of any area specified by the Minister."

Clause 62 amends section 17 of the MTSA to increase the penalty thresholds in sections 17(1) and 17(2) of the MTSA for an operator or vessel subject to a direction that fails to comply with it; these new thresholds are consistent with the provisions set out in clause 53(2).

Section 62 also adds sections 17.1 to 17.5 to the MTSA. If a vessel has been directed to proceed to a port or a marine facility under section 16(1)(a) of the MTSA, new section 17.1(1) authorizes the Minister to give directions to the port authority or the person in charge of that port or marine facility for the purpose of this new section. Under new section 17.2(1), a port authority or person in charge of a port or marine facility that fails to comply with a direction issued to them is guilty of an offence and liable on summary conviction to the penalties established in clause 53(2).

New sections 17.2(2) and 17.2(3) provide that a port authority or person in charge of a port or marine facility does not contravene a direction unless evidence shows that reasonable steps were taken at the time of the alleged contravention to bring the substance of the direction to the attention of the port authority or person in charge of a port or marine facility. This evidence could be a certificate signed by the Minister stating that a notice containing the direction was given to the port authority or person in charge of a port or marine facility.

New section 17.4 to the MTSA to allow the Minister to issue emergency directions to respond to immediate threats to the security of marine transportation, such as to evacuate and suspend access to vessels and marine facilities, require vessels to moor or anchor at an alternate site, control the movement of persons on vessels or within marine facilities, authorize screening methods, establish vessel exclusion zones and restricted areas, and suspend marine operations. Emergency directions come into force immediately when made and cease to have force after 72 hours, unless repealed by the Minister before its expiry. An emergency direction may apply in lieu of or in addition to a regulation made under the MTSA, an interim order, a security measure or a security rule, and this direction prevails in the case of any conflict.

New section 17.5 uses the same penalty scheme for indictable and summary offences as the scheme set out in clause 53(2). New sections 17.5(3), 17.5(4) and 17.5(5) provide that a person or vessel subject to an emergency direction does not contravene that direction unless there is evidence that reasonable steps were taken to bring the substance of the direction to the attention of the person or vessel at the time of the alleged contravention; this evidence could be, for example, a certificate signed by the Minister stating that a notice containing the emergency direction was given to the person or person who is or appears to be in charge of the vessel.

2.4.7 Screening Officers (Clauses 63 to 66)

Clause 63 amends section 19.2(2) of the MTSA to authorize the Minister of Transport to suspend or cancel the designation of a screening officer, if the officer contravenes an interim order or emergency direction. Clause 63 amends section 19.2(3) of the MTSA to remove "an immediate threat" from the grounds for which the Minister may suspend or cancel the designation of a screening officer. Rather, the amended section authorizes the Minister to do so if they are of the opinion that the officer "may pose a threat or a direct or indirect risk to the security of marine transportation."

Clause 64 updates the language in section 19.8(1) of the MTSA to take into account the amendments that clause 63 makes to section 19.2(3).

Clause 65 increases the penalty thresholds in section 20(4) of the MTSA for any person who is guilty of an offence on summary conviction for knowingly providing false or misleading information to a screening officer. Under the amended section, a person may be fined up to $500,000 or imprisoned for a term of not more than two years less a day, or both.

Clause 66 increases the monetary penalties in section 21(3) for operators of a vessel or facility who fail to comply with the requirements for posting authorized screening notices. A person guilty of an offence under the amended section may be fined, upon summary conviction, up to $100,000 in the case of an individual, or up to $1,000,000 in the case of a corporation.

2.4.8 Security Inspection (Clauses 67 and 68)

Clause 67 adds the terms "interim order" and "emergency direction" to sections 23(1) and 23(2)(b) of the MTSA, which relate to authorizing the inspection of vessels and marine facilities and the powers of inspectors, respectively.

Clause 68 increases the penalty thresholds in section 25(4) of the MTSA for persons who fail to assist an inspector, as needed to carry out their functions or who obstruct, using the same penalty scheme for indictable and summary offences as the scheme set out in clause 53(2).

