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LEGISLATIVE SUMMARY

Bill C-22:

An Act respecting Canada's offshore oil and gas operations, enacting the Nuclear Liability and Compensation Act, repealing the Nuclear Liability Act and making consequential amendments to other Acts

Publication No. 41-2-C22-E
19 March 2014
Revised 13 June 2014

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

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

Legislative Summary of Bill C-22
(Legislative Summary)

Publication No. 41-2-C22-E

Ce document est également publié en français.

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LEGISLATIVE SUMMARY OF BILL C-22: AN ACT RESPECTING CANADA'S OFFSHORE OIL AND GAS OPERATIONS, ENACTING THE NUCLEAR LIABILITY AND COMPENSATION ACT, REPEALING THE NUCLEAR LIABILITY ACT AND MAKING CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 BACKGROUND

Bill C-22, An Act respecting Canada's offshore oil and gas operations, enacting the Nuclear Liability and Compensation Act, repealing the Nuclear Liability Act and making consequential amendments to other Acts[1] (short title: Energy Safety and Security Act) was introduced by the Minister of Natural Resources and received first reading in the House of Commons on 30 January 2014.

Bill C-22 modifies Canada's civil liability regimes both for the offshore oil and gas industry and for the nuclear energy industry. Notably, it increases the absolute liability threshold to $1 billion for operators of offshore oil and gas and nuclear facilities. The current thresholds for offshore oil and gas operations are $40 million in the Arctic and $30 million for all other offshore areas. For nuclear facilities, the current threshold is $75 million. The increase in liability limits responds to the Commissioner of the Environment and Sustainable Development's fall 2012 report, which recommended updating Canada's liability limits for offshore and nuclear industries. The Commissioner noted that the thresholds had not changed in many years and were low compared to other countries.[2]

The re-examination of civil liability regimes is also set within the context of two major disasters:

- the explosion of British Petroleum's offshore drilling rig, *Deepwater Horizon*, on 20 April 2010, resulting in 11 fatalities and crude oil spilling uncontrollably for 87 days into the Gulf of Mexico; and
- a meltdown of three of six nuclear reactors at Tokyo Electric Power Company's Fukushima Daiichi Nuclear Power Station following a tsunami caused by the Tohoku earthquake on 11 March 2011.[3]

Both disasters resulted in a massive response, rehabilitation and compensation efforts and multiple legal claims by individuals and businesses. These events have prompted many countries, including Canada, to re-examine their civil liability regimes.

Currently, all of Canada's offshore petroleum production operations are found in Atlantic Canada. There are three oil drilling platforms off the coast of Newfoundland and Labrador, and another platform is expected to be operational by the end of 2017.[4] There is no offshore natural gas production in the province. Two platforms off the coast of Nova Scotia produce natural gas.[5]

In addition, offshore exploration activity is currently being conducted in Newfoundland and Labrador and Nova Scotia. Offshore petroleum wells may also be drilled in the Beaufort Sea – drilling programs there are undergoing a regulatory screening process.[6] Also, offshore basins near Nunavut's high Arctic Islands and in the Eastern Arctic may be developed in the future. Currently, a federal moratorium on oil and gas activities is in place in the offshore of British Columbia. In Quebec, a provincial moratorium exists on oil and gas offshore activities in the Gulf of Saint Lawrence;[7] a permanent prohibition on such activities applies in waters northwest of the Gulf of St. Lawrence and its estuary.[8]

There are two types of nuclear reactor in Canada: power reactors that generate electricity and research reactors. Five nuclear power plants in three provinces house 22 nuclear reactors.[9] Most of these reactors – 20 – are located in Ontario.[10] New Brunswick has one reactor, and Quebec's Gentilly-2 nuclear reactor was shut down on 28 December 2012.[11] As for research reactors, there are seven active in Canada. These reactors, which are smaller than power reactors, are used for "scientific research, non-destructive testing and the production of radioactive substances for medical, industrial and scientific uses." [12]

On 3 December 2013, Canada signed the International Atomic Energy Agency's *Convention on Supplementary Compensation for Nuclear Damage*.[13] Enacting Bill C-22 will allow Canada to ratify the convention. Once in force, the convention will help address nuclear liability issues for transboundary and transportation incidents and provide access to supplementary compensation from an international pool of up to $500 million.

2 DESCRIPTION AND ANALYSIS

Provisions of Bill C-22 are organized into two parts. Part 1 relates to Canada's offshore oil and gas regime, and Part 2 replaces the *Nuclear Liability Act* with a new Nuclear Liability and Compensation Act.

To interrupt reading as little as possible with often complex references to the bill's provisions discussed in this Legislative Summary, citations for the provisions have been placed in endnotes, keyed to the relevant sections or paragraphs in the text. In section 2.2, references to the pertinent sections of the new Act appear in the section headings.

2.1 PART 1 – CHANGES TO CANADA'S OFFSHORE OIL AND GAS OPERATIONS REGIME

2.1.1 OVERVIEW

Part 1 of Bill C-22 primarily amends the following four pieces of legislation under which the federal government regulates oil and gas activities:

- the *Canada Oil and Gas Operations Act*,[14] which applies in respect of the exploration and drilling for and the production, conservation, processing and transportation of oil and gas in areas that the federal government owns or for which the federal government has the right to dispose of or exploit the natural resources (some examples of such areas are Nunavut, Sable Island, much of the territorial sea of Canada and the continental shelf of Canada);
- the *Canada Petroleum Resources Act*,[15] which regulates interests in oil and gas in the same areas where the *Canada Oil and Gas Operations Act* applies;
- the *Canada–Newfoundland Atlantic Accord Implementation Act*,[16] which implements an accord between the governments of Canada and Newfoundland and Labrador to jointly regulate oil and gas activities in the Newfoundland and Labrador offshore area;[17] and
- the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*,[18] which implements an accord – analogous to that referred to in the previous bulleted item – between the governments of Canada and Nova Scotia to jointly regulate oil and gas activities in the Nova Scotia offshore area.[19]

The following terminology is used in section 2.1 of this Legislative Summary:

- *accord implementation Acts* means the *Canada–Newfoundland Atlantic Accord Implementation Act* and the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*;
- *minister* means either the Minister of Natural Resources or the Minister of Indian Affairs and Northern Development, depending on which of these two ministers has administrative responsibility for the natural resources in the area in question;
- *offshore petroleum boards* means the Canada–Newfoundland Offshore Petroleum Board and the Canada–Nova Scotia Offshore Petroleum Board, which are federal/provincial boards established under the accord implementation Acts, as well as under mirror provincial legislation, to jointly manage oil and gas activities in the offshore areas;
- *oil and gas Acts* means the *Canada Oil and Gas Operations Act*, the *Canada Petroleum Resources Act* and the two accord implementation Acts;
- *provincial counterpart* to the Minister of Natural Resources means, in the context of the *Canada–Newfoundland Atlantic Accord Implementation Act*, the Minister of Natural Resources (Newfoundland and Labrador), and in the context of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the Minister of Mines and Energy (Nova Scotia); and
- *relevant board* means the National Energy Board in the context of the *Canada Oil and Gas Operations Act* or the *Canada Petroleum Resources Act*, and it means the relevant offshore petroleum board in the context of the accord implementation Acts.

Amendments made only to the French or English version of an oil and gas Act are not summarized if the sole purpose of the amendment is to improve the language without changing the meaning, or make the version consistent with the existing version in the other official language.[20]

2.1.2 Cost Recovery

2.1.2.1 Regulations Respecting Fees or Charges

New provisions added to the four oil and gas Acts empower the Governor in Council to make regulations respecting fees or charges, or the method of calculating fees or charges, to be paid for the relevant board or the minister providing a service or product under the Act or for activities under or related to the Act, including the board's activities under the *Canadian Environmental Assessment Act, 2012*.[21]

The amounts of a fee or charge must not exceed the cost of providing the services or products or of performing the relevant activities. The regulations may provide for refunds of all or part of a fee or charge, or the method of calculating that refund. The relevant board may issue and publish guidelines and interpretation notes for applying the regulations.[22]

Regarding such regulations under either of the accord implementation Acts:

- the federal Minister of Natural Resources must consult with the minister's provincial counterpart before making a regulation, and the regulation may not be made without the approval of the provincial counterpart;
- the *User Fees Act*[23] does not apply to the fees or charges payable in accordance with the regulations; and
- amounts of fees and charges obtained in accordance with the regulations are shared equally between the federal and relevant provincial government.[24]

2.1.2.2 Failure to Pay a Fee or Charge

The relevant board is given the power to suspend or revoke an operating licence or an authorization for failure to pay a fee or a charge payable under regulations respecting fees or charges.[25]

2.1.3 Time Limits

2.1.3.1 Time Limit for an Authorization (*Canada Oil and Gas Operations Act*)

Bill C-22 sets a new time limit of 18 months, under the *Canada Oil and Gas Operations Act*, for the National Energy Board to communicate its decision regarding a complete application for an authorization to carry on a work or an activity in any area for which the Minister of Indian Affairs and Northern Development has administrative responsibility for natural resources. The minister may, by order, extend that period by up to three months, and the Governor in Council may – on the recommendation of the minister and by order – further extend the period by any additional period or periods of time.

Not included in the calculation of the 18-month period described above, or in any extension of that period, is time taken by the applicant to comply with any requirement or by the National Energy Board to provide information or undertake a study.

The board must make public the start and end dates of any period that is not included in the calculation of the 18-month period.[26]

2.1.3.2 Time Limit For an Environmental Assessment (*Canada Oil and Gas Operations Act*)

The bill adds a new section to the *Canada Oil and Gas Operations Act* stating that, if the work or activity for which a person[27] has applied for an authorization requires a federal environmental assessment for which the National Energy Board is the "responsible authority" under the *Canadian Environmental Assessment Act, 2012*, the board must issue the required decision statement following the environmental assessment within the timeline described in section 2.1.3.1 of this Legislative Summary, including any extensions.[28]

2.1.3.3 Time Limit for an Environmental Assessment (Accord Implementation Acts)

Bill C-22 establishes, under both of the accord implementation Acts, a 12-month time limit for the relevant board to issue a decision statement following any federal environmental assessment, required under the *Canadian Environmental Assessment Act, 2012*, of a physical activity **– and any related incidental activity –** in the offshore area for which the board is the responsible authority and where the environmental assessment was not referred to a review panel.

The 12-month period starts when the applicant has provided a complete application for an authorization for a work or an activity or for approval of a development plan. If the board requires the applicant to provide information or undertake a study with respect to the physical activity, the time taken by the applicant to comply is not included in calculating the 12-month period.

The board is required to make public the date on which the 12-month period begins and the start and end dates of any periods not included in the calculation of the 12-month period.[29]

2.1.4 Public Participation

2.1.4.1 Participant Funding Program

Section 58 of the *Canadian Environmental Assessment Act, 2012* requires a "responsible authority," [30] such as the National Energy Board, to establish a participant funding program to facilitate the participation of the public in any federal environmental assessment – other than an environmental assessment by a review panel – of a project under that Act.

Accordingly, Bill C-22 adds a new section to the *Canada Oil and Gas Operations Act* and each of the accord implementation Acts empowering the relevant board to establish a participant funding program for a project that requires an environmental assessment and is the subject of an application to the board for an operating licence

(National Energy Board only), for an authorization to carry out a work or an activity, or for approval of a development plan (offshore petroleum boards only).[31]

2.1.4.2 Public Hearings

Bill C-22 adds new sections:

- to the *Canada Oil and Gas Operations Act*, allowing the National Energy Board to conduct a public hearing in relation to the exercise of any of its powers or the performance of any of its duties and functions under the Act; and
- to each of the accord implementation Acts, allowing the relevant board to conduct a public hearing in relation to the exercise of any of its powers or the performance of any of its functions as a responsible authority under the *Canadian Environmental Assessment Act, 2012*.

Provisions relating to confidentiality at a public hearing are either amended or added to the Acts, allowing the relevant board to take any measures and make any order that it considers necessary to ensure the confidentiality of any information likely to be disclosed at the hearing if:

- disclosure could result in a material loss or gain to a person directly affected by the hearing, or prejudice the person's competitive position, and the potential harm outweighs the public interest in making the disclosure;
- the information is confidential financial, commercial, scientific or technical information supplied to the board that the person directly affected by the hearing has consistently treated as confidential, and the person's interest in confidentiality outweighs the public interest in disclosure; or
- there is a real and substantial risk that disclosure of the information will impair the security of pipelines, installations, vessels, aircraft or systems, or methods employed to protect them, and the need to prevent disclosure outweighs the public interest in disclosure.

The bill also adds a new blanket exception, prohibiting the relevant board from taking any measure or making any order to maintain the confidentiality of information or documentation referred to in specific sections of the Act.[32] Those sections refer to information or documentation about an exploratory well, a delineation well, a development well, geological or geophysical work, an engineering research or feasibility study or an environmental study, after a specified period of time has elapsed in each case.[33]

2.1.5 "Polluter Pays" Principle and Liability Limits

2.1.5.1 "Polluter Pays" Principle

Bill C-22 adds a new stated purpose – to promote "accountability in accordance with the 'polluter pays' principle" – to the existing list of purposes in the *Canada Oil and Gas Operations Act* and each of the accord implementation Acts.[34]

2.1.5.2 LIABILITY LIMITS

Table 1 presents the current and new liability limits that apply:

- without proof of fault or negligence, to a person who is required to obtain an authorization for a work or an activity from which a spill, authorized discharge, emission or escape of oil or gas (collectively "spill or discharge") emanated or from which debris originated; and
- to all persons to whose fault or negligence the spill or discharge or debris is attributable or who are by law responsible for others to whose fault or negligence the spill or discharge or debris is attributable. Such persons are jointly and severally liable,[35] to the extent determined according to the degree of fault or negligence proved against them.

