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Legislative Summary

BILL C-2: AN ACT TO PROVIDE FURTHER SUPPORT IN RESPONSE TO COVID-19

44-1-C2-E

1 February 2022

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Legislative Summary of Bill C-2
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-2: AN ACT TO PROVIDE FURTHER SUPPORT IN RESPONSE TO COVID-19

1 BACKGROUND

Bill C-2, An Act to provide further support in response to COVID-19¹ was introduced in the House of Commons on 24 November 2021 by the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, and received first reading on the same day. On 2 December 2021, the bill received second reading and was referred to the House of Commons Standing Committee on Finance. Consideration in committee was completed on 14 December 2021. The bill completed third reading in the House of Commons, and was also passed in the Senate, on 16 December 2021. It received Royal Assent on 17 December 2021.

Bill C-2 has five parts:

- Part 1 amends the *Income Tax Act* (ITA) and the *Income Tax Regulations* (ITR) to extend subsidies under the Canada Emergency Wage Subsidy (CEWS), the Canada Emergency Rent Subsidy (CERS), and the Canada Recovery Hiring Program (CRHP) to 7 May 2022, and to restrict eligibility for these benefits.
- Part 2 enacts the Canada Worker Lockdown Benefit Act (CWLBA), which authorizes the payment of a new temporary benefit that will be available to individuals whose ability to earn income is affected by a lockdown order. In addition, Part 2 makes consequential amendments to the ITA and ITR.
- Part 3 amends the *Canada Recovery Benefits Act* (CRBA) to, among other things, extend the eligibility period for the Canada recovery sickness benefit (CRSB) and Canada recovery caregiving benefit (CRCB) to 7 May 2022, as well as extend the duration of both benefits. It also makes a related amendment to the *Canada Recovery Benefits Regulations*.
- Part 3.1 sets out the requirement for a performance audit by the Auditor General of Canada of benefits paid under the CWLBA, the CRBA, the Canada Emergency Response Benefit (CERB) and the CEWS. It also requires a report on the Auditor General's review to be submitted to, and tabled by, the Speaker of the House of Commons.
- Part 4 amends the *Canada Labour Code* (CLC) to, among other things, increase the number of weeks of leave entitlement for federally regulated employees who are unable to work for reasons related to COVID-19. This leave will be in place until 7 May 2022, when it will be repealed along with other related

provisions. Part 4 also makes related and coordinating amendments to the *Budget Implementation Act, 2021, No. 1*.

Bill C-2 is the latest in a series of government bills introduced to provide supports to individuals and businesses during the COVID-19 pandemic. Related bills adopted in the 1st and 2nd Sessions of the 43rd Parliament include, but are not limited to:

- Bill C-13, An Act respecting certain measures in response to COVID-19² (which, among other things, amended the CLC to introduce leave for federally regulated employees related specifically to COVID-19);
- Bill C-14, A second Act respecting certain measures in response to COVID-19³ (which amended the ITA to introduce the CEWS); and
- Bill C-4, An Act relating to certain measures in response to COVID-19⁴ (which enacted the CRBA, authorizing the payment of the Canada recovery benefit, the Canada recovery sickness benefit, and the Canada recovery caregiving benefit).

The *2021 Budget Implementation Act* (Bill C-30, An Act to Implement Certain Provisions of the Budget Tabled in Parliament on April 19, 2021 and Other Measures)⁵ also included provisions related to pandemic support. Among other things, Bill C-30 amended the ITA to introduce the Canada Recovery Hiring Program.

2 DESCRIPTION AND ANALYSIS

Bill C-2 contains 29 clauses. Key amendments are discussed below.

2.1 PART 1: AMENDMENTS TO THE *INCOME TAX ACT*

Part 1 amends the ITA⁶ and the ITR⁷ to extend subsidies under the CEWS, the CERS, and the CRHP until 7 May 2022. It also changes the definition of “baseline percentage” to limit the application of the CEWS and the CERS to certain eligible entities in the tourism and hospitality sector and other hardest-hit organizations that have faced a significant revenue decline over the course of 12 months of the pandemic, as well as a current-month revenue decline (clauses 1 to 4).

2.1.1 Amendments applicable to both the Canada Emergency Wage Subsidy and the Canada Emergency Rent Subsidy

In order to extend the subsidies provided under the CEWS and the CERS, clause 1(8) amends the definition of “qualifying period” in section 125.7(1) of the ITA by adding qualifying periods 23 to 28. The 23rd qualifying period begins on 21 November 2021

and the 28th qualifying period ends on 7 May 2022. Additional qualifying periods may be added by regulation until no later than 2 July 2022.

Consequential amendments add references to the new qualifying periods in the definitions for “current reference period” (clause 1(3)) and “prior reference period” (clauses 1(6) and 1(7)).

Clause 1(2) amends the definition of “base percentage” in subsection 125.7(1) of the ITA. The base percentage is used to calculate the base portion of the CEWS. It is multiplied by “the amount of eligible remuneration paid to the eligible employee by the eligible employer for a [qualifying] period, on remuneration of up to \$1,129 per week.”⁸ It is also used in the calculation of the rent subsidy rate under the CERS.

The base percentage is increased in the ITA for the 20th qualifying period that begins on 29 August 2021 to 25%, consistent with the rate that was prescribed by regulation for that qualifying period, when the eligible entity’s revenue reduction percentage is greater than or equal to 50%, or in other cases, the multiplier in the formula provided is increased to 0.625. This has the effect of extending the base percentage applicable to the 19th qualifying period that begins on 1 August 2021 to the following qualifying period.

The base percentage is reduced to its previous rate of 10% when the eligible entity’s revenue reduction percentage is greater than or equal to 50%, or the amount provided by the formula for the other cases, for the 21st qualifying period that begins on 26 September 2021.