2.4.9 Provisions Relating to Offences and Administrative Penalties (Clauses 69 to 85)

Clause 69 amends the continuing offence provision in section 26 to extend its application to vessels, in the English version only of the MTSA. Similarly, clauses 70 to 72, 80, 82 and 84 amend a number of sections, primarily to extend to vessels the liability regime for marine transportation security established under the MTSA.

Clauses 73 to 79 and 83 amend a number of sections in the English version of the MTSA to include "or vessel" where current administrative penalties apply to a person. Clause 81(2) clarifies the language employed in sections 46(2) and 46(3) of the French version of the MTSA, making them more consistent with the English version.

Clause 85 amends section 51(c) of the MTSA, to increase the maximum penalty payable on summary conviction to $250,000. Furthermore, clause 85 adds sections 51(c.1) and 51(c.2) to authorize the Governor in Council to make regulations respecting persons who can request a review on behalf of a vessel concerning an alleged violation and respecting the service of documents on a vessel.

2.4.10 Transitional Provisions (Clauses 86 to 90)

The transitional provisions in clauses 86 to 90 specify that contravening an interim order, direction or emergency direction is a violation under the MTSA and constitutes a separate violation for each day on which it continues. The monetary penalty for the violation of an interim order ranges from $260 to $250,000, whereas for the violation of a direction or emergency direction, the penalty ranges from $1,300 to $250,000.

2.4.11 Coordinating Amendment (Clause 91)

Clause 91 contains a coordinating amendment between the MTSA and certain provisions of the *Protecting Canada's Immigration System Act* that are not in force. These provisions address the power of the Governor in Council to make regulations concerning the security of marine transportation, offences related to the regulations, the disclosure of information and offences related to directions. This amendment ensures that whichever specified provisions in either the *Protecting Canada's Immigration System Act* or the MTSA come into force first, the amendment set out in clause 91 of Bill C-33 prevails.

Under clause 91(2), in general, the Governor in Council may make regulations respecting threats or direct or indirect risks to the security of marine transportation, including the security of people, goods, vessels and marine facilities, and threats or risks to the health of persons involved in the marine transportation.

Under clause 91(4), penalties for offences against the regulations are revised to distinguish between those committed by persons and those committed by vessels. The maximum penalty for an offence by a person upon indictment is a fine of $1,000,000 or imprisonment for five years, or both; for a corporation, a fine of up to $2,000,000 may be imposed. Upon summary conviction, a person is liable to a fine of up to $500,000 or two years less one day of imprisonment, or both; a corporation is liable upon summary conviction to a fine of up to $1,000,000.

Clause 91(5) provides that a vessel that contravenes a regulation made under sections 91(1) or 91(2) is guilty of an offence and is liable on summary conviction to a fine of up to $1,000,000.

Clauses 91(8) and 91(9) ensure that the amendment set out in clause 62 of the present bill – which amends section 17 of the MTSA relating to operators of vessels who contravene a direction – prevails over a similar provision in the *Protecting Canada's Immigration System Act*.

2.5 AMENDMENTS TO THE *CANADA TRANSPORTATION ACT*

2.5.1 The Use of Automated Systems and Telecommunications (Clauses 92 and 93)

Clause 92 adds section 6.2(4) to the *Canada Transportation Act* (CTA)[21] to clarify that the ability of the Minister of Transport to use an electronic system when making decisions or determinations under the CTA (or any other Act of Parliament that the Minister administers or enforces) may include the use of an automated system. This new section also applies to a designated person making a decision or determination under any such Act.

Clause 93 adds sections 6.41(1) and 6.41(2) to the CTA. New section 6.41(1) allows Transport Canada inspectors, investigators and enforcement officers to use telecommunications to access and enter a place remotely to verify compliance or prevent non-compliance with Acts and regulations for which the Minister of Transport is responsible.[22] For a place not accessible to the public, new section 6.41(2) of the CTA specifies that when accessing such a place via telecommunications, the Minister of Transport must do so with the knowledge of the owner or person in charge of the place and must be in the place remotely for no longer than is necessary to verify compliance, prevent non-compliance or determine whether a violation has been committed.