Table 1 – Current Liability Limits and Liability Limits Under Bill C-22

Circumstances	Affected Area	Current Limit (Limit before Bill C-22 amendments)	New Limit (Limit under amended Acts)[a]
Without proof of fault or negligence	Atlantic offshore areas	$30 million	$1 billion[b]
	Land adjacent to arctic waters[c] and submarine areas subjacent to arctic waters	$40 million	$1 billion[b]
	Other areas in the Northwest Territories or Nunavut within 200 metres from inland water (river, stream or lake)	No limit specified	$25 million
	Other areas of the Northwest Territories or Nunavut not covered by the above descriptions	No limit specified	$10 million
	Any other areas to which the *Canada Oil and Gas Operations Act* applies[d]	No limit specified	$1 billion[b]
With proof of fault or negligence		Unlimited	Unlimited

Notes:

a. Note that the Governor in Council is given the power to increase the new liability limits by regulation. In the case of the *Canada Oil and Gas Operations Act*, such regulations must be made on the recommendation of the minister. In the case of the accord implementation Acts, before making such regulations, the federal Minister of Natural Resources must consult with, and obtain the approval of, the minister's provincial counterpart. (Clause 19(2) adds new section 26(2.3) to the *Canada Oil and Gas Operations Act*. Clauses 38 and 60(2), respectively, amend section 7 of and add new section 162(2.3) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 72 and 96(2), respectively, amend section 6 of and add new section 167(2.3) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.)

b. The Minister of Natural Resources may, by order, on the recommendation of the relevant board (and, in the case of the accord implementation Acts, with the consent of the provincial counterpart to the federal Minister of Natural Resources), approve a liability limit that is less than $1 billion for an applicant for, or a holder of, an authorization to carry out a work or an activity. A new regulatory power anticipates regulations concerning the circumstances under which the board may make such a recommendation, and the information to be submitted with respect to the recommendation. (Clauses 22 and 14(3) add new sections 27.1 and 14(1)(*h.2*), respectively, to the *Canada Oil and Gas Operations Act*. Clauses 63 and 54(4) add new sections 163.1 and 149(1)(*h.2*), respectively, to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 99 and 90(3) add new sections 168.1 and 153(1)(*h.2*), respectively, to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.)

c. According to the *Arctic Waters Pollution Prevention Act*, R.S.C., 1985, c. A-12, s. 2:

> "arctic waters" means the internal waters of Canada and the waters of the territorial sea of Canada and the exclusive economic zone of Canada, within the area enclosed by the 60th parallel of north latitude, the 141st meridian of west longitude and the outer limit of the exclusive economic zone; however, where the international boundary between Canada and Greenland is less than 200 nautical miles from the baselines of the territorial sea of Canada, the international boundary shall be substituted for that outer limit.

d. See section 2.1.1 of this Legislative Summary for a description of areas in which the *Canada Oil and Gas Operations Act* applies.

Sources: Current limits – Notwithstanding the detail in the *Canada Oil and Gas Operations Act*, R.S.C., 1985, c. O-7, s. 26, regarding losses, damages, costs and expenses covered under that Act (presented in section 2.1.5.3 of this Legislative Summary), no regulations under that Act actually set liability limits for the purposes of section 26. The current $30 million liability limit included in Table 1 for Atlantic offshore areas is taken from the *Canada–Newfoundland Oil and Gas Spills and Debris Liability Regulations*, S.O.R./88-262, and the *Canada–Nova Scotia Oil and Gas Spills and Debris Liability Regulations*, S.O.R./95-123. The current $40 million figure included for arctic waters is taken from the *Arctic Waters Pollution Prevention Regulations*, C.R.C., c. 354, s. 8, as well as from the *Arctic Waters Pollution Prevention Act*, R.S.C., 1985, c. A-12, s. 6(1)(*a*). Under sections 6(2) and 6(3) of that Act, liability related to the *Canada Oil and Gas Operations Act* and the accord implementation Acts is not for the full array of costs listed in items in section 2.1.5.3 of this Legislative Summary.

New limits – The new limits set out in Table 1 are added by clause 19(2) in new section 26(2.2) of the *Canada Oil and Gas Operations Act*; by clause 60(2) in new section 162(2.2) of the *Canada–Newfoundland Atlantic Accord Implementation Act*; and by clause 96(2) in new section 167(2.2) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

2.1.5.3 Losses, Damages, Costs and Expenses Covered

Currently, the liability presented in Table 1 is for the following:

- actual loss or damage incurred by any person as a result of a spill or discharge or debris; and
- the costs and expenses reasonably incurred by the federal government and various other parties, depending on the Act, in taking any action or measure related to a spill or discharge or debris.

However, under the current Act, when fault or negligence for a spill or discharge is proven, liability for the second item, above, does not apply.

Bill C-22 provides for liability for both items, regardless of whether fault or negligence is proven, and adds liability for:

- all actual loss or damage resulting from any action or measure taken in relation to the spill or discharge or debris;
- the costs and expenses reasonably incurred by any party in taking any action or measure in relation to the spill or discharge or debris; and
- all loss of non-use value[36] relating to a public resource that is affected by a spill or discharge or debris or as a result of any action or measure taken in relation to it.[37]

The term *actual loss or damage* does not include loss of income that a licensed commercial fisherman may recover under section 42(3) of the *Fisheries Act*.[38] Also, the costs and expenses that are recoverable by the federal government or a

provincial government under Bill C-22 and which are discussed in this section of the Legislative Summary are not recoverable under section 42(1) of the *Fisheries Act.* That section makes certain persons liable to pay costs and expenses incurred by the federal government or a provincial government to prevent, mitigate or remedy any adverse effects associated with the unauthorized deposit of a deleterious substance in water frequented by fish.[39]

2.1.5.4 Contractors

If a spill or discharge or debris is the result of a contractor's fault or negligence, the person who is required to obtain an authorization to carry out the relevant work or activity and who hired the contractor is jointly and severally liable[40] with the contractor for the items listed in section 2.1.5.3 of this Legislative Summary.[41]

2.1.5.5 Priority of Claims

Claims for amounts for the losses, damages and costs described in section 2.1.5.3 of this Legislative Summary rank in the following order:

- in favour of persons incurring actual loss or damage, without preference;
- to meet any costs and expenses, without preference; and
- to recover a loss of non-use value.

Only the federal government or a provincial government may sue to recover a loss of non-use value.[42]

2.1.5.6 No Double Liability

Bill C-22 amends an existing provision to clarify that, if a person is liable both under an oil and gas Act and under any other Act, without proof of fault or negligence, for the same occurrence, the person is liable up to the greater of the two liability limits set out in the two Acts. However, if liability under another Act is unlimited, then the liability limits established under Bill C-22 do not apply.[43]

2.1.6 Financial Requirements

2.1.6.1 Proof of Financial Resources

2.1.6.1.1 Financial Resources

A new provision requires that a person who applies to the relevant board for an authorization to drill for, develop or produce oil or gas provide proof – in the prescribed form and manner – that it has the financial resources necessary to pay the greatest of the amounts of the liability limits (set out in Table 1) that apply to it, or an even greater amount if the board considers it necessary. A person who applies for an authorization to carry out any other type of work or activity must provide proof that it has the financial resources necessary to pay an amount that the board determines. In determining the amount that an applicant must prove it is able to pay, the board is not required to consider any potential loss of non-use value of a public resource that could be affected by a spill or discharge.[44]

2.1.6.1.2 Delegation of Determination

The relevant board may delegate to any person any of its powers, described in section 2.1.6.1.1 of this Legislative Summary, to determine an amount of financial resources that a person is required to prove it is able to pay.[45]

2.1.6.2 Proof of Financial Responsibility

2.1.6.2.1 Letter of Credit, Guarantee, Indemnity Bond, etc.

Currently, a person applying for an authorization to carry out a work or an activity is required to provide proof of financial responsibility in the form of a letter of credit, a guarantee or indemnity bond or in any other form satisfactory to the relevant board "in an amount satisfactory to the Board."

Bill C-22 amends this requirement to specify that, in the case of the drilling for or development or production of oil or gas in a submarine or offshore area, the amount is $100 million, or if the board considers it necessary, a greater amount that the board determines. In other cases, the amount is determined by the board. Also, the minister may – by order and on the recommendation of the relevant board (and, in respect of the accord implementation Acts, with the approval of the provincial counterpart to the federal Minister of Natural Resources) – approve an amount that is less than $100 million.[46]

2.1.6.2.2 Pooled Fund

Bill C-22 introduces an alternative to providing proof of financial responsibility as described in section 2.1.6.2.1 of this Legislative Summary. A person may instead provide proof that it participates in a "pooled fund" established by the oil and gas industry that is maintained at a minimum of $250 million and meets all requirements established by regulation.

The Governor in Council may increase that minimum amount by regulation. Where the relevant board is the National Energy Board, the increase by regulation must be on the recommendation of the minister. In the case where the relevant board is one of the offshore petroleum boards, the Minister of Natural Resources must consult with the minister's provincial counterpart with respect to the proposed increase, and the regulations cannot be made without the approval of the provincial counterpart.

If a payment for liability is made out of a pooled fund, the person who is liable for the spill or discharge for which the payment was made must reimburse the amount of the payment to the pooled fund in the prescribed manner. If the person fails to do so, the board may suspend or revoke a relevant operating licence or authorization. The relevant board may issue and publish guidelines and interpretation notes for applying the new section, allowing for participation in a pooled fund as an alternative to providing proof of financial responsibility.[47]

2.1.6.3 Duties Related to Financial Requirements

2.1.6.3.1 Duty of the Relevant Board

The relevant board is required, before issuing the authorization to carry out a work or an activity, to ensure that the applicant has provided the necessary proof of its financial resources and responsibility.[48]

2.1.6.3.2 Proof to Remain in Force

A person who the relevant board has authorized to carry out a work or an activity must ensure that its proof of financial resources, as well as its proof of financial responsibility, each described in sections 2.1.6.1 and 2.1.6.2 of this Legislative Summary, remain in force for the duration of the relevant work or activity, as well as for a period of one year after the abandonment of the last well for which the authorization was issued. The board may reduce the latter period and – other than in the case of a person who participates in a pooled fund – it may reduce the relevant amount of financial resources or financial responsibility.[49]

2.1.6.3.3 Contravention of the Requirement for Proof to Remain in Force

The board is given a power to suspend or revoke an operating licence or an authorization for failure to comply with, for contravention of or for default in respect of any requirement that the proof of financial resources or financial responsibility remain in force, as described in sections 2.1.6.1 and 2.1.6.2 of this Legislative Summary.[50]

2.1.7 Use of a Spill-Treating Agent

Bill C-22 adds a number of new sections to the *Canada Oil and Gas Operations Act*, as well as to each of the accord implementation Acts, providing for the use of a spill-treating agent to reduce or mitigate any danger to life, health, property or the environment that may result from an oil spill.

2.1.7.1 List of Spill-Treating Agents

The Minister of the Environment is given the power to make regulations establishing a list of spill-treating agents. As soon as possible after the list is made or amended, the Minister of Natural Resources must notify the minister's provincial counterparts, as well as the offshore petroleum boards, of the making or amendment of the list. Prohibitions – included in sections 123 and 124(1) to 124(3) of the *Canadian Environmental Protection Act, 1999*[51] – against importing, exporting or loading a substance for disposal at sea do not apply in respect of a spill-treating agent.[52]

2.1.7.2 Approval to Use a Spill-Treating Agent

In response to a spill, the Chief Conservation Officer[53] may, in writing, approve and set requirements for the use of a spill-treating agent if the Chief Conservation Officer determines that the use of the agent is likely to achieve a net environmental benefit.

In the case of a spill in an area solely under federal management, the Chief Conservation Officer must not approve the use of the spill-treating agent before consulting with the minister and the Minister of the Environment.

In the case of a spill in an offshore area under joint federal/provincial management, the Chief Conservation Officer must first consult with the federal Minister of Natural Resources and the minister's provincial counterpart, and the Minister of Natural Resources must consult with the Minister of the Environment.

This approval process does not apply in the case of a small-scale test.[54]

2.1.7.3 Non-application of Environmental Provisions

2.1.7.3.1 Non-application of Other Provisions

Bill C-22 adds two new schedules, which list provisions under other federal statutes and regulations that may be relevant in the context of an oil spill. A new section specifies that, in the case of a spill, the provisions listed in the first new schedule do not apply to the deposit of a spill-treating agent, and the provisions listed in the second schedule do not apply in respect of any harm that is caused by the spill-treating agent or by the interaction between the spill-treating agent and the spilled oil[55] if the following three conditions are met:

- The authorization that the relevant board issued to carry out the relevant work or activity permits the use of the spill-treating agent. (Note that the board may not permit the use of a spill-treating agent unless the board determines that the use of the spill-treating agent is likely to achieve a net environmental benefit).
- The Chief Conservation Officer approves the use of the spill-treating agent, as described in section 2.1.7.2 of this Legislative Summary, in response to the spill, and it is used in accordance with any requirements set out in the approval.
- The spill-treating agent is used for the purposes of preventing any further spill, repairing or remedying any condition resulting from the spill and reducing or mitigating any danger to life, health, property or the environment that results or may reasonably be expected to result from the spill.[56]

2.1.7.3.2 Amending the Schedules

The Governor in Council is given the power to amend, by order, either new schedule in order to add, amend or remove a reference to a federal Act or regulation, or a provision of a federal Act or regulation. Such an order is made on the recommendation of the minister and any other minister responsible for the administration of the provision.[57]

2.1.7.3.3 Application of the *Fisheries Act*

Specific instructions are provided regarding the operation of sections of the *Fisheries Act* – providing for civil liability in connection with the deposit of a deleterious substance into fish-bearing waters – where section 36(3) of the *Fisheries Act* would have been contravened by the deposit of a spill-treating agent but is not applicable because the three conditions set out in section 2.1.7.3.1 of this Legislative Summary have been met.[58]

2.1.7.4 Regulations to Follow

2.1.7.4.1 Incorporating the Use of New Regulations

Bill C-22 authorizes the Governor in Council to make regulations relating to the use of spill-treating agents. Five years after Bill C-22 receives Royal Assent (or earlier on order of the Governor in Council), it will amend the new provisions relating to use of a spill-treating agent, described in section 2.1.7.3.1 of this Legislative Summary, to incorporate use of any new regulations.

Specifically, the Chief Conservation Officer's approval to use the agent in response to a spill will not be required in the case of a small-scale test if prescribed requirements are met. Each of the board and the Chief Conservation Officer, in making their determinations as to whether the use of a spill-treating agent is likely to achieve a net environmental benefit, will be required to take into account any prescribed factors and any factors they consider appropriate. (The Chief Conservation Officer will no longer be required to consult with the ministers in making this determination.)

