

# PRELIMINARY VERSION

## UNEDITED

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## Legislative Summary

### **BILL C-37: AN ACT TO AMEND THE DEPARTMENT OF EMPLOYMENT AND SOCIAL DEVELOPMENT ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS (EMPLOYMENT INSURANCE BOARD OF APPEAL)**

44-1-C37-E

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*Legislative Summary of Bill C-37*  
(Preliminary version)

44-1-C37-E

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## LEGISLATIVE SUMMARY OF BILL C-37: AN ACT TO AMEND THE DEPARTMENT OF EMPLOYMENT AND SOCIAL DEVELOPMENT ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS (EMPLOYMENT INSURANCE BOARD OF APPEAL)

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### 1 BACKGROUND

Bill C-37, An Act to amend the Department of Employment and Social Development Act and to make consequential amendments to other Acts (Employment Insurance Board of Appeal),<sup>1</sup> was introduced in the House of Commons on 14 December 2022 by the Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion, and given first reading the same day.<sup>2</sup>

Bill C-37 amends the *Department of Employment and Social Development Act*<sup>3</sup> (DESDA) to, among other aspects, establish the Employment Insurance (EI) Board of Appeal. The new EI Board of Appeal will become responsible for hearing first-level EI appeals, namely, appeals of decisions made by the Canada Employment Insurance Commission (CEIC) regarding a reconsideration of EI claim decisions. These first-level EI appeals are currently heard by the EI Section of the General Division of the Social Security Tribunal (the Tribunal). Bill C-37 also eliminates the requirement for leave to appeal (i.e., permission to appeal) decisions related to EI to the Appeal Division of the Tribunal.

The Government of Canada has indicated that the Tribunal will continue to hear first-level EI appeals until the EI Board of Appeal is operational: “[to] ensure smooth operations following the launch of the Board of Appeal, there will be a transition period during which the new EI Board of Appeal and the Social Security Tribunal will run in parallel.”<sup>4</sup> The EI Board of Appeal will operate as a tripartite organization overseen by the CEIC, and will represent the interests of government, workers and employers.<sup>5</sup>

Bill C-35 also makes consequential amendments to other pieces of legislation in order to support the creation of the EI Board of Appeal. These are: the *Federal Courts Act*,<sup>6</sup> the *Labour Adjustment Benefits Act*,<sup>7</sup> the *Income Tax Act*<sup>8</sup> and the *Employment Insurance Act*.<sup>9</sup>

Previous amendments to the DESDA to establish a new EI Board of Appeal were introduced through the *Budget Implementation Act, 2022, No. 1*.<sup>10</sup> However, the relevant provisions were deleted by the House of Commons Standing Committee

on Finance in its 1 June 2022 report to the House of Commons.<sup>11</sup> Other recent amendments to the DESDA with respect to the Tribunal were introduced through the *Budget Implementation Act, 2021, No. 1*,<sup>12</sup> such as changing the criteria for granting leave to appeal and introducing a *de novo* model for appeals of decisions of the Income Security Section at the Appeal Division.

This Legislative Summary provides a brief description of the key measures proposed in Bill C-37 by summarizing the substance of each part.

## 1.1 THE SOCIAL SECURITY TRIBUNAL

The Tribunal is an independent administrative tribunal with quasi-judicial powers that operates at arms' length from Employment and Social Development Canada (ESDC), Service Canada and the CEIC. The Tribunal was established under the *Jobs, Growth and Long-term Prosperity Act*<sup>13</sup> and was launched on 1 April 2013, when most relevant provisions of the Act came into force.<sup>14</sup>

The Tribunal was created with the stated intent of replacing multiple decision-making bodies to streamline the appeals process for federal social benefits and to reduce administrative duplication.<sup>15</sup> Prior to the creation of the Tribunal, a person who was subject to a decision of the CEIC regarding an EI claim could make an appeal to the Board of Referees (first level of appeal). An appeal of a decision by the Board of Referees could be made to the Office of the Umpire (second level of appeal).<sup>16</sup> Board of Referees panels consisted of a government-appointed Chair, a member appointed by the Commissioner for Workers, and a member appointed by the Commissioner for Employers.<sup>17</sup>

In contrast, under the current system, members of the Tribunal are appointed by the Governor in Council following consultation with the Commissioner for Workers, the Commissioner for Employers and the Tribunal's Chair. Members are appointed during good behaviour and may be removed for cause by the Governor in Council at any time.<sup>18</sup> The Commissioner for Workers and the Commissioner for Employers are appointed by the Governor in Council to the CEIC to represent the views of workers and employers, respectively.<sup>19</sup>