2.5.2 Reviews of Mergers and Acquisitions (Clauses 94 to 99)

Clause 94(1) of the bill adds sections 53.1(1.1), 53.1(1.2) and 53.1(2.01) to the CTA and amends section 53.1(2) . Under new section 53.1(1.1), notice of a proposed transaction must be given to the Minister of Transport and the Commissioner of Competition before the transaction is completed if:

- the transaction is not exempt under sections 111 to 113 of the *Competition Act*;[23]
- the transaction involves a transportation undertaking situated in a port (within the meaning of section 5 of the CMA); and

- the aggregate value of the Canadian assets that are the subject of the transaction, or the gross revenues from sales in or from Canada generated by those assets, exceed $10 million (as calculated under any of sections 110(2) to 110(6) of the *Competition Act*).

New section 53.1(1.1) is specifically for transactions for which it is not already required to give notice of a proposed transaction under section 53.1(1) of the CTA and section 114(1) of the *Competition Act*. According to Transport Canada, the goal of this change is to "[r]educe the Investment Notification and Review threshold to better ensure competition and national security."[24]

New section 53.1(1.2) provides some exceptions to section 53.1(1.1) related to the *Comprehensive Economic and Trade Agreement* between Canada and the European Union and its member states.

Amended section 53.1(2) and new section 53.1(2.01) specify the information that must be included in the notice given to the Minister of Transport and the Commissioner of Competition. This includes any information in the public interest concerning national transportation, as required under the guidelines issued and published by the Minister of Transport.

Clause 94(2) amends sections 53.1(2.1) and 53.1(3) in the English version of the CTA to add a reference to new section 53.1(2.01) of the CTA and for better concordance with the French version by reinforcing the requirement that guidelines issued by the Minister of Transport "must be elaborated" in consultation with the Competition Bureau and must include factors that may be considered to determine whether the transaction raises issues with respect to the public interest as it relates to national transportation.

Clause 94(3) amends section 53.1(4) of the CTA to add a reference to new section 53.1(1.1). It amends section 53.1(4) in the English version to improve concordance with the French version by reinforcing the Minister of Transport's obligation to give notice within 42 days when the is of the opinion that the transaction does not raise public interest issues regarding national transportation.

Clause 95(1) amends sections 53.2(1) and 53.2(2) of the CTA to add references to new section 53.1(1.1) and to section 53.3. It also amends section 53.2(1) in the English version to improve concordance with the French version by reinforcing the prohibition against completing a transaction unless it is approved by the Governor in Council. For a transaction that involves an air transportation undertaking, the Canadian Transportation Agency must determine that the transaction would result in an undertaking that is Canadian, as defined in section 55(1) of the CTA.

Clause 95(1) also amends section 53.2(2) in the English version to improve concordance with the French version by reinforcing the Commissioner of Competition's obligation to report to the Minister of Transport and to the parties of the transaction on any competition-related concerns within 150 days after being notified of a proposed transaction under section 114(1) of the *Competition Act* (or within any longer period that the Minister of Transport may allow).

Clause 95(1) adds section 53.2(2.1) to the CTA so that the Commissioner of Competition may report to the Minister of Transport and the parties of the transaction on any competition-related concerns within 150 days after being notified of a proposed transaction under section 53.1(1.1) of the CTA (or within any longer period that the Minister of Transport may allow).

Clause 95(2) amends section 53.2(4) of the CTA to specify that the Minister of Transport takes certain measures, as applicable, after receiving the report of the Commissioner of Competition, but before making a recommendation. Moreover, it amends section 53.2(4) of the English version to improve concordance with the French version by reinforcing the Minister of Transport's obligation to take these measures.

Clause 96 amends section 53.5(a) of the CTA, specifying that the Governor in Council may, on the Minister of Transport's recommendation, make regulations to specify the information required in notices under existing section 53.1(1) and new section 53.1(1.1).

Clause 97 amends the portion of section 53.6(1) of the CTA, and states that every person who contravenes existing section 53.1(1) and new section 53.1(1.1) is guilty of an offence and liable to a fine, as set out in section 53.6 of the CTA.