Finally, a fourth condition – that the agent is used in accordance with the regulations – will be added to the list of three conditions, set out in section 2.1.7.3.1 of this Legislative Summary, that must be met before provisions set out in the schedules will not apply.[59]

2.1.7.4.2 Regulatory Powers

The bill adds new related regulatory powers, and specifies that, in addition to other requirements, such regulations must be made on the recommendation of the Minister of Natural Resources and the Minister of the Environment. For the *Canada Oil and Gas Operations Act*, the recommendation of the Minister of Indian Affairs and Northern Development is also required.[60]

2.1.7.5 Scientific Research

For the purpose of a particular research project pertaining to the use of a spill-treating agent in mitigating the environmental impacts of a spill, the Minister of the Environment may authorize, and establish conditions for, the deposit of a spill-treating agent, oil or oil surrogate in areas of the sea under federal jurisdiction. In the context of an offshore area, the Minister of Natural Resources must obtain the approval of the minister's provincial counterpart before the Minister of the Environment may authorize such a deposit. The Minister of the Environment may not authorize the use of an oil surrogate unless it poses fewer safety, health or environmental risks than oil.[61]

2.1.8 Privileged Information

Under existing provisions of the *Canada Petroleum Resources Act* and the accord implementation Acts,[62] and subject to certain exceptions, much of the information and documentation provided for the purposes of the Act or its regulations is privileged.

2.1.8.1 Disclosure to a Government

Bill C-22 adds new sections allowing the relevant board to disclose privileged information and documentation to officials of the Government of Canada, the government of a province or a foreign government or to the representatives of their agencies for the purposes of a federal, provincial or foreign law that deals primarily with a petroleum-related work or activity. The following three conditions must be met before the disclosure may be made:

- The government or agency undertakes to keep the information or documentation confidential and not disclose it without the relevant board's written consent. (However, the board may only consent if the board itself is authorized to disclose the information or documentation.)
- The information or documentation is disclosed in accordance with any conditions agreed to by the board and the government or agency.
- In the case of disclosure to a foreign government or agency, the relevant minister or ministers[63] consent in writing.[64]

2.1.8.2 Disclosure to Minister

The relevant board may disclose to the relevant minister the information or documentation that it has disclosed or intends to disclose, as described in section 2.1.8.1 of this Legislative Summary, but the minister(s) may not further disclose that information or documentation unless either the board consents, in writing, to such further disclosure or the minister(s) is required by a federal Act (or an Act of the legislature of the relevant province, in the case of a provincial minister) to disclose that information or documentation. Note that the board may only consent to such further disclosure if the board itself is authorized to disclose the information or documentation.[65]

2.1.8.3 Three New Exceptions

Bill C-22 adds three new exceptions to the general rule that information and documents are privileged. The exceptions are:

- information regarding an applicant for an operating licence or authorization, or the scope, purpose, location, timing and nature of the proposed work or activity for which the licence or authorization is sought;
- information or documentation provided for a public hearing conducted under the power to hold a public hearing, as summarized in section 2.1.4.2 of this Legislative Summary; or
- information or documentation related to safety or environmental protection that the board discloses and that is:
  - provided in relation to an application for an operating licence or an authorization to carry out a work or an activity;
  - provided in relation to such a licence or authorization; or
  - provided in accordance with any regulations made under specified parts of the Acts.

However, the third exception, above, is subject to certain provisos generally aimed at protecting a person's competitive position and the person's confidential financial, commercial, scientific or technical information, as well as protecting the security of pipelines, buildings, installations, vehicles, systems, etc. The provisos provide for weighing the interest in non-disclosure against the public interest in disclosure. The same provisos apply in the context of public hearings, and therefore the provisos are summarized with more detail in section 2.1.4.2 of this Legislative Summary.[66]

2.1.8.4 Procedure Related to the Third Exception

Bill C-22 sets out a detailed procedure that the relevant board must follow before disclosing information or documentation related to safety or environmental protection, as described in the third exception summarized in section 2.1.8.3 of this Legislative Summary. Before the board makes such a disclosure, it must make every reasonable effort to provide written notice of its intended disclosure to the person who provided the information or documentation. (However, that person may waive the notice requirement, including by consenting to the disclosure.) The notice must:

- indicate that the board intends to make the disclosure;
- describe the information or documentation that the person provided to the board; and
- include a statement that the person may, within 20 days, provide written representation to the board as to why the information or documentation should not be disclosed.

After the person has had an opportunity to make representations but no later than 30 days after this notice is given, the board must decide whether to disclose the information or documentation, and it must give written notice of its decision to the person. If the board's decision is in favour of disclosure, the notice must indicate that the person has 20 days to request a review of the board's decision, and if no review is requested, that the board will make the disclosure. If the person opposes the intended disclosure, the person then has 20 days to apply to the court[67] for a review of the board's decision. The court will hear and determine such an application in a summary way, taking every reasonable precaution to avoid the disclosure of privileged information in its proceedings.[68]

2.1.8.5 Non-application of Three Exceptions

None of the three new exceptions summarized in section 2.1.8.3 of this Legislative Summary apply for information or documentation about an exploratory well, a delineation well, a development well, geological work or geophysical work, any engineering research or feasibility study or experimental project, or an environmental study after a specified period has elapsed for each case.[69] Note that under an existing provision of each relevant Act,[70] the general rule that information and documentation is privileged also does not apply to these classes of information or documentation.[71]

2.1.9 REGULATIONS

Under existing provisions of the various Acts, the Governor in Council may make regulations for the purposes of safety, the protection of the environment, and the production and conservation of oil and gas resources. Bill C-22 adds to this list a new purpose of "accountability." The bill also adds a new power for the Governor in Council to make regulations concerning the creation, conservation and production of records.[72]

2.1.10 ENFORCEMENT

2.1.10.1 SENTENCING PRINCIPLES

Sections 718.1 to 718.21 of the *Criminal Code* [73] set out principles and factors that a court is required to consider when sentencing a person who is found guilty of an offence. In addition to these principles and factors, Bill C-22 specifies that, when sentencing an offender under the *Canada Oil and Gas Operations Act* or one of the accord implementation Acts, the amount of the fine should be increased to account for every aggravating factor, and it should reflect the gravity of each aggravating factor associated with the offence. The bill adds the following new list of aggravating factors for a court to consider when sentencing:

- The offence caused:
  - harm or risk of harm to human health or safety; or
  - damage[74] or risk of damage to the environment, or to any unique, rare, particularly important or vulnerable component of the environment;
- The damage or harm is extensive, persistent or irreparable.
- The offender:
  - committed the offence intentionally or recklessly;
  - failed to take reasonable steps to prevent the commission of the offence;
  - increased its revenue or decreased its costs (or intended to do so) by committing the offence or failing to take action to prevent it;
  - has a history of non-compliance with federal or provincial safety or environmental legislation; or
  - after the commission of the offence, attempted to conceal its commission, failed to take prompt action to prevent, mitigate or remediate its effects, or failed to take prompt action to reduce the risk of committing similar offences in the future.

The absence of an aggravating factor is not a mitigating factor. If the court decides not to increase the amount of the fine despite the existence of one or more aggravating factors, the court must give reasons for that decision.[75]

2.1.10.2 Court Orders

2.1.10.2.1 New Types of Orders

Currently, when a person is found guilty of an offence under the *Canada Oil and Gas Operations Act* or one of the accord implementation Acts, the only type of order that the Act permits a court to make, in addition to any other punishment it imposed, is an order that the person comply with the relevant requirement. Bill C-22 adds 14 new types of orders that a court may make, having regard to the nature of the offence and the circumstances surrounding its commission.

The court may make an order prohibiting the offender from:

- committing an act or engaging in an activity that may result in the continuation or repetition of the offence; or
- taking measures to acquire an interest under the *Canada Petroleum Resources Act* or the relevant accord implementation Act, as the case may be, or from applying for any new licence or other authorization under the *Canada Oil and Gas Operations Act* or the relevant accord implementation Act, as the case may be, during a period that the court considers appropriate.

The court may make an order directing the offender to:

- take appropriate action to remedy or avoid harm to the environment from the offence;
- carry out, or to pay for, environmental effects monitoring;
- make changes to its environmental management system;
- have an environmental audit conducted, and remedy any deficiencies revealed during the audit;
- pay an appropriate amount of money to the Environmental Damages Fund[76] or to the federal government for the purpose of promoting the conservation, protection or restoration of the environment;
- publish the facts of the offence and details of the punishment imposed, including any orders;
- notify any person aggrieved or affected by the offender's conduct of the facts of the offence and details of the punishment imposed;
- post a bond or pay an amount of money into court to ensure that the offender complies with any prohibition, direction, requirement or condition specified in the order;
- perform community service;
- pay an amount of money to environmental, health or other groups to assist in their work (under the *Canada Oil and Gas Operations Act*, the groups' work is to be in the community where the offence was committed);
- pay an amount of money to an educational institution, including for environmental studies scholarships; or
- comply with conditions for securing the offender's good conduct.

The order may not continue in force for more than three years. If an offender does not comply with an order requiring the publication of facts relating to the offence and details of the punishment imposed, the relevant board may publish those facts and details and recover the costs of publication from the offender. Such costs constitute a debt to the federal government or the relevant offshore petroleum board, as the case may be, and may be recovered in any court of competent jurisdiction.[77]

2.1.10.2.2 Varying an Order

An offender or the relevant board may apply to the court to vary an order because of a change in the offender's circumstances since the order was made. The court may require the offender to appear before it, and it may direct that notice of the application be given to any interested persons.

After hearing from the offender, the relevant board and any interested persons the court may decide to hear from, the court may change any prohibition, direction, requirement or condition specified in the order for any period, or it may extend the period during which the order is to remain in force, not exceeding one year. Also, the court may decrease the period during which the order is to remain in force, or relieve the offender from complying with any condition specified in the order, either absolutely or partially or for any period. If a court has heard an application to vary an order for an offender, no other application may be made to vary an order for the same offender without the permission of the court.[78]

2.1.10.3 Recovery of Fines and Amounts

Bill C-22 adds a new section to assist in the recovery of an overdue fine or an amount an offender is ordered to pay. A prosecutor may file[79] the conviction or order in a court of competent jurisdiction,[80] which has the effect of entering as a judgment the amount of the fine or the amount ordered to be paid, and costs, if any. The judgment is then enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.[81]

2.1.11 Administrative Monetary Penalty System

2.1.11.1 Background Information

An administrative monetary penalty (AMP) is a civil sanction which may be an appropriate response for certain types of violations that require more than a warning but are not serious enough to warrant a criminal prosecution. According to an Environment Canada consultation document:

> Most AMPs are issued directly by a government department to the violator using a simple form that sets out the violation in respect of which the AMP is issued, the amount of the penalty, and the options for payment. … An AMP is designed to ensure compliance with legislation and can address a range of compliance issues: some relatively minor, and some more severe. An AMP takes away the financial incentives of rule-breaking and thereby removes any financial benefit, advantage, or gain a person or corporation achieved by committing a violation. It helps ensure future compliance and may discourage others from violating legislation.[82]

2.1.11.2 Designation of Violations

Bill C-22 adds new sections empowering the Governor in Council to make regulations designating as a "violation" the contravention of specific provisions of the *Canada Oil and Gas Operations Act* or either of the accord implementation Acts, or regulations made under any of these Acts. The Governor in Council may also designate as a violation the contravention of any direction, requirement, decision or order made under the Act, or the failure to comply with any term, condition or requirement of an operating licence, authorization, approval, leave or exemption granted under the Act. (In the case of the accord implementation Acts, before such regulations are made, the federal Minister of Natural Resources must consult with, and obtain the approval of, the minister's provincial counterpart.) Every person who commits a violation is liable to an AMP. The purpose of the penalty is to promote compliance with the Act rather than to punish.[83]

2.1.11.3 Notice of Violation

A notice of violation may be issued and served on a person believed, on reasonable grounds, to have committed a violation. The notice must:

- name the person;
- set out the facts surrounding the violation;
- set out the amount of the penalty;
- inform the person of the manner of paying the penalty;
- inform the person of the right to request a review; and
- inform the person that:
  - if the person neither pays the penalty nor requests a review, the person will be considered to have committed the violation and is liable to the penalty; or
  - if the person pays the penalty, the person is considered to have committed the violation and proceedings for it are ended.[84]

2.1.11.4 Amount of Administrative Monetary Penalties

The Governor in Council may make regulations respecting the determination of the amount payable as the penalty, which may be different for individuals and other persons,[85] for each violation.[86] However, the maximum penalties for a violation by an individual and another person are $25,000 and $100,000, respectively.[87]

2.1.11.5 Directors, Officers, Employees, Agents and Mandataries

If a corporation commits a violation, any director, officer, agent or mandatary[88] of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to the violation and is liable to a penalty, whether or not the corporation is proceeded against. The fact that the violation was committed by an employee, agent or mandatary of a person is sufficient proof of a violation by the person, regardless of whether or not the employee, agent or mandatary is identified or proceeded against.[89]

2.1.11.6 Rules About Violations

Bill C-22 sets out the following rules regarding violations:

- Proceeding with any act or omission as a *violation* under the Act precludes proceeding with it as an *offence* under the Act, and vice versa. Therefore, section 126 of the *Criminal Code*, which sets out the offence of disobeying a federal statute, does not apply as a violation.
- A person named in a violation does not have a defence by reason that the person exercised due diligence to prevent the commission of the violation or reasonably and honestly believed in the existence of facts that, if true, would exonerate the person. However, common law rules and principles that render any circumstance a justification or excuse in relation to a charge for an offence under this Act also apply in respect of a violation, as long as they are not inconsistent with the Act.
- A violation that is committed or continued on more than one day constitutes a separate violation for each day on which it is committed or continued.
- The limitation period for issuing a notice of violation is two years after the day on which the matter giving rise to the violation occurred.
- A person authorized to issue notices of violation may cancel or correct an error in a notice of violation at any time before the relevant board receives a request for a review in respect of the notice.
- The relevant board may make public the facts surrounding a violation, the name of a person who committed it and the amount of the penalty.[90]

2.1.11.7 Reviews

A person served with a notice of violation has 30 days – or a longer period if allowed by the relevant board – to make a request to the board for a review of the amount of the penalty, the facts surrounding the violation, or both. Either the board or a person it may designate may conduct the review. The object of the review is to determine whether the person committed the violation, whether the amount of the penalty was determined in accordance with the regulations, or both.