For the 22nd qualifying period that begins on 24 October 2021 to the 26th qualifying period that ends on 12 March 2022, the changes introduced by clause 1(2) make the CEWS and the CERS available only to the following entities:

1. an eligible entity that has both a revenue reduction percentage for the qualifying period and a prior year revenue decline of at least 50%;
2. an eligible entity that is a qualifying tourism or hospitality entity that has both a revenue reduction percentage for the qualifying period and prior year revenue decline of at least 40%; and
3. an eligible entity that is subject to a qualifying public health restriction and that has a revenue reduction percentage for the qualifying period of at least 40%.

In the first case, the base percentage is the lesser of 50% and the percentage determined by a formula, which is at least 10%.

In the second and third cases, the base percentage is the lesser of 75% and the eligible entity's revenue reduction percentage for the qualifying period, which must be equal to or greater than 40%.

For the 27th qualifying period that begins on 13 March 2022 and the 28th qualifying period that ends on 7 May 2022, the rules are the same as those applicable to the 22nd to 26th qualifying periods, except the base percentage in each case is halved.

For a qualifying period after the 28th qualifying period, the base percentage will be reduced to zero if there is no percentage determined by regulation.

Clause 1(16) adds three definitions to sections 125.7(1) of the ITA, which all pertain to the amendments made by clause 1(2) to the definition of “base percentage”:

- “prior year revenue decline” means the average of all percentages (which may be negative) that constitute the revenue reduction percentage of the eligible entity for a qualifying period that is any of the first qualifying period to the 13th qualifying period, with some adjustments, throughout which the eligible entity was either carrying on its ordinary activities, or not carrying on its ordinary activities because of a public health restriction;
- “qualifying public health restriction” means a public health restriction that lasts for at least seven days in the qualifying period, affects one or more qualifying properties of the eligible entity, or of one or more of its specified tenants, where it carries out the restricted activities and it is reasonable to conclude that at least approximately 25% of the qualifying revenue of the eligible entity, together with the qualifying revenues of its specified tenants, are derived from the restricted activities;
- “qualifying tourism or hospitality entity” has the meaning assigned by regulation. Clause 2 introduces the definition of “qualifying tourism or hospitality entity” in section 8901.1(1) of the ITR. It can be summarized as an eligible entity which derives its qualifying revenue primarily from carrying on one or more activities in the tourism or hospitality industry. Several examples are provided and include restaurants, hotels, travel agencies, museums, fitness and recreational sports centres and certain duty-free retail stores.

Clause 1(15) amends the definition of “top-up percentage” in subsection 125.7(1) of the ITA. The top-up percentage is used to calculate the top-up portion of the CEWS intended for eligible entities with revenue declines of over 50%. It is multiplied by the amount of eligible remuneration paid to the eligible employee by the eligible employer for a qualifying period, on remuneration of up to \$1,129 per week. It is also used in the calculation of the rent subsidy rate under the CERS.

The top-up percentage is increased in the ITA for the 20th qualifying period that begins on 29 August 2021 to the lesser of 15% or the amount provided by the

formula, the multiplier of which is increased by 0.25, consistent with the regulation for that qualifying period. This has the effect of extending the top-up percentage applicable to the 19th qualifying period that begins on 1 August 2021 to the following qualifying period.

The top-up percentage is reduced to its previous rate of 10% or the amount provided by the formula for the 21st qualifying period that begins on 26 September 2021.

The top-up percentage is reduced to zero for qualifying periods after the 21st qualifying period, to coincide with the changes made to the definition of base percentage described above.

2.1.2 Canada Emergency Wage Subsidy

Clause 1(21) amends section 125.7(14) of the ITA and clause 1(22) adds new section 125.7(14.1) to the ITA to extend the obligation of certain publicly listed corporations to repay the CEWS amounts received beyond the 22nd qualifying period that begins on 24 October 2021 to the 24th qualifying period that ends on 15 January 2022 and any subsequent qualifying period (the “excess refund amount”).

Consequential amendments are made by clauses 1(4) and 1(5) to the definition of “executive compensation repayment amount” in section 125.7(1) of the ITA which is used to determine the excess refund amount.

Additionally, new formulas are introduced to calculate the executive compensation repayment amount and the excess refund amount for the 24th qualifying period that begins on 19 December 2021 and subsequent qualifying periods.

Since the excess refund amount cannot exceed in any case the amount of the CEWS received by the eligible entity in a qualifying period, the new formula to calculate the executive compensation repayment amount provides that any excess of an amount calculated with the formula applicable to the 17th to 23rd qualifying periods on the amount of the CEWS received by the eligible entity for the same qualifying periods must be carried over to the 24th qualifying period and subsequent qualifying periods. The executive compensation repayment amount for the 24th qualifying period and subsequent qualifying periods will thus be equal to the aggregate 2022 compensation for specified executives minus the aggregate 2019 compensation for specified executives, plus the amount carried over.

The excess refund amount for such qualifying periods will be the lesser of the amount of the CEWS received and the greater of the following amounts:

- the executive compensation repayment amount; and

- the amount of taxable dividends paid by an entity that is a publicly traded company or its subsidiary to individuals who hold common shares.

This is in line with the government's stated objective when introducing this clawback measure⁹ that "any publicly listed corporation receiving the wage subsidy and found to be paying its top executives more in 2021 than in 2019 ... repay[s] the equivalent in wage subsidy amounts received."¹⁰

Clause 1(18.1) adds new section 125.7(2.01) to the ITA which provides that no overpayment is deemed to have arisen during a qualifying period with respect to an entity that is a publicly traded company or its subsidiary if it paid taxable dividends to individuals who are holders of common shares during the qualifying period. This clause, along with others, were introduced to Bill C-2 by the House of Commons Standing Committee on Finance which reported the bill back with amendments on 13 December 2021,¹¹ all of which were adopted by the House of Commons on 16 December 2021.