Under clause 98, the definition of "arrangement" in section 53.7 of the CTA is amended to add a mention of new section 53.1(1.1).

Under section 92(10)(c) of the *Constitution Act, 1867*,[25] the Parliament of Canada can bring an otherwise provincial work or undertaking under federal jurisdiction by declaring that it is for the "general Advantage of Canada." Clause 99 of the bill gives the federal government jurisdiction over matters relating to port terminals by adding section 172.5 to the CTA which provides that the terminals situated within a port, as defined in section 5 of the CMA, are works for the general advantage of Canada.

2.6 AMENDMENTS TO THE *CANADA MARINE ACT*

2.6.1 Purpose of the Act (Clause 100)

Section 4 of the *Canada Marine Act* (CMA)[26] contains the purpose of the Act. Clause 100 amends section 4(f) of the CMA to add "Indigenous peoples" to the list of stakeholders whose input should be considered as part of the management of marine infrastructure and services.

Clause 100 also adds sections 4(f.1) and 4(f.2) to the CMA. New section 4(f.1) stipulates that one purpose of the CMA is to manage marine infrastructure and services in a manner that maintains security and enhances the resiliency of supply chains. New section 4(f.2) describes another purpose of the CMA, which is to manage traffic to improve the efficiency of supply chains.

2.6.2 Letters Patent (Clause 101)

Section 8(2) of the CMA sets out the information that must be included in the letters patent of Canada port authorities. Clause 101(1) amends section 8(2)(f) of the CMA to change the maximum number of directors from 11 to 13.

Clause 101(2) amends section 8(2)(f)(ii) of the CMA to change the number of directors to be appointed by the municipalities mentioned in the letters patent from one to "up to two." Clause 101(2) also amends section 8(2)(f)(iii) of the CMA, changing the number of directors named by the provinces included in the letters patent from one to "one or two," and adding Prince Rupert and Thunder Bay to the list of port authorities for which the second director is appointed by the provinces of Alberta, Saskatchewan and Manitoba acting together.

Clause 101(3) adds section 8(2)(g.1) to the CMA to specify that the letters patent of a port authority include the principles and guidelines that govern the port authority's advisory committees.

Clause 101(4) adds section 8(2)(j.1) to the CMA under which the letters patent of a port authority set out the schedule for developing the port authority's land-use plans, with intervals of no more than five years.

Clause 101(5) adds section 8(2)(l.1) to the CMA. Under this new section, the letters patent of a port authority set out the schedule for submitting the port authority's borrowing plans, with intervals of no more than three years.

2.6.3 Directors of Port Authorities (Clauses 102 to 106)

Section 14 of the CMA focuses on the directors of port authorities; as noted above, section 8(2)(f) also requires that some of these director-related details are spelled out in the port authorities' letters patent.

Clause 102(1) amends section 14(1)(b) of the CMA to allow the municipalities mentioned in the letters patent to appoint one or two individuals, rather than just one individual. Under clause 102(2), section 14(2) of the CMA is amended to remove the stipulation that a director's appointment can only be renewed twice.

Clause 103 adds section 15.1 to the CMA, which requires that each director of a port authority undergo a security assessment that the Minister of Transport determines to be appropriate, while also maintaining the security certification from the federal government that is obtained as a result of that assessment.

Section 16 of the CMA lists individuals who cannot be director of a port authority. Clause 104(1) amends section 16(a) and adds section 16(a.1) which specifies that an officer or employee of a municipality mentioned in the letters patent cannot be a director of a port authority if, as a result of their employment, they are in a conflict of interest with the activities of the port authority. The current wording would not allow any such municipal officer or employee to be a director of a port authority. Clause 104(1) also amends section 16(b) of the CMA and adds section 16(b.1) to make the same change for officers or employees of a provincial public service.

Clause 104(2) amends section 16(c.1) of the CMA to remove an officer or employee of a federal Crown corporation from the list of individuals who cannot be director of a port authority.