Currently, the first requirement for individuals contesting an EI claim decision is to pursue a reconsideration process with the CEIC in accordance with section 112 of the *Employment Insurance Act*.<sup>20</sup> If a claimant or other person is dissatisfied with a decision made by the CEIC regarding a reconsideration of an EI claim decision, they can appeal that reconsideration decision to the Tribunal.<sup>21</sup>

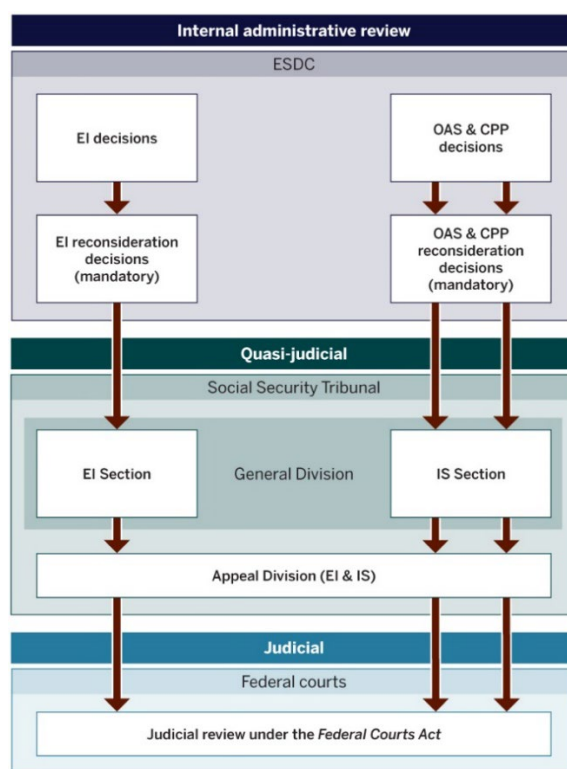
There are two levels of appeal to the Tribunal, each of which has its own division: the General Division (first level of appeal) and the Appeal Division

(second level of appeal). The General Division is formed by the EI Section (which handles appeals related to EI matters) and by the Income Security Section (which handles appeals related to Canada Pension Plan and Old Age Security matters). Decisions made by one of the sections of the General Division may be appealed to the Appeal Division of the Tribunal.<sup>22</sup> Leave to appeal is normally required in order to make an appeal to the Appeal Division.<sup>23</sup>

If an individual disagrees with a final decision from the Appeal Division, they can file an application for judicial review with either the Federal Court (e.g., for reviews of Appeal Division decisions on permission to appeal) or the Federal Court of Appeal, depending on the decision being reviewed.<sup>24</sup>

The current structure of the Tribunal’s appeals processes is represented in the infographic that follows.

**Figure 1 – Current Structure of the Social Security Tribunal**



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Note: “EI” refers to Employment Insurance and “IS” refers to Income Security (which includes decisions related to Old Age Security and the Canada Pension Plan).

Source: Figure prepared by the Library of Parliament using information obtained from KPMG LLP, “Figure 2 – The SST,” *Review of the Social Security Tribunal of Canada For Employment and Social Development Canada*, Final report, October 2017, p. 13.

## 1.2 RECENT REVIEWS OF THE SOCIAL SECURITY TRIBUNAL

In March 2017, the federal government commissioned a third-party review of the Tribunal based on a recommendation from the House of Commons Standing Committee on Human Resources, Skills, Social Development and the Status of Persons with Disabilities.<sup>25</sup> The review included consultations with a range of stakeholder groups, including but not limited to labour groups, unions, employers, advocacy groups, as well as clients and client representatives involved in the appeal process under the Tribunal.<sup>26</sup>

As a result of the review, the federal government announced in August 2019 that it would introduce a new decision-making body (namely, the EI Board of Appeal) as part of a suite of changes to make the appeals process more responsive to Canadians' needs. It stated that this body would be tripartite (i.e., it would represent the interests of workers, employers, and government), would be overseen by the CEIC, and would handle the first level of appeal following a request for reconsideration of an EI claim decision. The second level of appeal would still be handled by the Appeal Division of the Tribunal.<sup>27</sup> While the new body was initially scheduled to launch in April 2021, the government later indicated that this would be delayed due to challenges caused by the COVID-19 pandemic.<sup>28</sup>

During an additional round of consultations in summer 2022, the federal government sought feedback from Canadians and stakeholders on “the design of a new process to appeal an EI benefits decision and how an EI appeal hearing takes place.”<sup>29</sup>

## 2 DESCRIPTION AND ANALYSIS

### 2.1 AMENDMENTS TO THE *DEPARTMENT OF EMPLOYMENT AND SOCIAL DEVELOPMENT ACT*

#### 2.1.1 Establishment and Administration of the Employment Insurance Board of Appeal (Clauses 1 to 3)

Clause 1 of Bill C-37 amends the interpretation provision of the DESDA by adding a definition for the term “Board of Appeal,” which it defines as the EI Board of Appeal established under new section 43.01 of the Act. Related technical amendments are made under clause 2 of the bill to, among other aspects, change the heading of Part 5 of the DESDA to “Board of Appeal and Social Security Tribunal.”