Clauses 1(17) and 1(18) amend section 125.7(2) of the ITA to limit the qualifying periods during which an amount for eligible employees on leave with pay (furloughed employees) may be included in the computation of the CEWS. Such an amount may only be included for the 5th qualifying period that begins 5 July 2020 through the 19th qualifying period that ends 28 August 2021.

The amendments made by clauses 1(17) and 1(18) are retroactive to 29 August 2021, pursuant to clause 1(23).

Clause 4 repeals section 8901.2(0.1) of the ITR which introduced the definitions for the expressions "prior year revenue decline", "qualifying public health restriction", "qualifying tourism or hospitality entity", as Bill C-2 moves all these definitions in other sections of the ITA or the ITR. Clause 4 also repeals section 8901.2(8) of the ITR, which set the "recovery wage subsidy rate" to 50% for the 22nd qualifying period. These sections were initially added to the ITR as part of the Regulations Amending the Income Tax Regulations (COVID-19 – Twenty-Second Qualifying Period).¹²

2.1.3 Canada Emergency Rent Subsidy

Further to the introduction of new qualifying periods by clause 1(8), the last of which ends on 7 May 2022, consequential amendments add references to these new qualifying periods in the definitions for "rent subsidy percentage" and "rent top-up percentage" in section 125.7(1) of the ITA (clauses 1(12) and 1(14)).

For a qualifying period after the 28th qualifying period, the rent subsidy percentage and the rent top-up percentage will be reduced to zero if there is no percentage determined by regulation (clauses 1(13) and 1(14)).

Clauses 1(19) and 1(20) amend the formula provided in section 125.7(2.1) of the ITA for the computation of the CERS by increasing the maximum amount of qualifying rent expense to one million dollars for the 22nd qualifying period that begins on 24 October 2021 and subsequent periods.

2.1.4 Canada Recovery Hiring Program

Clause 1(1) amends the preamble of section 125.7(1) of the ITA in order for the definitions provided under this section to apply to the penalty of section 163(2.902) of the ITA which applies when the anti-avoidance rule intended to prevent amounts from the CRHP from being improperly obtained is triggered. This rule was added by the *Budget Implementation Act, 2021, No. 1*.¹³

Consequential amendments add references to the new qualifying periods in the definitions for “qualifying recovery entity” and “recovery wage subsidy rate” in section 125.7(1) of the ITA (clauses 1(10) and 1(11)).

Clause 1(9) amends the definition of “qualifying recovery entity” in section 125.7(1) of the ITA to provide clarity on the deadline by which an eligible entity must file an application under the CRHP. This amendment has the effect of “clarify[ing] that an eligible entity is not required to apply for the CEWS in order to qualify for the CRHP.”¹⁴

Clause 1(10) amends the definition of “qualifying recovery entity” in section 125.7(1) of the ITA to provide that the rate of revenue reduction percentage may be determined by regulation.

Clause 1(11) amends the definition of “recovery wage subsidy rate” in section 125.7(1) of the ITA to increase the rate to 50% for the 22nd qualifying period that begins on 24 October 2021 and subsequent qualifying periods.

2.2 PART 2: CANADA WORKER LOCKDOWN BENEFIT

Part 2 of the bill creates *An Act establishing the Canada worker lockdown benefit* (short title: the *Canada Worker Lockdown Benefit Act*). The Canada Worker Lockdown Benefit or (the lockdown benefit) replaces the Canada recovery benefit or (CRB) which ended on 23 October 2021.¹⁵

The lockdown benefit, like the CRB, targets workers who have been economically impacted by the pandemic and are not eligible for Employment Insurance (EI).¹⁶

To be eligible, in addition to being out of work or experiencing a 50% reduction in weekly income, the worker must not be receiving: the CRSB, the CRCB, short-term disability benefits, EI maternity or parental benefits or Québec Parental Insurance Plan benefits.

The proposed lockdown benefit differs significantly from the CRB in that: 1) it is a lower amount than the CRB (the maximum benefit is \$300 a week) (section 9); 2) it is only available to workers whose work interruption is a direct result of a government-imposed public health lockdown (section 4)(1)(f))¹⁷ and section 3) it is not available to workers who have lost income or employment due to refusal to adhere to a vaccine mandate (sections 4(3) and 4(4)).

Provisions establishing the CWLBA are contained in clause 5 of Bill C-2. Clauses 6 to 8 contain consequential amendments to the ITA and the ITR. Only key elements of clause 5 are discussed below.

2.3 CANADA WORKER LOCKDOWN BENEFIT (PART 1)

2.3.1 Lockdown Region

The lockdown benefit is available to workers whose loss of employment or employment income is related to measures imposed by a lockdown order that applies in a lockdown region (section 4(f)). Section 3(1) of the CWLBA allows the Minister of Employment and Social Development to recommend that the Governor in Council designate any region in Canada as a lockdown region. There are two conditions for making such a recommendation. First, the Minister must be of the opinion that doing so is in the public interest. Second, an entity that is lawfully entitled to impose public health measures, such as a provincial government or municipality, must have closed commercial and non-essential services or required persons to stay at home except for essential reasons for at least 14 consecutive days. The period during which a region may be designated as a lockdown region can be shortened by regulation (section 3(2)). The period for which a region is designated as a lockdown region starts on the Sunday of the week that the public health measures apply and ends on the Saturday of the week that they cease to apply (section 3(3)), meaning that the region will potentially be designated as a lockdown region for longer than the actual period that the public health measures are in place.