Currently, section 17 of the CMA allows the board of directors to elect a chairperson from among their number for a renewable term of up to two years. Clause 105 amends section 17 of the CMA so that the Minister of Transport, after consulting with the board of directors, is responsible for designating a chairperson from among their number for a renewable term of up to two years.

Clause 106 adds section 19(1)(b.1), which states that a port authority director ceases to hold office when that director no longer has a valid security certification.

2.6.4 Regulations Regarding the Corporate Management and Control of Port Authorities (Clause 107)

Section 27(1) of the CMA currently lists subject matters for which the Governor in Council may make regulations for the corporate management and control of port authorities. Clause 107(1) adds three subject matters to the list:

- the administrative requirements for a port authority's advisory committees established under section 33.1 added to the CMA by clause 110 of the bill;
- the conduct of governance assessments under section 33.2 added to the CMA by clause 110 of the bill and the information a port authority must provide to the Minister in its report about these assessments; and
- the information that must be included in a port authority's business plan under section 39 of the CMA.

Clause 107(2) adds section 27(1.1) to the CMA, giving the Governor in Council new regulation-making powers "respecting the impact of the operation of a port by a port authority on the environment, including climate change, and the impact of climate change on the operation of a port." Clause 107(2) also amends section 27(2) (Application) and section 27(3) (Binding on His Majesty) of the CMA to make reference to new section 27(1.1).

2.6.5 Capacity and Powers of a Port Authority (Clause 108)

Under section 28(2)(a) of the CMA, the power of a port authority to operate a port is limited to the power to engage in "port activities related to shipping, navigation, transportation of passengers and goods, handling of goods and storage of goods, to the extent that those activities are specified in the letters patent." Clause 108(1) amends that section to specify that these activities include "activities carried on in relation to real property and immovables that are not adjacent to navigable waters."

Clause 108(2) repeals section 28(5.1) of the CMA which addresses compliance with any code that governs the port authority's power to borrow.

2.6.6 Port Authority Borrowing Policy (Clause 109)

Clause 109 amends section 30.1 of the CMA, which deals with a port authority's borrowing policy, to account for the repeal of section 28(5.1). Under amended section 30.1, the directors of a port authority must submit its borrowing plan to the Minister of Transport within a year after the day on which the section comes into force or the day on which its letters patent are issued, whichever is later.

After that first plan, the directors must submit the port authority's borrowing plan in accordance with the schedule set out in its letters patent.

2.6.7 Port Authority Governance (Clause 110)

Clause 110 adds sections 33.1 and 33.2 to the CMA, which relate to the governance of port authorities. Under new section 33.1(1), port authorities must create a community advisory committee, an Indigenous advisory committee and a local government advisory committee in accordance with the ports' letters patent. Port authorities must consult with these advisory committees regularly with respect to issues related to port activities, under new section 33.1(2).

Under new section 33.2, a port authority must assess its governance practices in accordance with the regulations at least once every three years, and submit a report to the Minister of Transport.

2.6.8 Port Authority Financial Statements and Business Plans (Clauses 111 to 115)

Clause 111 amends section 35(2) of the CMA. It adds that port authorities must publish a notice on their website 30 days before their annual meeting, and the notice must specify that the port authority's financial statements are available at the authority's registered office and on its website.

Under section 37(1) of the CMA, a port authority shall make its annual financial statements available at its registered office at least 30 days before its annual meeting. Clause 112(1) amends this section so that the port authority must make these statements available both on its website and at its registered office.

Section 37(2) of the CMA focuses on the contents of those financial statements, which "shall be prepared in accordance with generally accepted accounting principles." Clause 112(2) amends this section to specify that the statements must be prepared in accordance with "the International Financial Reporting Standards, adopted by the Accounting Standards Board and effective as of January 1, 2011."

Clause 113 adds section 37.1 to the CMA to address the quarterly financial reports of port authorities. New section 37.1(1) requires port authorities to prepare quarterly financial reports for each of the first three quarters of the financial year.