If the facts of the violation are reviewed, the person who issued the notice of violation bears the burden of establishing, on a balance of probabilities, that the person named in the notice committed the violation. If it is determined that the amount of the penalty for the violation was not determined in accordance with the regulations, the board or the person conducting the review must correct the amount. The determination and the reasons for it are rendered in writing and served upon the person who requested the review. The determination is final and binding and except for judicial review by a competent court,[91] is not subject to appeal or to review by any court.[92]

2.1.11.8 Recovery of Administrative Monetary Penalties

Proceedings to recover an AMP may not be instituted more than five years after the day on which the penalty becomes payable. An AMP constitutes a debt due to the federal government – or in the case of the accord implementation Acts, to the

relevant provincial government – which may be recovered in court. In order to recover the debt, the relevant board may issue and register in court a certificate of non-payment specifying the unpaid amount, which has the same effect as a judgment of that court for a debt of the specified amount plus all related registration costs.[93]

2.1.11.9 Documents and Notices

In the absence of evidence to the contrary, a document that appears to be a notice of violation is presumed to be authentic and is proof of its contents in any proceeding about a violation. The Governor in Council may make regulations respecting the service of documents required or authorized under various sections, including the manner and proof of service.[94] The relevant board may establish the form of notices of violations, designate persons authorized to issue notices of violations, and establish short-form descriptions of violations to be used in notices.[95]

2.1.12 Amendments Specific to the *Canada Oil and Gas Operations Act* Regarding Transboundary Pools or Fields

Bill C-22 adds numerous new provisions to the *Canada Oil and Gas Operations Act* for delineating and managing transboundary pools or fields.

According to a definition that is added to the Act, "'transboundary' means, in relation to a pool, extending beyond the National Energy Board's jurisdiction under [the] Act or, in relation to a field, underlain only by one or more such pools."

Other new definitions relevant to this matter include these:

- "regulator" means a provincial government, a provincial regulatory agency or a federal–provincial regulatory agency that has administrative responsibility for the exploration for and exploitation of oil and gas in an area adjoining the perimeter.
- "perimeter" means:
  - the area in the Northwest Territories or Nunavut that is within 20 km of the limit of that territory; and
  - a 10 nautical mile–wide fringe along the seaward limit of submarine areas under federal jurisdiction.[96]

2.1.12.1 Appropriate Regulator

In relation to a transboundary pool or field, the "appropriate regulator" is the regulator that has jurisdiction in an area into which the transboundary pool or field in question extends. However, for the purposes of determining whether a pool transcends a boundary, as well as the pool's delineation, the "appropriate regulator" is any regulator that has jurisdiction in an area:

- adjoining the portion of the perimeter where the drilling took place or where an accumulation of oil or gas exists; or
- into which there is reason to believe that, based on data obtained from any drilling, an accumulation of oil or gas extends.[97]

2.1.12.2 Determination of Whether a Pool is Transboundary

2.1.12.2.1 Information

If an exploratory well is drilled in the perimeter (see the definition of *perimeter* in section 2.1.12 of this Legislative Summary), the National Energy Board must provide each appropriate regulator with any information in its possession – and, on request, with any additional information in its possession – that is relevant to the determination of whether a pool is transboundary and its delineation. Regulations may prescribe the timing and manner of providing such information as well as information to be included.[98]

2.1.12.2.2 Notice from the National Energy Board

If data obtained from any drilling in the perimeter provides sufficient information for the National Energy Board to determine whether a pool exists, the board must notify each appropriate regulator as soon as feasible of its determination. If the board provides no such notice, within one year of the board's receipt of data from the last of three drillings of the same geological feature in the perimeter, the board must notify each appropriate regulator either of its determination or that there is insufficient information to make a determination. If the board determines that a pool exists, the board must:

- specify in its notice to each appropriate regulator whether or not there is, in its opinion, reason to believe the pool is transboundary; and
- provide each appropriate regulator and the minister with the reasons for its determination and opinion.[99]

2.1.12.2.3 Notice from the Regulator

Within 90 days of the National Energy Board's receipt of any notice from a regulator indicating the regulator's determination as to whether a pool exists in an area adjoining the perimeter and, if applicable, whether there is reason to believe that the pool extends into the perimeter, the National Energy Board must inform the regulator of its agreement with the content of the notice, or of its disagreement, along with reasons for disagreeing.[100]

2.1.12.2.4 Delineation

If, after receiving a notice described above, the National Energy Board and the regulator agree that a pool exists, they must jointly determine whether the pool is transboundary and, if so, they must jointly delineate its boundaries. If they disagree about whether a pool exists or is transboundary or about a pool's delineation, they may refer the matter to an expert within 180 days of issuing the notice.[101]

2.1.12.3 Referral to an Expert

2.1.12.3.1 Appointment

The amendments that Bill C-22 makes to the *Canada Oil and Gas Operations Act* include four circumstances in which a matter may be referred to an expert for resolution. A party that intends to refer a matter to an expert must notify the other party of its intention, and within 30 days, the parties must agree on the appointment of an expert to decide the matter. However, if the parties cannot agree on the appointment of a single expert, within another 30 days the parties must each appoint one expert to a panel, and those two experts shall, in turn, jointly appoint an additional expert as chairperson. However, if the two experts cannot jointly agree on the appointment of a chairperson within 30 days of the last appointment, then, within another 30 days, the Chief Justice of the Federal Court appoints the chairperson, and the expert panel may begin its review of the matter.[102]

2.1.12.3.2 Disagreement Resolution

An expert must be impartial and independent and have knowledge or experience relative to the subject of disagreement. Decisions of an expert panel are arrived at by majority vote. The expert's or expert panel's decision must be made within 270 days of the expert or panel becoming responsible for resolving the matter. Subject to judicial review, the decision is final and binding. An expert must keep records of hearings and proceedings, which are deposited with the minister when the expert's relevant activities have ceased.[103]

2.1.12.4 Agreements Relating to Development of a Transboundary Pool or Field

2.1.12.4.1 Joint Exploitation Agreement

The minister and the appropriate regulator may enter into a joint exploitation agreement providing for the development of a transboundary pool or field as a single field. The agreement must include any matters provided for by regulations. If a joint exploitation agreement is signed, the transboundary pool or field may only be developed as a single field. Development of that field is subject to both a unit agreement and a unit operating agreement[104] being entered into and subsequently approved. More information about a unit agreement and approval is provided in sections 2.1.12.4.2 and 2.1.12.4.3 of this Legislative Summary. Where there is any inconsistency, the joint exploitation agreement prevails over the unit agreement and the unit operating agreement.[105]

If an interest owner[106] advises the minister or the National Energy Board that it intends to start production from a transboundary pool or field, the minister must notify the appropriate regulator as soon as feasible of the interest owner's intention. If the minister and the appropriate regulator have unsuccessfully attempted to enter into a joint exploitation agreement – within 180 days of the minister's notifying the appropriate regulator of the interest owner's intention – they may refer the matter to an expert to determine the particulars of the agreement. See section 2.1.12.3 of this Legislative Summary for information about referral to an expert.[107]

2.1.12.4.2 Unit Agreement

The royalty owners[108] and the working interest owners[109] of a transboundary pool or field that is to be developed as a single field may enter into a unit agreement and, once approved as described in section 2.1.12.4.3 of this Legislative Summary, must operate their interests in accordance with the unit agreement, including any amendment to it. Sections 37(2) and 37(3) of the *Canada Oil and Gas Operations Act* apply to the unit agreement. Those sections provide for the minister to enter into a unit agreement and explain the unit operator's relationship to the parties to the unit agreement.[110]

2.1.12.4.3 Approval of the Unit Agreement and the Unit Operating Agreement

The minister and the appropriate regulator may approve the unit agreement if all the royalty owners and all the working interest owners in the pool or field are parties to it, and they may approve the unit operating agreement if all the working interest owners in the pool or field are parties to it. Both agreements are to be jointly approved in this way before the National Energy Board issues an authorization to carry on a work or an activity connected with the development of a transboundary pool or field as a single field.[111]

2.1.12.4.4 Unitization Order

A *unitization order* is an order made by the minister that results in the unit agreement applying to all the royalty owners and working interest owners – and the unit operating agreement applying to all the working interest owners – who have an interest in the unit area.[112]

2.1.12.4.5 Application for a Unitization Order

One or more working interest owners who are parties to a unit agreement and a unit operating agreement and own in total 65% or more of the working interests in a transboundary pool or field that is to be developed as a single field may apply to the minister and the appropriate regulator for a unitization order. Section 47 of the *Canada Oil and Gas Operations Act* explains how the percentage of interest referred to in this section of the Legislative Summary and in other parts of the Act is to be determined. The unit operator (or proposed unit operator) may make the application on behalf of the working interest owners. The required contents of the application are set out in section 40(1) of the *Canada Oil and Gas Operations Act*. The minister and the regulator must appoint an expert, as described under section 2.1.12.3 of this legislative summary, to decide the application.[113]

2.1.12.4.6 Process for Deciding an Application

An expert responsible for determining an application for a unitization order must hold a hearing at which all interested persons are given an opportunity to be heard. At the end of the hearing, the expert must request that the minister and appropriate regulator order that the unit agreement is binding on and enforceable against all the royalty owners and working interest owners – and that the unit operating agreement is binding on and enforceable against all working interest owners – who have an interest in the unit area.

The expert may request that the minister and the regulator include in the order any variations to the unit agreement or the unit operating agreement that the expert determines are necessary to allow for the more efficient or more economical production of oil or gas from the unitized zone. However, the expert may make no such request that the order include variations if the expert finds that,

- on the day on which the hearing begins:
  - the unit agreement and unit operating agreement have been executed by one or more working interest owners who own in total 65% or more of the total working interests in the unit area;
  - the unit agreement has been executed by one or more royalty owners who own in total 65% or more of the total royalty interests in the unit area; and
- the unitization order applied for would allow for the more efficient or more economical production of oil or gas from the unitized zone.

Upon receiving such a request from an expert, the minister must issue a unitization order. The order only becomes effective on the date set out in the order – which must be at least 30 days after the order is made – if the appropriate regulator has issued an equivalent order.[114]

2.1.12.4.7 Effect of a Unitization Order

The unit agreement and unit operating agreement have the effect given to them by the minister's order. The issuance of unitization orders from both the minister and the regulator is deemed to be their joint approval of the unit agreement and unit operating agreement. A unitization order is not invalid by reason only of the absence of – or irregularities in giving – notice to any owner of the application for an order, or any irregularities in the proceedings leading to the order. While the order is in effect, all persons carrying on oil or gas activities in the unit area must abide by the provisions of the unit agreement and unit operating agreement.[115]

2.1.12.4.8 Revocation of a Unitization Order

The minister must immediately revoke a unitization order that varies a unit agreement or a unit operating agreement if, before the effective date of the order,

- the applicant withdraws the application, or
- the following people sign statements objecting to the order and file the statements with the minister:
  - in the case of a unit agreement:
    - working interest owner(s) who own in total more than 25% of the total working interests in the unit area and are part of the group that owns 65% or more of the total working interests in the unit area and that executed the unit agreement and unit operating agreement; and
    - royalty owner(s) who own in total more than 25% of the total royalty interests in the unit area and are part of the group that owns 65% or more of the total royalty interests and that executed the unit agreement; or

- in the case of a unit operating agreement: working interest owner(s) who own in total more than 25% of the total working interests in the unit area and are part of the group that owns 65% or more of the total working interests and that executed the unit agreement and the unit operating agreement.[116]

2.1.12.4.9 Amendment of a Unitization Order

A working interest owner may apply to both the minister and the appropriate regulator to have a unitization order amended. The minister and the regulator must appoint an expert, as described in section 2.1.12.3 of this Legislative Summary, to determine the application. The expert must hold a hearing at which all interested persons are given an opportunity to be heard. After the hearing, the expert may request that the minister and the appropriate regulator order the amendment of the unitization order either as proposed by the applicant, or as varied by the expert to allow for the more efficient or more economical production or oil or gas from the unitized zone.

However, if the expert finds that, on the day on which the hearing begins, one or more working interest owners who own in total 65% or more of the total working interests and one or more royalty interest owners who own in total 65% or more of the total royalty interests in the unit area have consented to the proposed amendment, the expert may end the hearing and request that the minister and appropriate regulator each amend their unitization orders in accordance with the amendment proposed. However, no such amendment may alter the ratios between the tract participations[117] of those tracts that were qualified for inclusion in the unit area before the commencement of the hearing.[118]

2.1.12.5 Development Plan for Work or Activity in a Transboundary Pool or Field

2.1.12.5.1 Approval

Under section 5.1 of the *Canada Oil and Gas Operations Act* and its regulations,[119] a person seeking the National Energy Board's approval for a well relating to a production project must first obtain the board's approval of a related development plan. Bill C-22 adds new provisions to section 5.1 that are applicable for a development plan – or amendment of a development plan – submitted for the board's approval for a transboundary pool or field that is the subject of a joint exploitation agreement. In such a case, the National Energy Board may not approve the development plan – or the amendment to a development plan – unless the appropriate regulator has agreed to its content. The board's approval of the development plan – or amendment to a development plan – is subject to:

- the consent of the Governor in Council in relation to Part I (a description of the general approach of developing the pool or field) of the development plan;
- any requirements the board and the regulator have agreed are appropriate; and
- any requirements set out in regulations.[120]

2.1.12.5.2 Disagreement

In the case of disagreement about the content of the development plan – or amendment to a development plan – or any of the requirements for approval, the minister or the regulator may refer the matter to an expert – as described in section 2.1.12.3 of this Legislative Summary – for resolution. However, the minister must have the Governor in Council's consent to refer the matter to an expert if it relates to Part I of the development plan, which is the part of the plan that includes a description of the general approach of developing the pool or field, rather than the more technical information that would be included in Part II.[121]

2.1.12.5.3 Benefits Plan Approval

Under section 5.2 of the Act, the National Energy Board does not approve a development plan or issue an authorization for any work or activity until the minister has approved (or waived the requirement for approval of) a related "benefits plan." A benefits plan, in brief, is a plan for employing Canadians and providing an opportunity for Canadian persons to provide goods and services for the work or activity.