2.3.2 Eligibility

The lockdown benefit period is 24 October 2021 to 7 May 2022, and can be extended by regulation to 2 July 2022. Applications for this benefit cannot be made more than 60 days after the week for which the benefit is being claimed, unless the week the application relates to ends before the day on which section 5(2) comes into force.

In that case, the application can be made within 60 days after the end of the week during which that section comes into force (section 5(2)). To qualify for the benefit, an individual must have a valid Social Insurance Number (section 4(1)(a)), be at least 15 years old (section 4(1)(b)), have been resident and present in Canada during the week (section 4(1)(c)) and have filed an income tax return for 2020 (section 4(1)(j)). The minister must pay the \$300 per week lockdown benefit to a person who applies and is eligible for it (sections 8 and 9).

If the lockdown benefit application relates to a week that started in 2021, a person must have had a minimum income of \$5,000 for 2020 or the 12 months prior to the application from:

- employment;
- self-employment;
- benefits under the *Canada Emergency Response Benefit Act* or the CRBA,¹⁸ to which they were entitled and were paid;
- unemployment benefits payable under Part I, VII.1 or VIII of the *Employment Insurance Act*;
- benefits related to pregnancy, care of newborn children or related to adoption of a child; and
- other income defined in regulations (section 4(1)(d)).

If the lockdown benefit application relates to a week that started in 2022, a person must have had a minimum income of \$5,000 for 2020, 2021 or the 12 months prior to the application from the same sources of employment listed for an application that started in 2020 (section 4(1)(e)).

Lockdown measures must result in:

- a person losing their employment during the period public health measures were imposed (including up to the Saturday of the week that the measures were lifted) (section 4(1)(f)(i));
- a self-employed person being unable to do their normal work (section 4(1)(f)(ii)); or
- an employed or self-employed person's average weekly income being reduced by at least 50% (section 4(1)(f)(iii)).

A person is not eligible for the lockdown benefit if loss of employment, inability to do self-employment work or a reduction in income is due to failure to comply with a COVID-19 vaccination requirement (section 4(3)).

A person is not eligible for the lockdown benefit if the following income was paid or payable:

- benefits related to pregnancy, care of newborn children or related to adoption of a child (section 4(1)(g)(i));
- a Canada recovery sickness benefit or a Canada recovery caregiving benefit (section 4(1)(g)(ii));
- unemployment benefits payable under Part I (benefits for insured persons who have had an interruption of earnings from employment and who have accumulated at least 420 hours of insurable employment), Part VII.1 (benefits for self-employed persons) or Part VIII (benefits for self-employed persons engaged in fishing) of the *Employment Insurance Act* (section 4(1)(g)(iii)); or
- other income set out in regulations (section 4(1)(g)(iv)).

A person is also not eligible if they have quit their employment or chosen to stop working (unless doing so was reasonable) (section 4(1)(h)), nor is a person eligible if they:

- did not return to work when it was reasonable to do so and were requested by their employer to return (section 4(1)(h)(i));
- did not resume self-employment when it was reasonable to do so (section 4(1)(h)(ii)); or
- declined a reasonable work offer (section 4(1)(h)(iii)).

Not complying with a COVID-19 vaccination requirement is not a reasonable excuse for quitting employment, choosing to stop working, not returning to work, not resuming self-employment, or declining a reasonable work offer (section 4(4)).

Finally, a person is not eligible for the lockdown benefit if they entered Canada and were isolating or quarantining under a *Quarantine Act* order as a result, unless they travelled for a necessary medical treatment or accompanied a person for a necessary medical treatment who could not travel alone (section 4(1)(i)(i)). A medical practitioner must certify that the medical treatment was necessary, and in the case of a person accompanying someone else for medical treatment, that the person seeking treatment could not travel alone. If a person entered into Canada and was required to self-isolate under a *Quarantine Act* order, but would not normally have had to quarantine, they would be eligible for the lockdown benefit (section 4(1)(i)(ii)).

Failure to file an income tax return for 2021 by 31 December 2022 will deem a person who received a lockdown benefit in 2021 not to be entitled to that benefit (section 4(5)). Similarly, failure to file an income tax return for 2021 and 2022 by 31 December 2023 will deem a person who received a lockdown benefit in 2022 not to be entitled to that benefit (section 4(6)). A person must attest to meeting the eligibility requirement (section 6(1)). However, they do not have to attest to income if they have already received a lockdown benefit and attest to having received it (section 6(2)).

2.4 GENERAL (PART 2)

Many of the sections in Part 2 parallel provisions contained in *An Act relating to certain measures in response to COVID-19* (formerly Bill C-4), from the 2nd Session of the 43rd Parliament.

2.4.1 Regulations

Section 10 sets out the regulation-making authority of the Governor in Council, including the authority to amend the definition of “lockdown order.” The end of the benefit date can also be extended by regulation to no later than 2 July 2022 (section 11).

2.4.2 Provision of Documents/Obligation to Appear

For the purpose of verifying compliance or preventing non-compliance, the minister can require a person to provide information or documents (section 13(1)). The minister can also require a person who has applied for or received a lockdown benefit to appear in respect of their application for that same purpose (section 13(2)). Failure to provide documents or to appear makes a person ineligible for a lockdown benefit (section 13(3)).

2.4.3 Disclosing Personal Information Collected under the *Quarantine Act*

The Minister of Health can disclose personal information collected under the *Quarantine Act* in relation to the eligibility criteria for the lockdown benefits in the case of quarantine/self-isolation resulting from travel for medical treatment for the person or for a person who accompanied someone else for medical treatment, or if a person entered into Canada and as a result was required to self-isolate under a *Quarantine Act* order, but would not normally have been required to quarantine (section 14).