Under new section 37.1(2), these quarterly reports, which must be prepared according to the aforementioned International Reporting Standards, must contain the quarterly financial statement, along with a financial statement for the beginning of the year to the end of that quarter. The quarterly reports must also contain comparative financial

information for the preceding financial year and a statement outlining the results, risks and significant changes in operations, personnel and programs.

Under new section 37.1(3), the reports must be published on the port authority's website within 60 days after the end of the applicable quarter.

Clause 114 amends sections 39 and 40 of the CMA. Section 39 is amended so that the five-year business plan that port authorities must submit to the Minister of Transport contains any information "prescribed by regulation." In the current version of section 39, port authorities are to submit a plan containing "any information that the Minister may require."

Section 40 of the CMA focuses on the presentation of information in port authorities' financial statements and business plans. The section is amended so that this presentation also applies to the quarterly financial reports provided for in new section 37.1(1).

Sections 41 to 43 of the CMA deal with the "special examinations" of port authorities' financial records that must be carried out at least once every five years. Clause 115 amends sections 42(3) and 42(4) to require port authorities to post on their website both a notice of having received the report and a copy of the report on their website; this is in addition to the existing requirement that a notice be published in a major newspaper distributed in the area where the port is located and that the report itself be available to the public at the port authorities' registered office during normal business hours.

2.6.9 Climate Change Plans and Reports (Clause 116)

Clause 116 adds sections 43.1 to 43.5 to the CMA, which deal with climate change plans and reports. Under new section 43.1(1), a port authority must prepare a five-year climate change plan within a year of the day section 43.1 comes into force or within a year from the day on which its letters patent are issued, whichever is later. This plan must be prepared every five years thereafter.

New section 43.1(2) enumerates what the plan must contain:

- a greenhouse gas (GHG) emissions reduction target;
- a description of actions that will be taken to achieve that target;
- information about any material changes in the content provided in the previous plan; and
- any prescribed information.

Similarly, new section 43.2(1) requires a port authority to prepare a five-year plan for climate change adaptation actions. The plan must be prepared either two years after the day on which section 43.2 comes into force, or two years after the day on which the authority's letters patent are issued, whichever is later. These plans must be prepared every five years thereafter.

New section 43.2(2) enumerates what this adaptation plan must contain:

- a description of current and anticipated impacts of climate change on the port's operations and assets, along with any adaptation actions to be taken in response to those impacts;
- a description of current and future commercial opportunities arising from the impacts of climate change on the port's operations and assets, if any, along with any actions the port authority has taken to benefit from these opportunities;
- information about any material changes in the content provided in the previous plan; and
- any prescribed information.

Under new sections 43.3 and 43.4, these five-year plans must be developed in a way that is consistent with recognized international standards, and they must be published on the port authority's website within three months after the end of the fiscal year in which the plans were prepared.

New section 43.5(1) requires port authorities to publish an annual report on these five-year plans on their website within three months after the end of each fiscal year. Under new section 43.5(2), these annual reports must contain:

- an inventory of GHG emissions resulting from the port's operations, presented in a manner consistent with recognized international standards;
- an update on the implementation of each five-year plan; and
- any prescribed information.

2.6.10 Leases and Licences of Federal Property (Clause 117)

Clause 117 amends section 45(3.1) of the CMA, which deals with the powers of a port authority when exercising its responsibilities regarding leases and licences of federal property. It adds section 45(3.01) to allow a port authority situated in Quebec to "renounce the benefit of accession in respect of any construction or work built on a federal immovable that the port authority manages" for the duration of a lease.[27] This clause also amends section 45(3.1) so that it applies to new section 45(3.01).

2.6.11 Land-Use Plans (Clause 118)

Clause 118(1) amends section 48(1) of the CMA, which focuses on port authorities' land-use plans. The section is amended so that after a port authority publishes its first land use plan, it must then publish subsequent ones according to the schedule set out in their letters patent.

Clause 118(3) amends sections 48(4) to 48(8) of the CMA. Section 48(4) is amended so that a port authority must publish a notice of its proposed land-use plan on its website (in addition to publishing the notice in a major newspaper located in the municipality where the port is located). The port authority must also publish the proposed land-use plan on its website, along with any related documents necessary to understand the plan.