Bill C-22 extends section 5.2 to the context of a transboundary pool or field by adding new sections specifying that the National Energy Board may not approve a benefits plan for a transboundary pool or field that is the subject of a joint exploitation agreement unless the minister and the appropriate regulator have agreed to its content. If the minister and the regulator disagree about the content of a plan, they may refer the matter to an expert for resolution, as described in section 2.1.12.3 of this Legislative Summary.[122]

2.1.13 Amendments Specific to the Accord Implementation Acts Regarding Fiscal Equalization Offset Payments and the Development Fund

2.1.13.1 Fiscal Equalization Offset Payments and the Development Fund

Bill C-22 repeals parts V and VI of each of the accord implementation Acts, which, respectively, deal with fiscal equalization offset payments and determination of per capita fiscal capacity, and a development fund.[123]

2.1.13.2 Per Capita Fiscal Capacity

In addition, the bill amends Part VIII of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, which addresses Crown share adjustment payments. Specifically, it repeals a section that refers to a section in Part V – which is itself repealed by Bill C-22 – which provides that the per capita fiscal capacity of Nova Scotia and the national average per capita fiscal capacity shall be determined in accordance with section 226 of the Act. Determining these two capacities is necessary because, when the per capita fiscal capacity of Nova Scotia for any fiscal year is equal to or greater than the national average per capita fiscal capacity for that fiscal year, the federal government does not make a Crown share adjustment

payment to Nova Scotia for that fiscal year. The current means of determining these two capacities is moved to a new section of the Act.[124]

2.1.14 Technical Corrections

2.1.14.1 Provisions Relating to Declarations

Under existing sections 28 and 35 of the *Canada Petroleum Resources Act*, which are not amended, the National Energy Board is the party responsible for making a declaration of significant discovery or a declaration of commercial discovery when the relevant conditions are met. However, existing sections 33 and 36 of the Act imply that it is the minister rather than the National Energy Board who makes such declarations. Bill C-22 amends sections 33 and 36 so that, consistent with sections 28 and 35, they refer to the National Energy Board rather than the minister as the party that makes such declarations. The bill makes a similar amendment to each of the accord implementation Acts.[125]

In the context of a declaration of commercial discovery, Bill C-22 adds a new requirement to the *Canada Petroleum Act* that a copy of the declaration (and any amendment to it or revocation of it) made regarding any frontier lands[126] that are subject to an interest be sent by registered mail to the interest owner.[127]

2.1.14.2 Definition of Well Termination Date

Bill C-22 amends the English definition of *well termination date* so that it no longer uses the term *test hole*. That term is neither defined nor used elsewhere in the Acts. In the French version, the bill repeals the definition of *date d'abandon du forage* and replaces it with a new definition of *date d'abandon du puits*, which is equivalent to the existing English definition.[128]

2.1.15 Consequential Amendments

2.1.15.1 *Nova Scotia and Newfoundland and Labrador Additional Fiscal Equalization Offset Payments Act*

Bill C-22 makes consequential amendments to the *Nova Scotia and Newfoundland and Labrador Additional Fiscal Equalization Offset Payments Act*,[129] which implements the Canada–Newfoundland and Labrador Arrangement and the Canada–Nova Scotia Arrangement. These two arrangements, which were signed between the respective provinces and the Government of Canada in 2005, relate to offshore revenues.

Bill C-22 amends the Act to delete references to the term *fiscal equalization offset payment*, which is necessary because Bill C-22 repeals Part V of each of the accord implementation Acts, which relate to fiscal equalization offset payments. As well, Bill C-22 repeals sections of the *Nova Scotia and Newfoundland and Labrador Additional Fiscal Equalization Offset Payments Act* regarding transitional payments for the periods 2006–2011 and 2011–2012.[130]

2.1.15.2 *Budget and Economic Statement Implementation Act, 2007*

Bill C-22 also makes a consequential amendment to the *Budget and Economic Statement Implementation Act, 2007*,[131] which implements certain provisions of the 2007 budget and economic statement. Specifically, the bill repeals section 174 of the Act, which directs how certain sections – which Bill C-22 also repeals – of the *Canada–Newfoundland Atlantic Accord Implementation Act* and the *Nova Scotia and Newfoundland and Labrador Additional Fiscal Equalization Offset Payments Act* were to be read for the fiscal year that began on 1 April 2007 or 2008, depending on an election that was available to the provinces under section 3.7(1) of the *Federal–Provincial Fiscal Arrangements Act* [132] at that time. The election related to the provinces' fiscal equalization payments for the fiscal year beginning on 1 April 2007.[133]

2.1.16 Coordinating Amendments

Coordinating amendments are needed because Bill C-22's introduction is preceded by the introduction during this parliamentary session of Bill C-5, Offshore Health and Safety Act,[134] as well as Bill C-15, Northwest Territories Devolution Act.[135] These two bills amend the four oil and gas Acts amended by Bill C-22. When Bill C-22 was introduced, Bills C-5 and C-15 had each passed second reading and been referred to committee.

2.1.16.1 Bill C-5

Bill C-5 adds a new Part III.1 to each of the accord implementation Acts to establish a new occupational health and safety regime in offshore workplaces. Coordinating amendments ensure that either different amendments made by bills C-5 and C-22 to the same provision of an accord implementation Act are integrated into the same provision of the accord implementation Act, or the amended provisions are renumbered to ensure that all changes made by both bills are included in each accord implementation Act. In several instances, a reference in one bill to a provision repealed by the other bill is repealed if the wording containing the reference comes into force after the provision is repealed.[136]

2.1.16.2 Bill C-15

Bill C-15 implements certain provisions of the *Northwest Territories Lands and Resources Devolution Agreement* by enacting a new Northwest Territories Act that gives the Legislative Assembly of the Northwest Territories greater control over land and resources in the territory. Bill C-15 also amends the *Canada Oil and Gas Operations Act* and the *Canada Petroleum Resources Act* so that they no longer apply to onshore[137] areas of the territory for which the territorial legislature is given regulatory responsibility.

Coordinating amendments in Bill C-22 ensure that, once Bill C-15 has amended section 3 of the *Canada Oil and Gas Operations Act* – which describes the lands and submarine areas to which the Act applies – references to section 3 made in other provisions of the Act reflect that amendment. One coordinating amendment ensures

that neither competing amendment to the definition of *unitization order* in section 29 of the *Canada Oil and Gas Operations Act* repeals the change made by the other, but that both changes are included in the definition. Another coordinating amendment recognizes that bills C-15 and C-22 each add identical new sections 101(6.1) to 101(6.3) to the *Canada Petroleum Resources Act*.[138]

2.1.17 Coming into Force

Except for the sections mentioned below, all of the amendments Bill C-22 makes to the four oil and gas Acts come into force 12 months after the day on which Bill C-22 receives Royal Assent or on any earlier day or days to be fixed by order of the Governor in Council.

As discussed in section 2.1.7.4 of this Legislative Summary, it is anticipated that after Bill C-22 is enacted, regulations relating to the use of spill-treating agents will be made. Accordingly, Bill C-22 will amend certain of the provisions that it enacts which relate to the use of spill-treating agents so as to incorporate references to the future regulations. Those amendments will come into force five years after the day on which Bill C-22 receives Royal Assent or on any earlier day or days that may be fixed by order of the Governor in Council. The coordinating amendment provisions of Bill C-22, clauses 117 and 118, come into force on Royal Assent.[139]

2.2 Part 2 – Enactment of the Nuclear Liability and Compensation Act and Repeal of the *Nuclear Liability Act*

Clause 128 of Bill C-22 repeals the *Nuclear Liability Act*,[140] and clause 120 replaces it with a new Nuclear Liability and Compensation Act, which is summarized below. The new Act comprises 80 sections.

2.2.1 Overview (Sections 3, 4 and 6 of the Act)

The purpose of the Act is "to govern civil liability and compensation for damage in case of a nuclear incident" (section 3).

The "minister" referred to in the Act is to be designated by the Governor in Council (section 4). The Act is binding on the federal and provincial governments (section 6).

2.2.2 Non-application (Section 5 of the Act)

The Act does not apply to a nuclear incident that results from an act of war, hostilities, civil war or insurrection, other than a terrorist activity as defined in section 83.01(1) of the *Criminal Code*. In addition, the Act does not apply to damage to a nuclear installation or its related property – including property under construction – if the operator is responsible for the damage.

2.2.3 Nuclear Installations and Operators (Section 7 of the Act)

A nuclear installation is a site or means of transport that the Governor in Council has designated, by regulation, as a nuclear installation. Such a regulation is made on the minister's recommendation and after consultation with the Canadian Nuclear Safety Commission.

A site may be designated as a nuclear installation if it is the location of one or more facilities that are licensed under the *Nuclear Safety and Control Act* [141] and that contain nuclear material. A means of transport may be designated as a nuclear installation if it is equipped with a nuclear reactor. In either case, the holder of the licence issued under the *Nuclear Safety and Control Act* – that either authorizes the facilities or relates to the means of transport – is the "operator" of the nuclear installation.

2.2.4 Liability for Nuclear Incidents

2.2.4.1 Operator's Liability (Sections 8 to 13 of the Act)

If a nuclear incident occurs in relation to a nuclear installation:

- an operator is not liable for any resulting damage except as provided for under the Act (section 8 of the Act);
- the operator of the nuclear installation – and no person other than the operator – is liable for the damage caused, as described in sections 2.2.4.2.1 and 2.2.4.2.2 of this Legislative Summary (section 9 of the Act);
- the operator's liability for damage caused by the nuclear incident is absolute (i.e., no proof of tort, or of fault within the meaning of the *Civil Code of Québec*, is required) (section 10 of the Act);
- two or more operators are jointly and severally, or solidarily, liable[142] to the extent that it cannot reasonably be determined what portion of the liability is attributable to each operator (section 11 of the Act);
- an operator is not liable for damage suffered by a person who intentionally caused the nuclear incident wholly or partly by an act or omission or under circumstances amounting to gross negligence or, in Quebec, gross fault (section 12 of the Act); and
- an operator has no right of recourse against any person other than an individual who intentionally caused the nuclear incident (section 13 of the Act).

2.2.4.2 Geographical Extent and Circumstances of Liability

If a nuclear incident occurs, the operator is liable for damage caused in the areas and circumstances listed in sections 2.2.4.2.1 to 2.2.4.2.3 of this Legislative Summary. Note that provisions of the new Nuclear Liability and Compensation Act permit Canada to ratify the International Atomic Energy Agency's *Convention on Supplementary Compensation for Nuclear Damage*. In anticipation of this convention coming into force, the Nuclear Liability and Compensation Act provides for operator

liability for damage caused in a "Contracting State," which is a state that has ratified, accepted or approved the convention or has acceded to it.

2.2.4.2.1 Canada or Its Exclusive Economic Zone (Sections 9(1) and 9(2) of the Act)

An operator is liable for damage that is caused within Canada or its exclusive economic zone[143] by:

- ionizing radiation emitted from any source of radiation within, or released from, the operator's nuclear installation;
- ionizing radiation emitted from nuclear material being transported:
  - from the operator's nuclear installation until it is placed in another nuclear installation or until liability is assumed by the operator of that other nuclear installation, under the terms of a written contract,
  - to the operator's nuclear installation from outside Canada,
  - from the operator's nuclear installation to a person in a state that is not a Contracting State, until it is unloaded in that state,
  - with the operator's written consent, to the operator's nuclear installation from a person in a state that is not a Contracting State from the time it is loaded on the means of transport,
  - **from the operator's nuclear installation by a second operator,[144] who is in the territory of a Contracting State (other than Canada), before that person assumes liability for the nuclear material under the terms of a written contract or before that person takes charge of the nuclear material, or**
  - **to the operator's nuclear installation from a second operator,[145] who is within the territory of a Contracting State (other than Canada), after the operator assumes liability under the terms of a written contract or after that operator takes charge of the nuclear material;**
- a combination of the radioactive properties and toxic, explosive or other hazardous properties of a source referred to in the first bullet point or nuclear material referred to in the second bullet point; or
- a preventive measure taken in relation to the operator's nuclear installation or in relation to any transportation for which the operator is responsible. Preventive measures are discussed in section 2.2.4.3 of this Legislative Summary.

2.2.4.2.2 Contracting State (Other than Canada) or Its Exclusive Economic Zone (Sections 9(4) to 9(6) of the Act)

An operator is liable for damage that is caused within a Contracting State (other than Canada) or its exclusive economic zone by:

- ionizing radiation emitted from any source of radiation within, or released from, the operator's nuclear installation;
- ionizing radiation emitted from nuclear material being transported:

  - from the operator's nuclear installation to a second operator,[146] who is within the Contracting State (other than Canada), before that person assumes liability for the nuclear material under the terms of a written contract or before that person takes charge of the nuclear material,
  - from a second operator,[147] who is within a Contracting State (other than Canada), to the operator after the operator assumes liability for the nuclear material under the terms of a written contract or after that operator takes charge of the nuclear material,
  - from the operator's nuclear installation to a person in a state that is not a Contracting State until it is unloaded, or
  - with the operator's written consent, from a person in a state that is not a Contracting State to the operator's installation from the time it is loaded on the means of transport;
- a combination of the radioactive properties and toxic, explosive or other hazardous properties of a source referred to in the first bullet point or nuclear material referred to in the second bullet point; or
- a preventive measure taken in relation to the operator's nuclear installation or in relation to any transportation for which the operator is responsible. Preventive measures are discussed in section 2.2.4.3 of this Legislative Summary.[148]

2.2.4.2.3 Reciprocating Country or Its Exclusive Economic Zone (Sections 70 and 9(3) of the Act)

Under section 33(2) of the *Nuclear Liability Act*, which is repealed by Bill C-22, the Governor in Council is empowered to declare a country to be a "reciprocating country" and to implement any arrangement between Canada and the reciprocating country relating to compensation for injury or damage resulting from nuclear material. The United States was declared a reciprocating country under that Act, and specific *Canada–United States Nuclear Liability Rules* were made.[149]

Under Bill C-22, the Nuclear Liability and Compensation Act continues the concept of a reciprocating country, empowering the Governor in Council to declare a country to be a reciprocating country if the country has made satisfactory arrangements for compensation in that country and in Canada for damage resulting from nuclear activities. The Governor in Council may make regulations to implement any related agreement between Canada and the reciprocating country. The Nuclear Liability and Compensation Act anticipates that such regulations, if made, would provide for an operator being liable for damage that occurs in the reciprocating country or its exclusive economic zone from nuclear activities for which the operator is responsible.