2.4.4 Certain Restricted Actions

Section 15 clarifies that benefits under the CWLBA are not subject to bankruptcy or insolvency laws; cannot be assigned, charged, attached or given as security; cannot be retained by way of deduction, set-off or compensation under any Act of Parliament other than the CWLBA; and are not garnishable moneys for the purposes of the *Family Orders and Agreements Enforcement Assistance Act*.

2.4.5 Repayment

If a person has either received a lockdown benefit that they were not entitled to or were overpaid, the amount must be repaid as soon as feasible (section 16(1)). The amount that must be repaid is a debt to the Crown. It is recoverable by the Minister of Employment and Social Development (section 16(2)) and can be garnished from the person's financial institution or employer (section 17(1) and 17(2)).

The amount of the debt can be certified by the minister. The certificate's registration in Federal Court is equivalent to a Federal Court judgment for the amount specified in the certificate plus related registration costs (section 20). With some exceptions, there is a six-year limitation period relating to recovering the money owed (section 21(1)); exceptions to this limitation period are listed in sections 21(2) to 21(7)). Money owed can be recovered at any time through deduction from, set-off against, or compensation against any sum of money payable to the person by the Crown, excluding deemed overpayments for the purposes of the Canada child benefit.

2.4.6 Minister Reconsideration of Lockdown Benefit Application and Individual Request for Review

The minister has 72 months from the date of payment of the lockdown benefit to reconsider an application for benefits if the minister is of the opinion that there has been a false or misleading statement or representation (section 18(5)). Otherwise, the minister has 36 months to reconsider the application (section 18(1)).

A person (or a financial institution or employer that received a garnishment notice) can ask the minister to review a decision made under the CWLBA within 30 days of the person being notified of the decision (section 19(1) and 19(2)). The minister must confirm, vary or rescind the decision, and communicate that to the person who made the request (section 19(3) and 19(4)).

2.4.7 Violations and Offences

The violations and offences established in the CWLBA parallel those established by *An Act relating to certain measures in response to COVID-19* (formerly Bill C-4), from the 2nd Session of the 43rd Parliament.

2.4.7.1 Violations

Section 23(6) highlights that penalties under the CWLBA are imposed not as a punitive measure but instead to promote compliance. Knowingly making a false or misleading misrepresentation when applying for a lockdown benefit is a violation (section 23(1)(a)). A person who applies for and receives a benefit knowing they are not eligible is also committing a violation (section 23(1)(b)). However, a person who mistakenly believed that a representation was true or that they were eligible for the lockdown benefit is not subject to a penalty (section 23(5)).

A penalty can be imposed if the minister is of the opinion that the person has committed the violation. The minister can set the penalty amount at no more than 50% of the lockdown benefit that was or would have been received, to a maximum of \$5,000 for all penalties under section 23 (sections 23(2), 23(3) and 23(4)). The penalty is a debt to the Crown and is recoverable by the minister (section 26).

If a prosecution for the offence of the act that would be the subject of the violation has been instituted against a person, or if it has been more than three years since the act occurred, no penalty can be imposed (section 24).

A penalty can be rescinded or reduced by the minister in certain circumstances (section 25).

2.4.7.2 Offences

Section 27(1) establishes three offences under the CWLBA:

- knowingly using false identity information or someone else's identity information to obtain a lockdown benefit;
- counseling a person to apply for the lockdown benefit with intent to steal all or a substantial part of it; and
- knowingly making three or more false or misleading representations in relation to one or more applications if the total amount of the benefit paid would have been at least \$5,000.

Similar to the exception for mistaken belief that a representation is true in relation to the penalty provisions, a person who mistakenly believed that the identity information is not false or that the representations were true does not commit an offence (section 27(2)).

If a penalty for the act that would constitute the offence has already been imposed, the offence cannot be prosecuted (section 27(3)).

A person found guilty of this summary conviction offence is liable to a maximum fine of \$5,000 plus up to double the amount of the benefit that would have been received as a result of committing the offence, to a maximum of six months' imprisonment, or to both (clause 27(4)).

2.5 CONSEQUENTIAL AMENDMENTS

Clauses 6 to 8 make consequential amendments to the ITA and the ITR to add references to the CWLBA.

Clause 6 amends section 56(1)(r) of the ITA in order to make any amount received under the CWLBA taxable for the recipient, retroactive to 24 October 2021.

Clause 7 amends subparagraphs (vii.7), (vii.8) and (vii.9) of section 241(4)(d) of the ITA, which deals with the disclosure of taxpayer information, to include a mention of the CWLBA in all provisions allowing an official to provide taxpayer information to certain other officials under certain circumstances.

Clause 8 amends section 103(6)(h) of the ITR in order to include payments made under the CWLBA in the definition of a “lump sum payment.” This makes such payments subject to the withholding provisions of section 103(4) of the ITR, retroactive to 24 October 2021.

2.6 PART 3: AMENDMENTS TO THE *CANADA RECOVERY BENEFITS ACT* AND *CANADA RECOVERY BENEFITS REGULATIONS*

Part 3 of Bill C-2 amends the CRBA, which authorizes the payment of three temporary benefits included in Canada's economic response to the COVID-19 pandemic: the CRB, the CRSB and the CRCB.