Clause 3 of the bill amends Part 5 of the DESDA to provide for the establishment of the EI Board of Appeal under new section 43.01 and to set out its administration under new sections 43.02 to 43.1 of the Act (discussed in further detail in sections 2.1.1.1

to 2.1.1.4 of this legislative summary). The EI Board of Appeal will provide a new first-level process for hearing EI-related appeals, thereby replacing the EI Section of the General Division of the Tribunal.

#### 2.1.1.1 Membership

Under the new membership provisions in clause 3 of the bill, the EI Board of Appeal is to consist of: the Executive Head; a maximum of six regional coordinators; and, to the extent possible, an equal number of members who are employers' representatives, members who are workers' representatives, and other members who are appointed by the Governor in Council. All of these persons may hold office during pleasure for up to five years with the possibility of reappointment (new sections 43.02(1) and 43.02(2), 43.03(1) and 43.03(3)).<sup>30</sup> Regional coordinators and members of the EI Board of Appeal must be appointed taking into account the importance of regional representation as well as the diversity of Canadian society (new sections 43.02(3) and 43.03(4)).

The Executive Head and the regional coordinators are to be appointed by the Governor in Council on the recommendation of the Minister after consultation with the CEIC. The Executive Head is to be appointed on a full-time basis, while the regional coordinators are to be appointed on a full-time or part-time basis (new sections 43.02(1) and 43.02(2)).

Reflecting the tripartite nature of the EI Board of Appeal, members who are employers' representatives and workers' representatives are to be appointed at pleasure by the CEIC on a part-time basis, while the other members are to be appointed at pleasure by the Governor in Council on a part-time basis (new sections 43.03(1)(a) to 43.03(1)(c)). The terms of no more than half of the members of the EI Board of Appeal may end in any one year (new section 43.03(2)).

Upon ceasing to be members of the EI Board of Appeal for a reason other than removal, members can carry out and complete their duties and functions with respect to ongoing matters within 12 weeks of their departure at the request of the Executive Head. For this purpose, they are deemed to be members of the EI Board of Appeal during this time (new section 43.03(5)).

#### 2.1.1.2 Work

Clause 3 of the bill also specifies that the Executive Head has supervision over and direction of the work of the EI Board of Appeal and must report regularly to the CEIC on the overall performance of the EI Board of Appeal (new sections 43.04(1) and 43.04(2)). The Executive Head may delegate certain powers, duties or functions to any regional coordinator (new section 43.04(4)). In the event of absence or



incapacity of the Executive Head, or if this office is vacant, the Chairperson of the CEIC may authorize a person to act as the Executive Head for a term of up to 90 days, after which point the Governor in Council's approval must be sought (new section 43.04(6)).

An appeal to the EI Board of Appeal is to be heard before a three-member panel selected by the Executive Head. This panel must be presided by the member of the EI Board of Appeal that is appointed by the Governor in Council; with the other two members being the employers' representative and the workers' representative (new section 43.05(1)). Members are assigned by the Executive Head to a particular region to hear appeals in that region, considering the members' ordinary place of residence (new section 43.04(5)).

A regional coordinator is to be selected by the Executive Head to determine if an extension of time to bring an appeal to the EI Board of Appeal should be granted, to determine if an appeal before the EI Board of Appeal has been abandoned, or to hear an application to reopen an appeal that has been determined to be abandoned (new sections 43.05(2)(a) to 43.05(2)(c)).

The duty to select panel members and the regional coordinator may be delegated by the Executive Head to employees of the Department of Employment and Social Development (new section 43.05(3)). It should be noted that the Minister is responsible for providing the EI Board of Appeal with the departmental employees, the support services and the facilities it needs to exercise its powers and perform its duties and functions (new section 43.08). The term "Minister" is defined under section 2 of the DESDA as the "Minister of Employment and Social Development."

#### 2.1.1.3 Remuneration and Other Benefits

Clause 3 of the bill further specifies that the Executive Head, the regional coordinators and the members of the EI Board of Appeal are to be paid the remuneration fixed by the Governor in Council (new section 43.06(1)).<sup>31</sup> They are entitled to be reimbursed for reasonable travel and living expenses incurred while performing their duties and functions, in accordance with Treasury Board directives (new sections 43.06(2) to 43.06(4)).