Section 48(5) of the CMA focuses on the contents of the notice. Bill C-33 amends this section to clarify that the section applies to a notice of a proposed land-use plan.

Section 48(6) of the CMA contains requirements regarding the adoption of the plan. The bill amends this section to add that, after the port authority considers any representations made by stakeholders in relation to a proposed land-use plan, it can make any amendments that it considers appropriate before adopting the plan.

Section 48(7) of the CMA on the notice and publication of an adopted land-use plan is amended so that a port authority must publish on its website (in addition to publishing the notice in a major newspaper located in the municipality where the port is located) a notice of the adoption of the land-use plan, including information about where the plan may be obtained. The port authority must also publish on its website the land-use plan itself, along with a summary of what it heard from stakeholders.

2.6.12 Fixing of Fees (Clause 119)

Clause 119 amends section 49(1) of the CMA so that a port authority's power to fix fees is subject to any regulations made under section 62 of the CMA.

2.6.13 Regulations (Clause 120)

Section 62(1) of the CMA lists the areas in which the Governor in Council can make regulations. Clause 120(1) adds two areas to this list: management of marine traffic (along with the fees to be paid, and information-sharing by users and port authorities in support of that management), and the regulation of activities carried out by or on a vessel moored or at anchor in a port. Clause 120(2) adds another area to the list,

namely the information or documents that a port authority or its subsidiary must provide to the Minister of Transport.

2.6.14 Ministerial Orders (Clauses 121 and 122)

Clause 121 amends section 67(1) of the CMA, regarding the Minister of Transport's power to fix fees. The amendment specifies that the Minister must fix these fees by order.

Clause 122 adds section 107.1 to the CMA regarding ministerial orders. Under new section 107.1(1), where the Minister of Transport is of the opinion that there is an imminent risk of harm to "national security, national economic security or competition that constitutes a significant threat to the safety and security of persons, goods, ships or port facilities, or the security of supply chains,"), the Minister may issue an order requiring a port authority to take any measure or stop any activity that the Minister considers necessary to prevent that harm.

Under new section 107.1(2), every port authority subject to such an order must comply with it once they have been notified of the order's substance. These orders are also exempt from certain parts of the *Statutory Instruments Act* under new section 107.1(3).

The Minister of Transport must publish the order on Transport Canada's website under new section 107.1(4). An exception to this publication requirement is allowed under new section 107.1(5) if, in the opinion of the Minister, the order "contains confidential or privileged information or information the publication of which would pose a risk to national security, national economic security or competition."

2.6.15 Consequential Amendment to the *Transportation Appeal Tribunal of Canada Act* (Clause 123)

The *Transportation Appeal Tribunal of Canada Act* (TATCA) is amended by clause 123 to reflect the section number changes made to both the CMA and TDGA in this bill. The TATCA gives jurisdiction to the Transportation Appeal Tribunal of Canada, a quasi-judicial body, to conduct reviews and hear appeals as provided in federal transportation legislation.

2.6.16 Coordinating Amendment (Clause 124)

Both Bill C-33 and another bill currently before Parliament, Bill C-26, An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts[28] contain changes that affect the jurisdiction

of the TATCA. A coordinating amendment is necessary to ensure that the jurisdiction specified in the TATCA accurately reflects the amendments made by both these bills.

Under clause 124, if Bill C-26 receives Royal Assent, then, on the first day on which both section 18 of Bill C-26 and section 123 of Bill C-33 are in force, section 2(3) of the TATCA is replaced by the following:

> Jurisdiction in respect of other Acts
>
> (3) The Tribunal also has jurisdiction in respect of reviews and appeals in connection with administrative monetary penalties provided for under sections 177 to 181 of the *Canada Transportation Act* [reflecting changed section numbers], sections 127 to 133 of the *Critical Cyber Systems Protection Act*, sections 43 to 55 of the *International Bridges and Tunnels Act*, sections 129.01 to 129.17 of the *Canada Marine Act* [reflecting changed section numbers], sections 16.1 to 16.25 of the *Motor Vehicle Safety Act*, sections 39.1 to 39.26 of the *Canadian Navigable Waters Act*, sections 130.01 to 130.19 of the *Marine Liability Act* and sections 32.1 to 32.28 of the *Transportation of Dangerous Goods Act, 1992*.