The CRBA was enacted by Bill C-4, An Act relating to certain measures in response to COVID-19, following the phase-out of the CERB during the 2nd Session of the 43rd Parliament. The CERB, which was available from 15 March 2020 to 3 October 2020, was introduced to help mitigate the economic effects of the COVID-19 pandemic and provided \$500 per week for up to 28 weeks to eligible workers who had lost income for reasons related to the pandemic. It was administered jointly by the Canada Revenue Agency under the *Canada Emergency Response Benefit Act* (for workers who were not eligible for EI) and by Service Canada under the *Employment Insurance Act* (for workers who were eligible for EI).¹⁹

On 27 September 2020, the federal government transitioned most workers who were unable to work for reasons related to the COVID-19 pandemic to a simplified EI program, and introduced the CRB, the CRSB and the CRCB for those who were ineligible for EI.²⁰

The Library of Parliament's legislative summary for Bill C-30, the *2021 Budget Implementation Act* describes the CRB, the CRSB and the CRCB as follows:

The CRB offers income support to workers who are unemployed or experienced a 50% reduction in income due to COVID-19, while the CRSB targets those who are unable to work because they have contracted COVID-19, are more vulnerable to COVID-19 (e.g., due to an underlying condition), or have been advised to self-isolate. The CRCB offers income support to those who cannot work because they must care for a child or family member for reasons related to COVID-19.²¹

On 21 October 2021, the federal government confirmed that broad-based income and business support programs related to the pandemic, including the CRB, would end on 23 October 2021, in line with previously announced plans. (Note that applications for the CRB remain open until 22 December 2021, provided that applicants are applying for a period that ended before or on 23 October 2021 and are applying within 60 days of the end of that period.²²) The government also proposed extending the CRSB and CRCB to 7 May 2021, and increasing the maximum duration of each benefit by two weeks.²³ Part 3 of Bill C-2 reflects these proposals.

2.6.1 Eligibility for the Canada Recovery Sickness Benefit and the Canada Recovery Caregiving Benefit

Clauses 9(1) and 13(1) of Bill C-2 amend sections 10(1) and 17(1) of the CRBA to extend the end of the eligibility period for the CRSB and the CRCB from 20 November 2021 to 7 May 2022. Note that Bill C-2 makes many of the same changes to the CRSB and the CRCB, and that this document therefore discusses changes to the two benefits in tandem.

Existing eligibility criteria for the CRSB and CRCB are set out in sections 10(1) and 17(1) of the CRBA. Under these provisions, eligibility is tied to an individual's income for the preceding two calendar years, or the 12 months preceding the individual's application. The existing provisions refer to specific calendar years; therefore, amendments are necessary when benefits are extended. Clauses 9(2) and 13(2) of the bill add new sections 10(1)(e.1) and 17(1)(e.1) to the CRBA. These new sections stipulate that individuals applying for the CRSB or the CRCB for a week beginning in 2022 must have earned at least \$5,000 from eligible income sources in 2019, 2020, 2021, or in the 12 months preceding their application.

Accordingly, Bill C-2 amends sections 10(2) and 17(2) of the CRBA (which define self-employment income for the purposes of the \$5,000 income requirement), as well as sections 12(2) and 19(2) of the CRBA (which state that applicants for the CRSB or CRCB who attest that they have already received a benefit under the CRBA are not required to attest to their income), to cover individuals who apply for the CRSB or CRCB for a week beginning in 2022 (clauses 9(4), 11, 13(4) and 15).

To be eligible for the CRSB or the CRCB, individuals must not, in relation to the week for which they are applying, have applied for or received EI benefits; the CRB, the CRSB, or the CRCB; benefits paid under a provincial plan because of pregnancy or the need to care for a newborn or newly adopted child; or any other income prescribed by regulation.²⁴ Clauses 9(3) and 13(3) of Bill C-2 add new sections 10(1)(g)(iii.1) and 17(1)(g)(iii.1) to the CRBA, modifying this list to include the lockdown benefit provided under the CWLBA, created in Part 2 of the bill.

The bill extends the period during which a person may apply for the CRSB or CRCB from 20 November 2021 to 7 May 2022 (clauses 10 and 14). Additional qualifying periods may be added by regulation until no later than 2 July 2022 (clause 17, amending new section 24.1).

Under the current rules, an application for the CRSB or CRCB must be made within 60 days of the end of the week to which the benefit applies. Clauses 10 and 14 modify sections 11(2) and 18(2) of the CRBA to specify that a person applying in relation to a week that begins after 20 November 2021 and ends before the coming-into-force of section 11(2) (in the case of the CRSB) or section 18(2) (in the case of the CRCB) may make their application within 60 days of the end of the week that the section came into force. This allows individuals to apply for benefits retroactively for the period between 20 November 2021 and the bill's coming into force, and prevents an interruption in the period for which CRSB and CRCB benefits are available until 7 May 2022.

2.6.2 Duration of the Canada Recovery Sickness Benefit and the Canada Recovery Caregiving Benefit

The bill increases the maximum amount of time for which the CRSB is payable from four to six weeks, or the maximum number of weeks fixed by regulation (clause 12, amending section 16(1) of the CRBA and clause 19, repealing section 3 of the *Canada Recovery Benefits Regulations*²⁵).

Clause 16 of Bill C-2 also amends sections 23(1) and 23(2) of the CRBA to increase the maximum number of weeks for which a CRCB is payable from 42 to 44. This aggregate maximum applies to all persons residing in the same household.

2.6.3 Authority of the Governor in Council

The bill extends the Governor in Council's authority to amend by regulation the eligibility period for the CRSB and the CRCB until 2 July 2022. It also removes the Governor in Council's authority to amend by regulation the eligibility period for the CRB, since the CRB is being replaced by the new lockdown benefit set out in Part 2 of the bill under the CWLBA (clause 17, amending new section 24.1).

2.6.4 Consolidated Revenue Fund

Section 41 of the CRBA states that until 31 March 2024, money required by the Minister of Employment and Social Development or by the Canada Revenue Agency to administer and enforce the CRBA may be paid out of the Consolidated Revenue Fund. Clause 18 of Bill C-2 extends this permission to 31 March 2026.