The Executive Head and the full-time regional coordinators are deemed to be employed in the public service for the purposes of the *Public Service Superannuation Act*<sup>32</sup> (new section 43.07(1)). This Act sets out the pension benefits scheme for eligible federal public servants and their dependants.

The Executive Head, the regional coordinators and the members of the EI Board of Appeal are deemed to be employees for the purposes of the *Government*

*Employees Compensation Act*,<sup>33</sup> which sets out the workers' compensation benefits scheme for federal employees who are injured or become ill as a result of their work. They are also deemed to be employees of the federal public administration for the purposes of regulations made under section 9 of the *Aeronautics Act*,<sup>34</sup> which may establish compensation payable for the death or injury of an employee while undertaking a flight in the course of their duties (new section 43.07(2)).

#### 2.1.1.4 Immunity

Finally, clause 3 of the bill provides that the Executive Head, the regional coordinators and the members of the EI Board of Appeal have immunity in civil proceedings for anything done or said in good faith when exercising their actual or purported powers, duties or functions (new section 43.09). In addition, they are not competent or compellable to appear as a witness in any civil proceedings with respect to matters coming to their knowledge while exercising their powers, duties or functions (new section 43.1).

#### 2.1.2 Appeal to the Employment Insurance Board of Appeal (Clauses 4 and 42 to 44)

Clause 4 of the bill amends the DESDA to establish the process for making appeals to the EI Board of Appeal under new sections 43.11 to 43.19.

According to the new provisions, an appeal of a decision made by the CEIC under section 112 of the *Employment Insurance Act* regarding a reconsideration of an EI claim decision must be brought to the EI Board of Appeal within 30 days after the appellant receives the decision, or, at the latest, within one year if the EI Board of Appeal allows it (new sections 43.11(1) and 43.11(2)). The decision with regards to the extension of time to make an appeal must be made in writing and a copy of that decision must be sent to the appellant, the CEIC and any other party (new section 43.11(3)).

The new provisions also make the following stipulations regarding appeals to the EI Board of Appeal:

- An appeal is to be heard in the appellant's region and in the format selected by the appellant, except when provided otherwise in the regulations (new sections 43.16(1) and 43.16(2), and 68.2(k) to 68.2(m)).
- All or part of a hearing may be held in private in the circumstances provided for in the regulations (new sections 43.16(3) and 68.2(c)).
- A party may choose a representative at their own expense (new section 43.17).
- The Executive Head may authorize any party that is required to attend a hearing to receive reimbursement of travel or living expenses or the payment of allowances (including compensation for lost pay) for reasons provided in the regulations and

in accordance with the rates fixed by the Treasury Board (new sections 43.15 and 68.2(h)).

The EI Board of Appeal may decide any question of law or fact, provided it is not a constitutional law question, in connection with any application made or appeal brought under the Act (new sections 43.12 and 43.18(1)). However, certain EI-related questions listed under section 90 of the *Employment Insurance Act* (such as whether an employment is insurable and whether an EI premium is payable) must be determined by an authorized officer of the Canada Revenue Agency (new section 43.18(2)).

The EI Board of Appeal may dismiss the appeal or confirm, rescind or vary a decision of the CEIC or give the decision that the CEIC should have given (new section 43.13(1)). The EI Board of Appeal's decisions must be made in writing and include reasons; copies of the decision must be sent to the appellant, the CEIC and any other party (new section 43.13(2)). The Executive Head may, for special reasons in a particular case, extend the time the regulations provide to the EI Board of Appeal to make such decisions (new sections 43.14 and 68.2(g)).

The EI Board of Appeal may determine that an appeal has been abandoned if it has been unable to contact the appellant or if the appellant has not communicated with the Board as requested (new section 43.19(1)). On application, however, the EI Board of Appeal may reopen an abandoned appeal if it failed to observe a principle of natural justice in making the original abandonment determination, or if the appellant did not communicate with the Board for circumstances beyond their control and applied within 30 days of those circumstances being resolved (new section 43.19(2)). A decision regarding abandonment of appeals or reopening of abandoned appeals must be made in writing; copies of that decision must be sent to the appellant, the CEIC and any other party (new section 43.19(3)).

Transitional provisions are made in this regard at clauses 42 to 44 of the bill. Clause 42 stipulates that an appeal that is ongoing before the EI Section prior the coming into force of clause 5 (which, as discussed below, repeals the current structure of the General Division) will be deemed to be an appeal before the EI Board of Appeal. In addition, pursuant to clauses 43 and 44, the EI Board of Appeal can access any documents and information of the Tribunal necessary to make a decision about an application or appeal, and the Tribunal is required to transfer documents and information related to ongoing appeals.