2.7 COMING INTO FORCE (CLAUSE 125)

Certain specified provisions of Bill C-33 come into force on a day to be fixed by order of the Governor in Council. These are:

- section 26(1);
- sections 28, 32 and 42(3);
- sections 30, 33 and 42(2);
- section 40, 42(5) and 43(2);
- sections 94 to 98;
- section 99; and
- section 121.

All other provisions of the bill come into force once the bill receives Royal Assent.

NOTES

1. Bill C-33, An Act to amend the Customs Act, the Railway Safety Act, the Transportation of Dangerous Goods Act, 1992, the Marine Transportation Security Act, the Canada Transportation Act and the Canada Marine Act and to make a consequential amendment to another Act, 44th Parliament, 1st Session.
2. Transport Canada, *Strengthening the* Port System and Railway Safety in Canada Act*: Minister of Transport introduces a new bill to make our supply chain stronger*, News release, 17 November 2022.
3. Ibid.
4. Transport Canada, *Policy statement on port investment*, Backgrounder.
5. Transport Canada, *Strengthening the* Port System and Railway Safety in Canada Act*: Minister of Transport introduces a new bill to make our supply chain stronger*, News release, 17 November 2022.
6. Ibid.
7. *Rail Safety Act* Review Panel, *Enhancing Rail Safety in Canada: Working Together for Safer Communities*, Final report, May 2018.
8. Ibid.
9. Transport Canada, *What we heard report: Ports modernization review*.
10. Ibid.
11. Government of Canada, *Action. Collaboration. Transformation: Final Report of The National Supply Chain Task Force 2022*.
12. Ibid, p. 29.
13. Transport Canada, *Proposed legislative changes to support building stronger supply chains*, Backgrounder.
14. *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.)).
15. Government of Canada, *Action. Collaboration. Transformation: Final Report of The National Supply Chain Task Force 2022*, p. 17.
16. *Railway Safety Act*, R.S.C. 1985, c. 32 (4th Supp.)).
17. The English version of the bill uses the term “assurance of compliance” and can be translated by “assurance de conformité,” which describes what is meant more precisely than the term “transaction” used in the French version.
18. *Transportation of Dangerous Goods Act*, 1992, S.C. 1992, c. 34.
19. *Marine Transportation Security Act*, S.C. 1994, c. 40.
20. Argyro Kepesedi, United Nations Conference on Trade and Development, “Maritime Autonomous Surface Ships: A critical ‘MASS’ for legislative review,” *Transport and Trade Facilitation Newsletter*, No. 96, Fourth Quarter 2022,13 December 2022.
21. *Canada Transportation Act*, S.C. 1996, c. 10.
22. Transport Canada, *Proposed legislative changes to support building stronger supply chains*, Backgrounder.
23. *Competition Act*, R.S.C. 1985, c. C-34.
24. Transport Canada, *Proposed legislative changes to support building stronger supply chains*, Backgrounder.
25. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.).
26. *Canada Marine Act*, S.C. 1998, c. 10.

27. Under section 1110 of the *Civil Code of Québec*, "[s]uperficies results from division of the subject of the right of ownership of an immovable, transfer of the right of accession or renunciation of the benefit of accession." See *Civil Code of Québec*, c. CCQ-1991, s. 1110.

    If a port authority were to renounce the benefit of accession in respect of a construction or work built on a federal immovable that it manages, as allowed by new section 45(3.01) of the TDGA, the superficiary who built that construction or work would be its temporary owner for the duration of the lease. See Stikeman Elliot, *The Creation of Superficies as an Acquisition Method*, 14 September 2010.

28. Bill C-26, An Act respecting cyber security, amending the Telecommunications Act and making consequential amendments to other Acts, 44th Parliament, 1st Session.