2.7 PART 3.1: REVIEW BY THE AUDITOR GENERAL OF CANADA

Part 3.1 was introduced to Bill C-2 by the House of Commons Standing Committee on Finance which reported the bill back with amendments on 13 December 2021,²⁶ all of which were adopted by the House of Commons on 16 December 2021.

Clause 9.1 states that, during the year after the clause comes into force, the Auditor of General of Canada must complete a performance audit of benefits paid under the CWLBA and CRBA (as well as the efficiency of these benefits, and the means to measure their effectiveness); and of the benefits paid under the CERB and CEWS (clause 9.1(1)(a) to 9.1(1)(c)).

According to the Office of the Auditor General of Canada, a performance audit “[examines] the government’s management practices, controls, and reporting systems based on its own public administration policies and on best practices,” aiming to answer whether programs are run “with due regard for economy, efficiency, and environmental impact” and whether the government has means in place to measure their effectiveness.²⁷

The Auditor General must also complete a performance audit of payments made under the CERB, the CEWS, CWLBA and CRBA to ineligible recipients, including the Canada Revenue Agency’s response regarding those payments (clause 9.1(1)(d)).

Further, a report on these performance audits must be submitted to the Speaker of the House of Commons. If the House is sitting, the Speaker must table it as soon as is feasible. If the House is not sitting, the Speaker must table it on the first day of the next sitting (clause 9.1(2)).

2.8 PART 4: AMENDMENTS TO THE *CANADA LABOUR CODE*

The CLC²⁸ applies to employees in a federally regulated workplace. Part 4 of Bill C-2 amends the CLC to increase the number of weeks of leave eligibility for employees who are unable to work for reasons related to COVID-19.

2.8.1 Leave Related to COVID-19

Under section 239.01(1) of the CLC, employees in a federally regulated workplace are entitled to unpaid medical leave or caregiving leave if they are unable to work for reasons related to COVID-19. While on leave, employees may have access to income support payments made under the CRBA.

Clause 24(1) of Bill C-2 amends section 239.01 to increase the maximum number of weeks of leave employees may take for reasons related to COVID-19. These changes bring the maximum length of COVID-19–related medical leave and caregiving leave available into line with the extended benefit eligibility periods proposed in Part 3 of Bill C-2, which amends the CRBA.

Employees are currently entitled to up to two weeks of medical leave related to COVID-19. Under amended section 239.01(1)(a), the medical leave entitlement increases to up to six weeks, or to another number of weeks if fixed by regulation. If more than one maximum is fixed, employees are entitled to the highest one. Eligibility for this type of leave remains unchanged.²⁹

Bill C-2 also increases the maximum length of unpaid leave for COVID-19–related caregiving duties from 42 to 44 weeks, or another number of weeks if fixed by regulation (amended section 239.01(1)(b)). This is also the maximum total number of weeks that can be taken for this type of leave, both for individuals and for members of the same household (amended sections 239.01(3) and 239.01(5)). Employees are eligible for this type of leave if they are unable to work because they must care for a child younger than 12 or a family member requiring supervised care because of certain reasons related to COVID-19. These reasons are currently listed in section 239.01(1)(b) and remain unchanged.³⁰

If a person is on COVID-19–related leave when the sections extending the maximum leave duration come into force, the person may extend their leave to include the additional permitted weeks of leave (amended section 239.01(4)). Periods of COVID-19–related leave taken before 20 November 2021 count towards the maximum leave period (amended section 239.01(6)). These amendments essentially renumber existing provisions and modify the leave maximums and relevant dates; the bulk of amended section 239.01 is unchanged in substance.

Clause 24(2) provides for the repeal of section 239.01, and leave related to COVID-19. The leave provisions are designed to be temporary and end on 7 May 2022.

Current section 246.1(1)(a) allows an employee to make a complaint with the Canada Industrial Relations Board if they have faced employer reprisals for taking COVID-19 leave. Clause 25(2) repeals this provision on 7 May 2022, to coincide with the end of COVID-19 leave entitlements.

2.8.2 Leave Related to COVID-19 and Leave Interruption

Various sections of the CLC currently allow employees to interrupt their vacation leave and other types of leave, to instead use medical leave, quarantine leave, or leave related to COVID-19. Clauses 20 to 23 amend and remove references to leave relating to COVID-19 from sections 187.1 (interrupting vacation), 187.2 (postponing vacation), 206.1 (interrupting or extending parental leave), and 207.02 (interrupting compassionate care leave, leave related to critical illness, or leave related to death or disappearance). Subsections of these provisions that deal exclusively with COVID-19 leave are repealed. These changes come into effect at the same time as COVID-19 leave entitlements end.

2.9 COORDINATING AND RELATED AMENDMENTS

Clauses 26 and 27 make coordinating amendments with the *2021 Budget Implementation Act* to remove references to COVID-19–related leave and quarantine leave from sections 187.1, 187.2, 206.1, and 207.02 of the CLC, when these types of leave no longer exist in the CLC. Quarantine leave and COVID-19 leave will eventually be removed through related amendments under the *2021 Budget Implementation Act* and this bill.³¹

Clause 28 makes coordinating amendments specifying how regulations changing the eligibility period for the Canada recovery sickness and caregiving benefits will impact the COVID-19–related leave under the CLC. This ensures that employees covered by the CLC have access to job-protected COVID-19–related leave as long as one or both of these benefits are available.