### 2.1.3 The General Division of the Social Security Tribunal (Clauses 5 to 12)

Clauses 5 to 12 of Bill C-35 are technical amendments to reflect the new structure of the Tribunal, under which the General Division will no longer hear EI appeals.

Notably, clause 5 repeals section 44(2) of the DESDA, which provides that the General Division of the Tribunal consists of the Income Security Section and the EI Section.

Clause 6 amends section 45(2) of the DESDA to provide that, along with the Chairperson of the Tribunal, there will be two (as opposed to three as currently stipulated) full-time members that will hold office as Vice-chairpersons. One Vice-chairperson will be responsible for the Appeal Division, while the other Vice-chairperson will be responsible for the General Division.

Clause 9 amends section 51(2) of the DESDA to provide that, if the Vice-Chairperson of the Appeal Division cannot act for the Chairperson owing to absence or incapacity, or if the office is vacant, the Vice-chairperson of the General Division (as opposed to the Vice-chairperson of one of the sections) may be authorized by the Minister to act as, and perform all the duties and functions of, the Chairperson.

Clause 8 repeals section 47 of the DESDA, which currently requires the Minister to consult a committee before making recommendations to the Governor in Council about the appointment of a Tribunal member who may hear matters in the EI Section of the General Division.

Finally, clauses 7, 11 and 12 of the bill remove references to the EI Section or matters coming within its purview, the Income Security Section as well as the CEIC from relevant provisions under Part 5 of the DESDA.

2.1.3.1 Transitional Provisions Regarding the Vice-Chairperson and Members Assigned to the Employment Insurance Section of the General Division  
(Clauses 35 to 37)

Clauses 35 to 37 of the bill are transitional provisions with respect to the Vice-Chairperson and members assigned to the EI Section of the General Division. According to clause 35, upon the coming into force of clause 5, part-time members assigned to the EI Section will become part-time members of the EI Board of Appeal, while full-time members of the EI Section will be assigned to hear matters in the General Division which will no longer be divided into two sections. At the same time, the Vice-chairperson responsible for the EI Section will become a full-time regional coordinator of the EI Board of Appeal.

Furthermore, clause 36 provides that the part-time members and Vice-chairperson assigned to the EI Section cease to be members of the Tribunal upon becoming members of the EI Board of Appeal and regional coordinator, respectively. As such, for the remainder of the term for which they were originally appointed to the Tribunal, they are deemed to be appointed as EI Board of Appeal members (specifically, as the

members who are appointed by the Governor in Council) or as regional coordinator, and hold office during good behaviour. They may be removed for cause by the Governor in Council during that term. Upon the expiry of that term, they are eligible to be reappointed as EI Board of Appeal members or regional coordinator and hold office at pleasure. They are entitled to the same remuneration that they received while at the Tribunal for the remainder of the terms for which they were originally appointed.

Clause 37 indicates that former members of the General Division, the former Vice-chairperson responsible for the EI Section, and full-time members of the Tribunal who were assigned to hear matters in the EI Section, will not have any right to claim any compensation, damages, indemnity or other form of relief for ceasing to hold office in the Tribunal, for the abolition of that office, or for being assigned to hear matters in the General Division, by the operation of this Act.

2.1.4 Appeal to the Appeal Division of the Social Security Tribunal of a Decision Made by the Employment Insurance Board of Appeal (Clauses 14 and 22)

Clause 14 of the bill amends the DESDA to set out the process for appeals to the Appeal Division of the Tribunal of a decision made by the EI Board of Appeal, under new sections 54.1 to 54.5.

Under the new provisions, any decision of the EI Board of Appeal may be appealed to the Appeal Division within 30 days, or at the latest and if allowed by the Appeal Division within one year, from the day the decision and reasons were communicated in writing to the appellant (new sections 54.1, 54.2(1) and 54.2(2)).

The grounds of an appeal to the Appeal Division are provided under new section 54.3 of the DESDA as follows:

- the EI Board of Appeal failed to observe a principle of natural justice or to properly exercise its jurisdiction (new section 54.3(a));
- the EI Board of Appeal erred in law in making its decision (new section 54.3(b));
- the EI Board of Appeal based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it (new section 54.3(c)); or
- a question of constitutional law remains to be determined (new section 54.3(d)).