Bill C-22 provides for the repeal of the provisions relating to a "reciprocating country" – as well as for the repeal of the provision summarized in section 2.2.4.2.1 of this Legislative Summary regarding an operator's liability for nuclear material being transported "from outside Canada" – on a day or days to be fixed by order of the Governor in Council.[150] This presumably will occur once the convention is in force, and the provisions of the Nuclear Liability and Compensation Act implementing the convention have been brought into force, obviating the need for other international compensation mechanisms.[151]

2.2.4.3 Compensable Damage

The following types of damage caused by a nuclear incident are compensable:

- bodily injury or death and damage to property (section 14 of the Act);
- psychological trauma suffered by a person if it results from bodily injury to that person (section 15 of the Act);
- economic loss incurred by a person as a result of bodily injury, damage to property, or psychological trauma resulting from bodily injury (section 16 of the Act);
- costs incurred by a person who loses the use of property and the resulting wage loss by that person's employees (however, if a nuclear incident occurs at a nuclear installation that generates electricity, the costs resulting from a failure of the installation to produce electricity are not compensable) (section 17 of the Act); and
- reasonable costs of remedial measures taken to repair, reduce or mitigate environmental damage:
  - if the measures are ordered by an authority acting under federal or provincial environmental legislation (section 18 of the Act) or
  - if the measures are ordered by an authority of a Contracting State (other than Canada) acting under the environmental laws of that state (unless the damage is insignificant) (section 19 of the Act).

2.2.4.3.1 Preventive Measures (Sections 20 and 21 of the Act)

If an authority has recommended that measures be taken in a specified area to prevent damage (and, in the case of a Contracting State other than Canada, the recommendation is made because of a grave and imminent danger of damage), the following costs and losses incurred by persons who live in, carry on business in, work in or are present in the area are compensable:

- the reasonable costs of the preventive measures; and
- the costs and economic loss – including lost wages – arising from the loss of use of property.

However, in order for these amounts to be compensable under this provision, in recommending the preventive measures, the authority must have been acting under a nuclear emergency scheme established under federal or provincial law, or in the case of a Contracting State other than Canada, acting under an emergency scheme established under that state's laws. Also note that any authority or its agencies that establishes or implements a nuclear emergency scheme cannot be compensated under this provision.

2.2.4.3.2 Concomitant Incidents (Section 22 of the Act)

If a nuclear incident and a concomitant non-nuclear incident cause damage, the damage is deemed to have been caused by the nuclear incident to the extent that it cannot be identified as having been caused only by the non-nuclear incident.

2.2.4.3.3 Damage During Transportation (Section 23 of the Act)

If a nuclear incident occurs during transportation of nuclear material or any storage incidental to transportation, damage to the means of transport or the storage site is not compensable.

2.2.4.4 Financial Provisions

2.2.4.4.1 Limit of Liability (Sections 24 to 26 and 78(*b*) of the Act)

Table 2 presents the limit of an operator's liability for damage resulting from a nuclear incident, which depends on when the incident arises (section 24(1) of the Act).

Table 2 – Operator's Liability Limit for Damage from a Nuclear Incident Under the Nuclear Liability and Compensation Act

A. Nuclear incident arising within one year after section 24(1) comes into force	B. Nuclear incident arising within one year after A	C. Nuclear incident arising within one year after B	D. Nuclear incident arising after C
$650 million	$750 million	$850 million	$1 billion

The Governor in Council may, by regulation, increase any liability limit or reduce the limit applicable to an operator or to the operators of a class of nuclear installations, having regard to the nature of the installation and the nuclear material (sections 24(2) and 78(*b*) of the Act).

The limits set out in Table 2 do not relieve an operator from payment of the costs of administering claims, court costs or interest on compensation (section 24(3) of the Act).

If more than one operator is liable for damage caused by a single nuclear incident during transportation of nuclear material or storage incidental to transportation, the total liability of those operators is limited as set out in Table 2 (section 25 of the Act).

The minister must review the liability limit regularly and at least once every five years, having regard to changes to the consumer price index, financial security requirements under international agreements respecting nuclear liability, and any other relevant consideration (section 26 of the Act).

2.2.4.4.2 Financial Security (Section 27 of the Act)

An operator[152] must maintain financial security in an amount equal to the applicable liability limit for each of its nuclear installations. The minister may require a foreign operator who is transporting nuclear material within Canada to maintain financial security in an amount prescribed by regulation, but which is not more than the limit set out in Table 2. (This does not apply to transport by sea if there is a right of entry into a Canadian port in case of distress or a right of innocent passage through Canadian territory. It does not apply to transport by air if there is a right to fly over or land on Canadian territory.) The operator may not use such financial security to pay costs of administering claims, court costs, legal fees or interest on compensation.

2.2.4.4.3 Insurance (Sections 28–30 and 78(*a*) of the Act)

Financial security is to be in the form of insurance with an approved insurer and a standard insurance policy approved by the minister. The minister may designate as an approved insurer any insurer or association of insurers that, in the minister's opinion, is qualified.

The minister may enter into an agreement with an operator that authorizes up to 50% (or another percentage fixed by regulation) of the operator's financial security to be an alternate financial security. Such an agreement must identify the financial instrument being used as the alternate financial security, specify its dollar value, and set out any conditions, including a requirement that the operator submit reports or submit to audits regarding the financial security, or that the operator pay a fee for the authorization of the security or for the audits. The minister may amend the conditions of an agreement, or revoke the agreement.

An approved insurer or any provider of an alternate security may only suspend or cancel an operator's insurance or alternate financial security on two month's written notice to the minister. Insurance or alternate financial security that relates to the transportation of nuclear material is not to be cancelled or suspended during the period of transportation.

2.2.4.4.4 Indemnity Agreements (Sections 31 and 32 of the Act)

The minister may enter into an indemnity agreement with an operator under which the federal government – whether for the payment of fees or not – covers risks that would not be assumed by an approved insurer.

If a regulation has varied the limit of the operator's liability from that set out in Table 2, the indemnity agreement may provide that the federal government must cover the difference between the operator's liability under the regulation and the limit set out in Table 2 if damage from a nuclear incident exceeds the operator's liability under the regulation. The minister must table a copy of each indemnity agreement before Parliament within 30 sitting days after the agreement is entered into.

The existing Nuclear Liability Reinsurance Account is continued as the "Nuclear Liability Account" into which are credited fees paid to the government under an indemnity agreement and to which is charged amounts payable by the government

under an indemnity agreement. Any deficit in the account is to be paid from the Consolidated Revenue Fund, with the approval of the Minister of Finance.

2.2.4.5 Preservation of Certain Rights and Obligations (Section 33 of the Act)

Nothing under the Nuclear Liability and Compensation Act is to be construed as limiting any right or obligation arising under any contract of insurance; any system of health insurance, employees' compensation or occupational disease compensation; and any survivor disability provision of a pension plan.

2.2.4.6 Judicial Proceedings

2.2.4.6.1 Where Action Is to Be Brought (Section 34 of the Act)

An action involving damage caused by a nuclear incident is to be brought in the court in Canada that has jurisdiction in the place where the incident occurred. The Federal Court has jurisdiction if the incident occurred in more than one province or at least partly within Canada's exclusive economic zone. Also, the Federal Court has jurisdiction if the nuclear incident was caused by an operator (which implies a Canadian person) and occurred outside the territory or the exclusive economic zone of any Contracting State, or the place where the nuclear incident occurred cannot be determined with certainty.

If a Canadian court and the court of another Contracting State have concurrent jurisdiction for a claim or action, Canada and the other Contracting State must determine by agreement which court is to have exclusive jurisdiction. A court of competent jurisdiction in Canada must recognize and enforce a judgment of a court of another Contracting State that is rendered in accordance with the convention and that meets the criteria under Canadian law for being recognized in Canada. In relation to damage that occurs outside Canada or its exclusive economic zone, no Canadian court or tribunal has jurisdiction except as provided in the Act.

2.2.4.6.2 Limitation Period (Sections 35(1) and 35(4) of the Act)

An action or claim must be brought within three years. In the case of an action or claim for loss of life, the three-year period begins once the claimant knows, or reasonably ought to know:

- of the loss of life (however, if conclusive evidence of loss of life is not available, then a court order presuming a person to be dead is required instead); and
- the identity of the operator responsible.

In any other case, the period begins once the claimant knows, or reasonably ought to know, both of the damage and of the identity of the operator responsible.

The Governor in Council may extend the period by regulation.

2.2.4.6.3 Absolute Limit (Sections 35(2) and 35(3) of the Act)

The three-year limitation period is subject to the following absolute limits. No action or claim may be brought:

- 30 years after the nuclear incident occurred, if the claim relates to bodily injury or death; or
- 10 years after the nuclear incident occurred, in any other case.

If the damage is the result of a nuclear incident involving nuclear material that was, at the time of the nuclear incident, lost, stolen, jettisoned or abandoned, no action or claim is to be brought 20 years after the day on which the loss, theft, jettison or abandonment occurred.

2.2.5 Nuclear Claims Tribunal

2.2.5.1 Establishment of a Tribunal (Sections 36 to 38, 41, 42 and 79 of the Act)

The Governor in Council may have claims regarding a nuclear incident dealt with by a nuclear claims tribunal, rather than a court, if he or she "believes that it is in the public interest to do so, having regard to the extent and the estimated cost of the damage, and the advantages of having the claims dealt with by an administrative tribunal." This is done by means of a declaration which, though not a statutory instrument, must be published, without delay, in Part II of the *Canada Gazette*. The tribunal then has exclusive jurisdiction, and any other proceedings are discontinued. The minister must submit a report to Parliament estimating the cost of the indemnification for the damage arising from the nuclear incident. (Sections 36 to 38 of the Act)

As soon as feasible after the declaration is made, the Governor in Council must establish the tribunal and designate the location of its head office in Canada. The tribunal's purpose is to examine and adjudicate claims for damage quickly and fairly. It must carry out its duties equitably, without discrimination on the basis of nationality or residence. The tribunal must notify the public – including by publishing the information in the *Canada Gazette* – of its purpose and inform people how to obtain information on bringing a claim. (Sections 41 and 42 of the Act)

The Governor in Council may make regulations respecting the tribunal, including regulations regarding the appointment of members, conflict of interest, the chairperson's powers and duties, the absence or incapacity of a member, and employment of claims officers and other employees. (Section 79 of the Act)

2.2.5.2 Interim Financial Assistance (Sections 39 and 40 of the Act)

After the Governor in Council has made a declaration (as described in section 2.2.5.1 of this Legislative Summary) and before the tribunal has published the notice, the minister may pay interim financial assistance to persons who have suffered damage as a result of the nuclear incident. The maximum amount of such assistance is 20%

of the difference between the liability limit set out in Table 2 and the amount of compensation the operator paid before the declaration.

The Minister's functions in relation to interim financial assistance can be delegated to any person, association of insurers or province, if the minister enters into an agreement to that effect. The minister must inform the tribunal of the names of the persons who receive interim financial assistance and the amounts they receive.

2.2.5.3 Membership in and Operation of the Tribunal (Sections 43 to 47 of the Act)

The tribunal is composed of at least five persons ("members"), one of whom is the chairperson, appointed by the Governor in Council to hold office during good behaviour for an appropriate term and who can be removed for cause. A majority of the members must be sitting or retired judges of a superior court or lawyers (or Quebec notaries) with at least 10 years' standing. Members are to be paid the remuneration and expenses fixed by the Governor in Council. Members are immune from civil liability for anything they do (or omit to do) in good faith as members of the tribunal. The tribunal may hire and manage staff, and it may temporarily engage and manage persons with technical or specialized knowledge to assist the tribunal in its work.

2.2.5.4 Powers and Duties of the Tribunal (Sections 50 to 55 of the Act)

The Nuclear Claims Tribunal:

- has the powers, rights and privileges of a superior court with respect to matters necessary or proper for exercising its jurisdiction, such as the examination of witnesses, the inspection of documents and the enforcement of its orders;
- is not bound by the legal rules of evidence, but it cannot receive as evidence anything that would be inadmissible in a court by reason of privilege;
- may issue commissions to take foreign evidence;
- may require persons claiming compensation to undergo medical or other examinations;
- may refuse to hear any claim it considers to be frivolous or vexatious; and
- may make any rules it considers necessary for the exercise of its powers and the performance of its duties and functions.

The Attorney General of Canada and the competent authority of any other Contracting State may intervene in the tribunal's proceedings.

On the minister's request, the tribunal must submit a report on its activities, which the minister must then table in Parliament.

2.2.5.5 Claims (Sections 56 to 60 of the Act)

The chairperson may establish panels of the tribunal to hear claims, and the tribunal may establish classes of claims to be determined without a hearing by a claims officer. Panel hearings are to be held in public, but can be held wholly or partly in private to protect a person's privacy.

The tribunal may award interim compensation – which the minister must pay to a claimant – before it makes a decision with respect to a claim. If the tribunal decides to award compensation, it must notify the claimant, the operator and the minister of the amount of the award, any reduction in the amount applicable under the regulations (as discussed in section 2.2.5.7 of this Legislative Summary), and any amounts that have already been paid. The amount of the award must not include costs or interest.