2.10 COMING INTO FORCE

Clause 29 provides that sections 187.1(3.1), 206.1(4.1), 207.02(3.1), 239.01, and 246.1(1)(a.1) of the CLC, which all deal specifically with COVID-19–related leave, will be repealed on 7 May 2022. This will end the COVID-19 leave entitlements provided under section 239.01. Amendments that remove references to COVID-19 leave in sections 187.1, 206.1 and 207.02 will come into force on 8 May 2022. These dates align with the proposed end date for the Canada recovery sickness and caregiving benefits.

PRELIMINARY VERSION

UNEDITED

NOTES

1. [Bill C-2, An Act to provide further support in response to COVID-19](#), 44th Parliament, 1st Session.
2. [Bill C-13, An Act respecting certain measures in response to COVID-19](#), 43rd Parliament, 1st Session.
3. [Bill C-14, A second Act respecting certain measures in response to COVID-19](#), 43rd Parliament, 1st Session.
4. [Bill C-4, An Act relating to certain measures in response to COVID-19](#), 43rd Parliament, 2nd Session.
5. [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.
6. [Income Tax Act](#), R.S.C. 1985, c. 1 (5th Supp.).
7. [Income Tax Regulations](#), C.R.C., c. 945.
8. Government of Canada, “[20-2. How is the base wage subsidy determined for claim periods 5 to 21?](#),” *Frequently asked questions: Canada emergency wage subsidy (CEWS)*, 24 September 2021.
9. [Budget Implementation Act, 2021, No. 1](#), S.C. 2021, c. 23, ss. 22 and 32.
10. Government of Canada, “[Part 1: Finishing the Fight Against COVID-19 – Ensuring the Canada Emergency Wage Subsidy Supports Workers](#),” *A Recovery Plan for Jobs, Growth, and Resilience*, Budget 2021.
11. House of Commons, Standing Committee on Finance, [Bill C-2, An Act to provide further support in response to COVID-19](#), First report, December 2021.
12. [Regulations Amending the Income Tax Regulations \(COVID-19 – Twenty-Second Qualifying Period\)](#), SOR/2021-0240, 10 December 2021, in *Canada Gazette*, Part II, 22 December 2021.
13. [Budget Implementation Act, 2021, No. 1](#), S.C. 2021, c. 23, s. 43(3).
14. Department of Finance Canada, [COVID-19 Subsidies – Explanatory Notes Relating to the Income Tax Act and Income Tax Regulations](#).
15. The Canada Recovery Benefit (CRB) was enacted by [Bill C-4, An Act relating to certain measures in response to COVID-19](#) (S.C. 2020, c. 12). The CRB and other benefits replaced the Canada Emergency Response Benefit (CERB), which was established by the *Canada Emergency Response Benefit Act*, which was part of [Bill C-13, An Act respecting certain measures in response to COVID-19](#) (S.C. 2020, c. 5). The CERB ended in September 2020.
16. To receive the CRB workers not eligible for Employment Insurance (EI) must have earned at least \$5,000 in 2019, 2020, or in the 12 months before the date of application from any of the following sources: employment income (total or gross pay), net self-employment income (after deducting expenses), maternity and parental benefits from EI or similar Québec Parental Insurance Benefits benefits, regular or special benefits from EI if the EI claim began on or after 27 September 2020. The worker must be seeking employment. The worker must not have turned down employment, quit a job or reduced hours voluntarily or be quarantining after international travel. The worker must also be residing and present in Canada, have a valid Social Insurance number, be at least 15 years old and filed a tax return in 2019 or 2020. These are also requirements for the lockdown benefit.
17. Instead of benefits being available Canada wide, the federal government would have the flexibility to target specific geographic regions more heavily impacted by COVID-19 infections or public health orders.
18. [Canada Recovery Benefits Act](#), S.C. 2020, c. 12, s. 2.
19. [Interim Order No. 1 Amending the Employment Insurance Act \(Employment Insurance Emergency Response Benefit\)](#), SOR/2020-61, 1 April 2020, in *Canada Gazette*, Part II, 15 April 2020.
20. Government of Canada, “Why are the Recovery Benefits replacing the Canada Emergency Response Benefit?,” [Questions and Answers about Canada Recovery Benefits](#).
21. 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, 17 May 2021.



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22. Government of Canada, [Canada Recovery Benefit \(CRB\)](#).
23. Department of Finance Canada, [Government announces targeted COVID-19 support measures to create jobs and growth](#), News release, 21 October 2021.
24. [Canada Recovery Benefits Act](#), S.C. 2020, c. 12, ss. 10(1)(g) and 17(1)(g).
25. [Canada Recovery Benefits Regulations](#), SOR/2021-35.
26. House of Commons, Standing Committee on Finance, [Bill C-2, An Act to provide further support in response to COVID-19](#), First report, December 2021.
27. Office of the Auditor General of Canada, [Performance Audits](#), "What We Do."
28. [Canada Labour Code](#), R.S.C. 1985, c. L-2.
29. An individual is eligible for COVID-19 medical leave if they have or might have COVID-19, have an underlying condition that makes them more susceptible to COVID-19 in the opinion of certain medical professionals, or have been advised to isolate themselves for reasons related to COVID-19.
30. For example, reasons for COVID-19 caregiving leave include school closures, where a child or family member has or might have COVID-19, or where a child or family member has been advised to isolate.
31. Clause 344(1) of the [Budget Implementation Act, 2021, No. 1](#), S.C. 2021, c. 23 amends section 239(1) of the *Canada Labour Code* (CLC) and entitles employees to take up to 27 weeks of medical leave as a result of quarantine. Quarantine would be included as a reason for being eligible for medical leave instead of being a separate type of leave. The separate category of quarantine leave would be removed. This change has not yet come into force and requires an order by the Governor in Council. Clause 24(2) of Bill C-2 repeals COVID-19 leave entitlements under section 239.01 of the CLC, and will come into force in May 2022.