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

The Appeal Division may dismiss the appeal, give the decision that the EI Board of Appeal should have given, refer the matter back to the EI Board of Appeal for reconsideration, or confirm, rescind or vary the decision of the EI Board of Appeal in whole or in part (new section 54.5(1)). The decision by the Appeal Division must be provided in writing and include reasons; copies of the decision and reasons must be sent to the appellant and any other party (new section 54.5(2)).

Clause 22 of the bill amends section 67 of the DESDA to allow the Chairperson or a Vice-Chairperson, in particular cases and for special reasons, to extend the time within which the Appeal Division is required by regulation to decide an appeal of a decision made by the EI Board of Appeal.

2.1.5 Appeal to the Appeal Division of the Social Security Tribunal of a Decision Made by the General Division (Clauses 15 to 21, 23, 38 to 41, 45 and 46)

Clauses 15 and 16 of the bill provide that an application for leave to appeal a decision made by the EI Section of the General Division before its repeal will no longer be necessary. However, an appeal to the Appeal Division of a decision made by the General Division (or by the Income Security Section before its repeal) may only be brought if leave to appeal is granted (amended sections 56 and 57).

Clauses 17 to 20 of the bill are technical amendments to leave to appeal and related provisions to ensure consistency with these changes. Notably, these amendments repeal sections 58(1) and 58(2) of the DESDA, which provide the grounds of appeal with respect to a decision made by the EI Section as well as the criteria for the Appeal Division to refuse leave to appeal of a decision made by the EI Section. In addition, section 58.1 of the DESDA, which provides the criteria for leave to appeal to be granted in connection with a decision made by the Income Security Section, is amended such that references to the Income Security Section are replaced with references to the General Division.

The bill makes various transitional provisions in this regard. Clause 38, for example, stipulates that an application for leave to appeal a decision made by the EI Section, that is ongoing before the Appeal Division when clause 4 (the provision setting out the appeal mechanism with respect to the EI Board of Appeal) comes into force, becomes a notice of appeal. This notice of appeal is then deemed to have been filed on the same day on which the application for leave to appeal was filed. Additional transitional provisions are made under clauses 39 and 40 of the bill regarding prospective and ongoing appeals of a decision made by the EI Section before the coming into force of clause 5 (the provision which repeals the current structure of the General Division), which are to be subject to the changes discussed above (including those related to leave to appeal).

Clause 21 amends section 59(1) of the DESDA, which provides that the Appeal Division may dismiss the appeal, give the decision that the General Division should have given or confirm, rescind or vary the decision of the General Division. In the case of an appeal of a decision made by the EI Section, the Appeal Division also has the power to refer the matter back to the EI Section for reconsideration. Clause 21 amends this provision of the DESDA to temporarily allow the Appeal Division to refer appeals of a decision made by the EI Section to the EI Board of Appeal for reconsideration. The Appeal Division, however, is not authorized to refer a question of constitutional law back to the EI Board of Appeal for reconsideration in accordance with clause 41 of the bill.

Additional transitional provisions are made under clauses 45 and 46 of the bill to, among other aspects, stipulate that on appeal of a decision made by the EI Section regarding matters such as a summary dismissal, the Appeal Division must refer the matter back to the EI Board of Appeal for reconsideration instead of to the EI Section.

Clause 23 of Bill C-37 adds new section 68.01 to provide that, upon request, the EI Board of Appeal must provide the Appeal Division with any documents and information that are necessary to decide an application or appeal.

#### 2.1.6 Regulations (Clauses 24 and 25)

Clause 24 of Bill C-37 adds new section 68.2 to allow the CEIC to make regulations related to the operation of the EI Board of Appeal, with the approval of the Governor in Council. Specifically, the CEIC may make regulations regarding:

- the quorum for three-member panels hearing an appeal brought before the EI Board of Appeal (new section 68.2(a));
- the appointment process for and conflicts of interest of members of the EI Board of Appeal who are employers' representatives and workers' representatives (new section 68.2(b));
- when a hearing may be held in private (new section 68.2(c));
- the procedure with respect to applications made or appeals brought to the EI Board of Appeal (new section 68.2(d));
- when information is deemed to have been communicated or received (new section 68.2(e));
- the time within which the EI Board of Appeal must make a decision regarding an appeal (new section 68.2(f));



- any special reasons the Executive Head may rely on in order to extend the time within which the EI Board of Appeal is required by regulation to make a decision about an appeal (new section 68.2(g));
- the reasons for reimbursing travel or living expenses, or for paying allowances, to any party that is required to attend an EI Board of Appeal hearing (new section 68.2(h));
- the power to exclude people from a hearing while oral evidence of sexual or other harassment is being given (new section 68.2(i));
- the form and manner in which an appeal of a decision made by the CEIC regarding a reconsideration of an EI claim decision must be brought to the EI Board of Appeal (new section 68.2(j));
- the regions to which the Executive Head is to assign members of the EI Board of Appeal and where appeals may be heard (new section 68.2(k));
- when an appeal may not be heard in the appellant's region (new section 68.2(l)); and
- when an appeal is not to be heard in the format selected by the appellant (new section 68.2(m)).