2.2.5.6 Rehearing and Appeal (Sections 61 to 63 of the Act)

A claimant or operator who is dissatisfied with a claims officer's decision has 30 days to apply to the tribunal for a rehearing by a panel. If a claim has been heard by a panel of fewer than three members, the claimant or operator may apply to the chairperson for leave to appeal. The appeal is to be heard by a panel of three other members on the basis of the record of the original panel and submissions of interested parties. In exceptional circumstances, the panel hearing the appeal may admit additional evidence or testimony if it is essential in the interests of justice to do so. The possibility of judicial review of a tribunal decision by the Federal Court is only available when the tribunal:

- acted without or beyond its jurisdiction or refused to exercise its jurisdiction;
- failed to observe a principle of natural justice, procedural fairness or other legal procedure; or
- acted by reason of fraud or perjury.

2.2.5.7 Financial Provisions

2.2.5.7.1 Compensation to Be Paid (Sections 64 to 67 of the Act)

Once an award is final and not subject to rehearing or appeal, the minister must pay the award due to the claimant out of the Nuclear Liability Account. If the amount in that account is insufficient, the deficit is paid from the Consolidated Revenue Fund, with the approval of the Minister of Finance. The operator who is liable for the damage must pay to the Government of Canada (who credits the amounts to the Nuclear Liability Account) the lesser of:

- the applicable liability limit of the operator less the total amounts the operator paid in compensation before the tribunal was established; or
- the total of all amounts the minister paid to claimants in compensation.

If the operator fails to pay any amount due, it must be paid to the government by the approved insurer or the issuer of the financial instrument, depending on the relevant form of financial security maintained by the operator.

2.2.5.7.2 Limit of Payments (Section 68 of the Act)

In the case of a nuclear incident, the tribunal must not award an amount that is more than the liability limit set out in Table 2 less the total of amounts the operator paid in compensation before the tribunal was established. However, if Parliament appropriates further funds to pay compensation, the tribunal may award those further funds. Also, if the minister makes a call for public funds under the convention (as described in section 2.2.6 of this Legislative Summary), the tribunal may award additional funds paid by Contracting States.

2.2.5.7.3 Regulations Respecting Compensation (Sections 80 and 69 of the Act)

The Governor in Council may make regulations respecting the compensation that the tribunal may award, including regulations:

- establishing priorities for classes of damage;
- for specified classes of damage, reducing awards on a pro rata basis and fixing maximum awards; and
- establishing classes of damage for which compensation is not to be awarded.

If a regulation reducing awards or fixing maximum awards is amended, the minister must pay to a claimant who was not fully compensated because of the previous regulation any additional amount payable under the amended regulation. If a regulation establishing non-compensable classes of damage is amended, the tribunal may consider any new claim that was not compensable under the previous regulation.

2.2.6 Supplementary Compensation Under the Convention

2.2.6.1 Call for Public Funds (Sections 71(1) and 72(1) of the Act)

If a nuclear incident is likely to result in compensation for damage that exceeds the **amount made available by Canada (under Article III.1(a) of the convention)** and public funds may be necessary to compensate the damages caused in one of the areas listed below, then the minister must give notice (under Article VI of the convention) to all other Contracting States. If public funds are necessary, in the minister's opinion, to compensate the damage, the minister must make a "call for public funds" (under Article VII.1 of the convention). The public funds are to be used to compensate for damage suffered:

- in a Contracting State;[153]
- in or above the exclusive economic zone of a Contracting State, or on its continental shelf, if the damages relate to the exploitation or exploration of natural resources; or

- in or above the maritime areas beyond the territorial sea of a Contracting State, if the damage occurs on or by a ship, aircraft, artificial island, installation, or structure of a Contracting State or under its jurisdiction, or by a national[154] of a Contracting State.

2.2.6.2 How Public Funds Are to Be Used (Section 71 of the Act)

When the minister makes a call for public funds under the convention, those funds are to be used to compensate the damage caused in the areas listed in section 2.2.6.1 of this Legislative Summary. However, in relation to damage suffered in an area described in the third bullet point in section 2.2.6.1 of this Legislative Summary, the public funds are not to be used to compensate damage that occurs in the territorial sea of a non-Contracting State or damage that occurs from a preventive measure.

2.2.6.3 Call by the Minister for Public Funds (Sections 72 and 78(*c*) of the Act)

When the minister makes a call for public funds, he or she must calculate Canada's contribution following a formula provided in regulations. If there are insufficient funds in the Nuclear Liability Account to cover Canada's contribution, the deficit is to be paid from the Consolidated Revenue Fund, with the approval of the Minister of Finance. All public funds contributed by Canada and other Contracting States are credited to the Nuclear Liability Account before being paid out to compensate damages caused in one of the areas listed in section 2.2.6.1 of this Legislative Summary, but only once an award is final and not subject to appeal.

2.2.6.4 Call by Another Contracting State for Public Funds (Sections 73, 75 and 78(*c*) of the Act)

When a Contracting State other than Canada makes a call for public funds, and, in the minister's opinion, the claims for compensation cannot be satisfied out of the amount the **Contracting State where the nuclear installation is situated – or under whose authority the installation is operated – has made available** under the convention, the minister must, without delay, pay to that Contracting State Canada's contribution – calculated in accordance with the formula in the regulations – from the Nuclear Liability Account. If there are insufficient funds in that account, the deficit is to be paid from the Consolidated Revenue Fund, with the approval of the Minister of Finance. The minister must recognize a settlement made by a Contracting State other than Canada in accordance with that state's laws for compensation for damage to which the convention applies.

2.2.6.5 Reimbursement by the Industry (Sections 74, 76 and 78(*d*) of the Act)

Members of the nuclear industry who are prescribed by regulations must reimburse the minister for any public funds contributed by Canada after either Canada or another Contracting State has made a call for public funds. Such reimbursement must be made, and credited to the Nuclear Liability Account, within the fiscal year

in which the payments were made. The Governor in Council is empowered to make related regulations, including regulations respecting the manner of calculating the amount of payments and the manner in which they are to be paid (sections 74 and 78(*d*)).

If public funds are contributed by Canada or by another Contracting State to compensate damage resulting from a nuclear incident that an individual intentionally caused, the Attorney General of Canada or the Contracting State, respectively, may exercise an operator's right of recourse against that individual. The Attorney General may exercise this right of recourse on behalf of the Contracting State, if the state so requests. If the Attorney General fails to exercise this right within three months of being asked to do so, the Contracting State may exercise the right. Any public funds so recovered must be distributed to the Contracting States in proportion to the funds that they contributed (section 76).

2.2.7 Offence and Punishment (Section 77 of the Act)

Under the Nuclear Liability and Compensation Act, it is a summary offence for an operator not to meet the financial security requirements. The punishment for the offence is a fine of $300,000 for each day the offence is committed and continued. However, no operator is to be found guilty if the operator exercised due diligence to prevent the commission of the offence.

2.2.8 Consequential Amendments (Clauses 123 to 127 of Bill C-22)

The *Transportation of Dangerous Goods Act, 1992* and the *Nuclear Safety and Control Act* are amended to reflect the name "Nuclear Liability and Compensation Act" as opposed to the previous *Nuclear Liability Act*, as well as the term *nuclear claims tribunal* as opposed to the previous term *nuclear damage claims commission*.

Section 82 of the *Nuclear Safety and Control Act* – which refers to the *Nuclear Liability Act* and which was a transitional provision needed when the Canadian Nuclear Safety Commission replaced the Atomic Energy Control Board more than a decade ago – is repealed.

Finally, the term *Nuclear Liability Reinsurance Account* is replaced with the term *Nuclear Liability Account* in all federal laws and regulations.

2.2.9 Coming into Force (Clause 129 of Bill C-22)

For the purposes of bringing the Nuclear Liability and Compensation Act into force, the provisions in Part 2 of Bill C-22 are divided into three groups.

In the first group, provisions of the Act that do not rely on the International Atomic Energy Agency's *Convention on Supplementary Compensation for Nuclear Damage* being in force come into force on a day or days to be fixed by order of the Governor in Council. Presumably this will occur once related regulations are finalized.

In the second group, provisions of the Nuclear Liability and Compensation Act that rely on the convention being in force come into force on a day to be fixed by order of the Governor in Council, but that day cannot be before the convention is in force.

In the third group, clauses repealing the provisions relating to "reciprocating country" (as discussed in section 2.2.4.2 of this Legislative Summary), making consequential amendments to other Acts and regulations, and repealing the *Nuclear Liability Act*, come into force on a day or days to be fixed by order of the Governor in Council.

NOTES

1. Note that the English and French versions of the long title of the bill are not consistent. The French version does not convey the idea of "offshore" or of "gas."
2. Office of the Auditor General of Canada, "Chapter 2 – Financial Assurances for Environmental Risks," *2012 Fall Report of the Commissioner of the Environment and Sustainable Development*.
3. World Nuclear Association, "Fukushima Accident," *Information Library*.
4. The three producing projects are Hibernia, Terra Nova and White Rose. There are plans to expand drilling at Hibernia and White Rose using existing infrastructure. The Hebron project is expected to be operational before the end of 2017. See Newfoundland and Labrador, Department of Natural Resources, *Hibernia*; *Terra Nova Offshore Petroleum Field*; *White Rose*; and *Hebron*.
5. The two natural gas energy projects are the Sable Offshore Energy Project, which has been producing gas since 1999, and the Deep Panuke Offshore Gas Project, which began operations in 2013. See Canada–Nova Scotia Offshore Petroleum Board, "Offshore Projects," *Offshore Activity*; and Encana, *Deep Panuke*.
6. National Energy Board, *Imperial Oil Resources Ventures Limited – Beaufort Sea Exploration Joint Venture Drilling Program*.
7. Government of Quebec, Ministry of Energy and Natural Resources, "Martine Ouellet rend public le rapport d'étude final de l'EES2," News release, 13 September 2013.
8. Quebec, National Assembly, *Loi limitant les activités pétrolières et gazières*, 2nd Session, 39th Legislature, R.S.Q. 2011, c. 13.
9. There are three nuclear plants in Ontario, one in New Brunswick and one in Quebec. See Canadian Nuclear Safety Commission, *Bruce A and B Nuclear Generating Stations*, *Pickering Nuclear Generating Station* and *Darlington Nuclear Generating Station* (Ontario); *Point Lepreau Generating Station* (New Brunswick); and *Gentilly-2 Nuclear Generating Station* (Quebec).
10. Two reactors at the Pickering Nuclear Generation Station are not in operation.
11. Canadian Nuclear Safety Commission, *Gentilly-2 Nuclear Generating Station*.
12. Canadian Nuclear Safety Commission, *Research Reactors*.
13. International Atomic Energy Agency, *Convention on Supplementary Compensation for Nuclear Damage*, Information Circular INFCIRC/567, 22 July 1998.
14. *Canada Oil and Gas Operations Act*, R.S.C., 1985, c. O-7.
15. *Canada Petroleum Resources Act*, R.S.C., 1985, c. 36 (2nd Supp.).
16. *Canada–Newfoundland Atlantic Accord Implementation Act*, S.C. 1987, c. 3.

17. The offshore area in this context is described in section 2 of the *Canada–Newfoundland Atlantic Accord Implementation Act*, as well as in the *Newfoundland and Labrador Offshore Area Line Regulations*, SOR/2003-192.

18. *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, S.C. 1988, c. 28.

19. The offshore area in this context is described in the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, Schedule I.

20. Clause 103 of Bill C-22 amends the French version of section 217(2) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, making it less equivalent to the existing English version.

21. Cost recovery for the board's activities under the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19, only applies in the context of the accord implementation Acts.

22. Clauses 5 and 12, respectively, add new section 4.2 to and amend section 5.3(1) of the *Canada Oil and Gas Operations Act*. Clause 36 adds new sections 107(1)(*c.1*) to 107(1)(*c.3*), 107(1.1) and 107(1.2) to the *Canada Petroleum Resources Act*. Clauses 39, 45 and 56, respectively, add new section 29.1 to and repeal similar section 118(*e*) and amend section 151.1(1) of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 74, 81 and 92, respectively, add new section 30.1 to and repeal similar section 121(*e*) and amend section 156(1) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

23. *User Fees Act*, S.C. 2004, c. 6.

24. Clauses 38 and 39, respectively, amend section 7 of and add new sections 29.2 and 29.3 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 72 and 74, respectively, amend section 6 of and add new sections 30.2 and 30.3 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

25. Clause 6(2) adds new section 5(5)(*a.1*) to the *Canada Oil and Gas Operations Act*. Clause 50(2) adds new section 138(5)(*a.1*) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 86(2) adds new section 142(5)(*a.1*) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

26. Clause 7 adds new sections 5.001(1), 5.001(2), 5.001(4) and 5.001(5) to the *Canada Oil and Gas Operations Act*.

27. In this context, the term *person* is used in its legal sense and includes corporations.

28. Clause 7 adds new section 5.001(3) to the *Canada Oil and Gas Operations Act*.

29. Clause 51 adds new section 138.01 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 87 adds new section 142.02 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

30. Under the *Canadian Environmental Assessment Act, 2012*, s. 52, a *responsible authority* is a government organization responsible for overseeing the environmental assessment process for a project that includes activities that the responsible authority regulates.

31. Clause 7 adds new section 5.002 to the *Canada Oil and Gas Operations Act*. Clause 51 adds new section 138.02 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 87 adds new section 142.03 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

32. For a full description of the types of information or documentation for which the exceptions do not apply, see *Canada Petroleum Resources Act*, ss. 101(7)(*a*) to 101(7)(*e*) and 101(7)(*i*); *Canada–Newfoundland Atlantic Accord Implementation Act*, ss. 119(5)(*a*) to 119(5)(*e*) and 119(5)(*i*); and *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, ss. 122(5)(*a*) to 122(5)(*e*) and 122(5)(*i*).

33. Clause 13 adds new sections 5.331 and 5.351 and amends sections 5.34 and 5.35 of the *Canada Oil and Gas Operations Act*. Clause 41 adds new sections 44.1 to 44.4 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 77 adds new sections 44.1 to 44.4 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

34. Clause 3 adds new section 2.1(*b.01*) to the *Canada Oil and Gas Operations Act*. Clause 48 adds new section 135.1(*b.1*) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 84 adds new section 138.1(*b.1*) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

35. Joint and several liability is a common law concept. In the situation where two or more operators are liable for damages resulting from a nuclear incident, joint and several liability allows a claimant to exact the full amount of compensation due from any of the operators. The operators may seek reimbursement from each other based on the extent to which each operator is at fault for the nuclear incident.