Clause 25 of the bill amends sections 69(c) and 69(f) of the DESDA to allow the Governor in Council to make regulations with respect to additional matters, including the time limits to bring an appeal of a decision made by the EI Board of Appeal to the Appeal Division and the time within which the Appeal Division is required to make a decision about such an appeal. The Governor in Council may also make regulations with respect to applications for leave to appeal a decision made by the General Division.

## 2.2 CONSEQUENTIAL AMENDMENTS (CLAUSES 26 TO 33, 47 AND 48)

Clauses 26 to 33 of Bill C-37 are consequential amendments to support the creation of the EI Board of Appeal.

Clause 26 amends section 28(1)(g.1) of the *Federal Courts Act*, which provides the Federal Court of Appeal with jurisdiction to judicially review decisions made by the Appeal Division of the Tribunal, with a few exceptions. Additional exceptions provided under clause 26 relate to decisions to extend the time limits for bringing appeals to the EI Board of Appeal and for bringing appeals of decisions made by the EI Board of Appeal to the Appeal Division.

Clauses 27 to 33 amend the *Labour Adjustment Benefits Act*, the *Income Tax Act* and the *Employment Insurance Act* to reflect the new structure, whereby the General Division of the Tribunal will no longer hear EI-related appeals as the new



EI Board of Appeal will take over these functions following a transition period. Transitional provisions are made in this regard under clauses 47 and 48 of the bill.

### 2.3 COMING INTO FORCE (CLAUSE 49)

Clause 49(1) of the bill provides for the coming into force of various provisions on a day to be fixed by order of the Governor in Council. These include clause 4 (which establishes the process for making appeals to the EI Board of Appeal), clause 14 (which establishes the process for making appeals to the Appeal Division of the Tribunal of a decision made by the EI Board of Appeal), and most of the consequential amendments. Other provisions also coming into force at the same time reflect the fact that the EI Board of Appeal will temporarily coexist with the EI Section of the General Division of the Tribunal until the repeal of the relevant provisions.

Clause 49(2) of the bill provides for the coming into force of clause 5 (which repeals the current structure of the General Division) and related provisions, on a day to be fixed by order of the Governor in Council. This day, however, must be after the day fixed under clause 49(1).

Other clauses not included in the coming into force provisions, such as clause 3 (which sets out the establishment and administration of the EI Board of Appeal) and clause 24 (which provides the CEIC with regulation-making powers with respect to the operation of the EI Board of Appeal), come into force upon Royal Assent.

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### NOTES

1. [Bill C-37, An Act to amend the Department of Employment and Social Development Act and to make consequential amendments to other Acts \(Employment Insurance Board of Appeal\)](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session.
2. House of Commons, [Debates](#), 14 December 2022, 1630.
3. [Department of Employment and Social Development Act](#), S.C. 2005, c. 34.
4. Employment and Social Development Canada (ESDC), [Government of Canada introduces bill to create Employment Insurance Board of Appeal](#), News release, 14 December 2022.
5. ESDC, [Government of Canada introduces bill to create Employment Insurance Board of Appeal](#), News release, 14 December 2022. See also [Bill C-37, An Act to amend the Department of Employment and Social Development Act and to make consequential amendments to other Acts \(Employment Insurance Board of Appeal\)](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session, cl. 3.
6. [Federal Courts Act](#), R.S.C. 1985, c. F-7.
7. [Labour Adjustment Benefits Act](#), R.S.C. 1985, c. L-1.
8. [Income Tax Act](#), R.S.C. 1985, c. 1 (5<sup>th</sup> Supp).
9. [Employment Insurance Act](#), S.C. 1996, c. 23.

# PRELIMINARY VERSION

## UNEDITED

10. [Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures](#), 44<sup>th</sup> Parliament, 1<sup>st</sup> Session (first reading version).
11. House of Commons, Standing Committee on Finance, [Bill C-19, An Act to implement certain provisions of the budget tabled in Parliament on April 7, 2022 and other measures](#), Fourth report, 44<sup>th</sup> Parliament, 1<sup>st</sup> Session.
12. [Budget Implementation Act, 2021, No. 1](#), S.C. 2021, c. 23. See also “[2.4.20 Division 20: Amendments to the Department of Employment and Social Development Act \(Social Security Tribunal\)](#),” *Legislative Summary of Bill C-30: An Act to implement certain provisions of the budget tabled in Parliament on April 19, 2021 and other measures*, Publication no. 43-2-C30-E, Library of Parliament, 16 July 2021.
13. [Jobs, Growth and Long-term Prosperity Act](#), S.C. 2012, c. 19. This Act received Royal Assent on 29 June 2012. For information about this Act while it was before Parliament, see [Bill C-38, An Act to implement certain provisions of the budget tabled in Parliament on March 29, 2012 and other measures](#), 41<sup>st</sup> Parliament, 1<sup>st</sup> Session.
14. [Jobs, Growth and Long-term Prosperity Act](#), S.C. 2012, c. 19, s. 281; and KPMG LLP, [Review of the Social Security Tribunal of Canada For Employment and Social Development Canada](#), Final report, October 2017, p. 1.
15. For more information on the Social Security Tribunal, see Social Security Tribunal of Canada, [Social Security Tribunal of Canada](#); Social Security Tribunal of Canada, “[Employment Insurance General Division: First level of appeal](#),” *Your appeal*; and Social Security Tribunal of Canada, “[Employment Insurance Appeal Division: Second level of appeal](#),” *Your appeal*. See also [Social Security Tribunal Regulations, 2022](#), SOR/2022-255.
16. [Employment Insurance Act](#), S.C. 1996, c. 23, ss. 114 and 115 (version in force from 14 December 2012 to 5 January 2013); and KPMG LLP, [Review of the Social Security Tribunal of Canada For Employment and Social Development Canada](#), Final report, October 2017, pp. 12–13.
17. [Employment Insurance Act](#), S.C. 1996, c. 23, s. 111(3) (version in force from 14 December 2012 to 5 January 2013); and KPMG LLP, [Review of the Social Security Tribunal of Canada For Employment and Social Development Canada](#), Final report, October 2017, p. 30.
18. [Department of Employment and Social Development Act](#), S.C. 2005, c. 34, s. 45(5). See also Government of Canada, “1. Appointment, Tenure and Related Matters (Contextual),” [Terms and conditions applying to Governor in Council appointees](#).
19. Government of Canada, “Members,” [Canada Employment Insurance Commission \(CEIC\)](#).
20. [Employment Insurance Act](#), S.C. 1996, c. 23, s. 112.
21. [Employment Insurance Act](#), S.C. 1996, c. 23, s. 113; and Government of Canada, [Request for reconsideration of an Employment Insurance decision](#).
22. [Department of Employment and Social Development Act](#), S.C. 2005, c. 34, ss. 44 and 55.
23. [Department of Employment and Social Development Act](#), S.C. 2005, c. 34, s. 56(1); and Social Security Tribunal of Canada, “[Employment Insurance Appeal Division: Second level of appeal](#),” *Your appeal*.
24. [Department of Employment and Social Development Act](#), S.C. 2005, c. 34, s. 68; and [Federal Courts Act](#), R.S.C. 1985, c. F-7, ss. 18.1 and 28(1)(g.1). See also Social Security Tribunal of Canada, “[Employment Insurance Appeal Division: Your decision](#),” *Your appeal*; and Social Security Tribunal of Canada, “[How the Social Security Tribunal \(SST\) works: Responding to the Supreme Court of Canada’s decision in Vavilov](#),” *Our work, our people*.
25. KPMG LLP, [Review of the Social Security Tribunal of Canada For Employment and Social Development Canada](#), Final report, October 2017, p. 6.
26. ESDC, [Government of Canada introduces bill to create Employment Insurance Board of Appeal](#), News release, 14 December 2022.
27. ESDC, [Helping middle-class Canadians with the support they need](#), News release, 15 August 2019.
28. Canada Employment Insurance Commission, [2019/2020 Employment Insurance Monitoring and Assessment Report](#), 2021, p. 365.



# PRELIMINARY VERSION

UNEDITED

29. ESDC, [Government of Canada introduces bill to create Employment Insurance Board of Appeal](#), News release, 14 December 2022.
30. According to a Government of Canada publication, “[a]ppointees who hold office during pleasure may be removed from office at the discretion of the Governor in Council.” See Government of Canada, [Terms and conditions applying to Governor in Council appointees](#).
31. For additional information, see Government of Canada, [Compensation, terms and conditions of employment](#).
32. [Public Service Superannuation Act](#), R.S.C. 1985, c. P-36.
33. [Government Employees Compensation Act](#), R.S.C. 1985, c. G-5. See also Service Canada, [Compensation for federal workers](#).
34. [Aeronautics Act](#), R.S.C. 1985, c. A-2.