36. *Use values* and *non-use values* are defined in Environment Canada, *Measuring Economic Values for the Environment* :

> Use values are associated with direct use of the environment such as fishing and swimming in a lake, hiking in a forest – or commercial uses such as logging or farming. Non-use values are related to the knowledge of the continued existence of the environment (*existence values*), or the need to leave environmental resources to future generations (*bequest values*).

37. Clauses 19(1) and 19(2) amend sections 26(1) and 26(2), respectively, of the *Canada Oil and Gas Operations Act*. Clauses 60(1) and 60(2) amend sections 162(1) and 162(2), respectively, of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 96(1) and 96(2) amend sections 167(1) and 167(2), respectively, of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

38. *Fisheries Act*, R.S.C., 1985, c. F-14, s. 42(3).

39. Clauses 16 and 19(2), respectively, amend section 24(3) (which is renumbered as section 24(2)) of and add new section 26(2.5) to the *Canada Oil and Gas Operations Act*. Clauses 57 and 60(2), respectively, amend section 160(3) (which is renumbered as section 160(2)) of and add new section 162(2.5) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 93 and 96(2), respectively, amend section 165(3) (which is renumbered as section 165(2)) of and add new section 167(2.5) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

40. See section 2.1.5.2 of this Legislative Summary.

41. Clause 19(2) adds new section 26(2.1) to the *Canada Oil and Gas Operations Act*. Clause 60(2) adds new section 162(2.1) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 96(2) adds new section 167(2.1) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

42. Clause 19(2) amends section 26(3) of and adds new section 26(2.6) to the *Canadian Oil and Gas Operations Act*. Clause 60(2) amends section 162(3) of and adds new section 162(2.6) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 96(2) amends section 167(3) of and adds new section 167(2.6) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

43. Clause 19(2) amends section 26(2.1) and renumbers it section 26(2.4) of the *Canada Oil and Gas Operations Act*. Clause 60(2) amends section 162(2.1) and renumbers it section 162(2.4) of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 96(2) amends section 167(2.1) and renumbers it section 167(2.4) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

44. Clause 20 adds new sections 26.1(1) to 26.1(3) to the *Canada Oil and Gas Operations Act*. Clause 61 adds new sections 162.1(1) to 162.1(3) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 97 adds new sections 167.1(1) to 167.1(3) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

45. Clause 4 amends section 4.1(1) of the *Canada Oil and Gas Operations Act*. Clause 49 amends section 137.1 of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 85 amends section 141.1 of the *Canada–Nova Scotia Offshore Petroleum Resources Implementation Act*.

46. Clauses 21(1) and 22, respectively, amend section 27(1) of and add new section 27.1 to the *Canada Oil and Gas Operations Act*. Clauses 62(1) and 63, respectively, amend section 163(1) of and add new section 163.1 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 98(1) and 99, respectively, amend section 168(1) of and add new section 168.1 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

47. Clause 21(1) adds new sections 27(1.01) and 27(1.02) and makes a consequential amendment to section 27(2) of the *Canada Oil and Gas Operations Act*. Clauses 21(2), 6(3), 12 and 14(3), respectively, add new section 27(5) to, amend sections 5(5)(*c*) and 5.3(1) of and add a new regulatory power to section 14(1)(*h.1*) of the *Canada Oil and Gas Operations Act*.

    Clause 62(1) adds new sections 163(1.01) and 163(1.02) and makes a consequential amendment to section 163(2) of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 62(2), 38, 50(3), 56 and 54(4), respectively, add new section 163(5) to, amend sections 7, 138(5)(*c*) and 151.1(1) of, and add a new regulatory power to section 149(1)(*h.1*) of the *Canada–Newfoundland Atlantic Accord Implementation Act*.

    Clause 98(1) adds new sections 168(1.01) and 168(1.02) and makes a consequential amendment to section 168(2) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*. Clauses 98(2), 72, 86(3), 92 and 90(3), respectively, add new section 168(5) to, amend sections 6, 142(5)(*c*) and 156(1) of and add a new regulatory power to section 153(1)(*h.1*) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

48. Clause 9 amends section 5.03 of the *Canada Oil and Gas Operations Act*. Clause 53 amends section 138.3 of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 89 amends section 142.3 of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

49. Clauses 20 and 21(1) add new sections 26.1(4), 26.1(5) and 27(1.2) to and amend section 27(1.1) of the *Canada Oil and Gas Operations Act*. Clauses 61 and 62(1) add new sections 162.1(4), 162.1(5) and 163(1.2) to and amend section 163(1.1) of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 97 and 98(1) add new sections 167.1(4), 167.1(5) and 168(1.2) to and amend section 168(1.1) of *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

50. Clause 6(3) amends section 5(5)(*c*) of the *Canada Oil and Gas Operations Act*. Clause 50(3) amends section 138(5)(*c*) of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 86(3) amends section 142(5)(*c*) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

51. *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, ss. 123–124(3).

52. Clauses 15, 2 and 18, respectively, add new section 14.2, add a new definition to section 2 in and add new section 25.2, respectively, to the *Canada Oil and Gas Operations Act*. Clauses 37 and 59, respectively, add a new definition to section 2 in and new sections 161.2 and 161.4 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 71 and 95, respectively, add a new definition to section 2 in and new sections 166.2 and 166.4 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

53. The relevant board may designate a person to be the Chief Conservation Officer for the purposes of the Act. (*Canada Oil and Gas Operations Act*, s. 3.1; *Canada–Newfoundland Atlantic Accord Implementation Act*, s. 140; and *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, s. 144.)

54. Clause 17(1) adds new section 25.1(3) to the *Canada Oil and Gas Operations Act*. Clause 58(1) adds new section 161.1(3) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 94(1) adds new section 166.1(3) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

55. The provisions referred to in the second new schedule continue to apply for any harm caused by the spill or by the interaction between the spill-treating agent and the spilled oil. (Clause 17(1) adds new section 25.1(2) to the *Canada Oil and Gas Operations Act*. Clause 58(1) adds new section 161.1(2) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 94(1) adds new section 166.1(2) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.)

56. Clauses 8, 17(1) and 28 add new section 5.021, new sections 25.1(1) to 25.1(2) and new schedules 1 and 2, respectively, to the *Canada Oil and Gas Operations Act*. Clauses 52(1), 58(1) and 70 add new section 138.21, new sections 161.1(1) to 161.1(2) and new schedules 1 and 2, respectively, to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 88(1), 94(1) and 109 add new section 142.21, new sections 166.1(1) to 166.1(2) and new schedules V and VI, respectively, to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

57. Clause 15 adds new section 14.1 to the *Canada Oil and Gas Operations Act*. Clause 55 adds new section 149.1 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 91 adds new section 153.1 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

58. Clause 18 adds new section 25.3 to the *Canada Oil and Gas Operations Act*. Clause 59 adds new section 161.3 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 95 adds new section 166.3 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

59. Clauses 8 and 17(2) to 17(4), respectively, amend sections 5.021 and 25.1(1)(*b*) of, add new section 25.1(1)(*d*) to and amend section 25.1(3) of the *Canada Oil and Gas Operations Act*. Clauses 52(2) and 58(2) to 58(4), respectively, amend sections 138.21 and 161.1(1)(*b*) of, add new section 161.1(1)(*d*) to and amend section 161.1(3) of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 88(2) and 92(2) to 92(4), respectively, amend sections 142.21 and 166.1(1)(*b*) of, add new section 166.1(1)(*d*) to, and amend section 166.1(3) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

60. Clauses 14(2) and 14(4) add new sections 14(1)(*b.1*) to 14(1)(*b.3*) and section 14(3), respectively, to the *Canada Oil and Gas Operations Act*. Clauses 54(3) and 54(5) add new sections 149(1)(*b.1*) to 149(1)(*b.3*) and section 149(3), respectively, to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 90(2) and 90(4) add new sections 153(1)(*b.1*) to 153(1)(*b.3*) and 153(3), respectively, to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

61. Clause 18 adds new section 25.4 to the *Canada Oil and Gas Operations Act*. Clause 59 adds new section 161.5 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 95 adds new section 166.5 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

62. Section 101(2) of the *Canada Petroleum Resources Act*; section 119(2) of the *Canada–Newfoundland Atlantic Accord Implementation Act*; and section 122(2) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

63. For the purposes of the *Canada Petroleum Resources Act*, the "relevant minister" is either the Minister of Natural Resources or the Minister of Indian Affairs and Northern Development, depending on the area in question and which of those two ministers has administrative responsibility for the natural resources in that area. For the purposes of the *Canada–Newfoundland Atlantic Accord Implementation Act* and the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the "relevant ministers" are the Minister of Natural Resources and that minister's provincial counterpart.

64. Clause 34(4) adds new sections 101(6.1) and 101(6.3) to the *Canada Petroleum Resources Act*. Clause 46(6) adds new sections 119(6) and 119(8) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 82(7) adds new sections 122(6) and 122(8) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

65. Clause 34(4) adds new sections 101(6.2) and 101(6.3) to the *Canada Petroleum Resources Act*. Clause 46(6) adds new sections 119(7) and 119(8) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 82(7) adds new sections 122(7) and 122(8) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

66. Clause 34(8) adds new sections 101(8) to 101(10) to the *Canada Petroleum Resources Act*. Clause 46(6) adds new sections 119(9) to 119(11) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 82(7) adds new sections 122(9) to 122(11) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

67. For the purposes of the *Canada Petroleum Resources Act*, the Federal Court may review the decision. For the purposes of each of the *Canada–Newfoundland Atlantic Accord Implementation Act* and the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the Trial Division of the Supreme Court of Newfoundland and Labrador and the Supreme Court of Nova Scotia, respectively, may review the decision.

68. Clause 35 adds new section 101.1 to the *Canada Petroleum Resources Act*. Clause 47 adds new section 119.1 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 83 adds new section 122.1 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

69. For a full description of the types of information or documentation for which the exceptions do not apply, see sections 101(7)(*a*) to 101(7)(*e*) and 101(7)(*i*) in the *Canada Petroleum Resources Act*; sections 119(5)(*a*) to 119(5)(*e*) and 119(5)(*i*) in the *Canada–Newfoundland Atlantic Accord Implementation Act*; and sections 122(5)(*a*) to 122(5)(*e*) and 122(5)(*i*) in the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

70. See section 101(7) in the *Canada Petroleum Resources Act*; section 119(5) in the *Canada–Newfoundland Atlantic Accord Implementation Act*; and section 122(5) in the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

71. Clause 34(8) adds new section 101(11) to the *Canada Petroleum Resources Act*. Clause 46(6) adds new section 119(12) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 82(7) adds new section 122(12) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

72. Clauses 14(1) and 14(3), respectively, amend section 14(1) of and add new section 14(1)(*h.3*) to the *Canada Oil and Gas Operations Act*. Clauses 54(1) and 54(4), respectively, amend section 149(1) of and add new section 149(1)(*h.3*) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 90(1) and 90(3), respectively, amend sections 153(1) of and add new section 153(1)(*h.3*) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

73. *Criminal Code*, R.S.C. 1985, c. C-46, ss. 718.1–718.21.

74. "Damage" includes loss of use value and non-use value. (Clause 25 adds new section 60(6) to the *Canada Oil and Gas Operations Act*. Clause 64 adds new section 193(4.2) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 100 adds new section 199(4.2) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.)

75. Clause 25 adds new sections 60(3) to 60(7) to the *Canada Oil and Gas Operations Act*. Clause 64 adds new sections 194(3) to 194(4.3) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 100 adds new sections 199(3) to 199(4.3) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

76. The Environmental Damages Fund is an account in the accounts of Canada.

77. Clause 26 amends section 65 of the *Canada Oil and Gas Operations Act*. Clause 65 amends section 196 of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 101 amends section 201 of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

78. Clause 26 adds new sections 65.1 and 65.2 to the *Canada Oil and Gas Operations Act*. Clause 65 adds new sections 196.1 and 196.2 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 101 adds new sections 201.1 and 201.2 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

79. To "file" a document with a court is to formally submit it to the court.

80. In the context of the *Canada–Newfoundland Atlantic Accord Implementation Act*, the Supreme Court of Newfoundland and Labrador is the competent court. In the context of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, the Supreme Court of Nova Scotia is the competent court.

81. Clause 26 adds new section 65.3 to the *Canada Oil and Gas Operations Act*. Clause 65 adds new section 196.3 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 101 adds new section 201.3 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

82. Environment Canada, *Administrative Monetary Penalty System – Consultation Document*.

83. Clause 27 adds new sections 71.01(1)(*a*) and 71.03 to the *Canada Oil and Gas Operations Act*. Clauses 38 and 66, respectively, amend section 7 of and add new sections 202.01(1)(*a*) and 202.03 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 72 and 102, respectively, amend section 6 of and add new sections 207.01(1)(*a*) and 207.03 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

84. Clause 27 adds new sections 71.06, 71.7 and 71.8 to the *Canada Oil and Gas Operations Act*. Clause 66 adds new sections 202.06, 202.7 and 202.8 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 102 adds new sections 207.06, 207.7 and 207.8 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

85. As in several other instances in this Legislative Summary, in this context, the term *persons* is used in its legal sense and includes corporations.

86. In the case of the accord implementation Acts, before such regulations are made, the federal Minister of Natural Resources must consult with the minister's provincial counterpart with respect to the proposed regulations, which cannot be made without the provincial minister's approval. (Clause 38 amends section 7 of the *Canada–Newfoundland Atlantic Accord Implementation Act*; and clause 72 amends section 6 of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.)

87. Clause 27 adds new sections 71.01(1)(*b*) and 71.01(2) to the *Canada Oil and Gas Operations Act*. Clause 66 adds new sections 202.01(1)(*b*) and 202.01(2) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 102 adds new sections 207.01(1)(*b*) and 207.01(2) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

88. *Mandatary* is the civil law term meaning "agent."

89. Clause 27 adds new sections 71.04 and 71.05 to the *Canada Oil and Gas Operations Act*. Clause 66 adds new sections 202.04 and 202.05 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 102 adds new sections 207.04 and 207.05 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

90. Clause 27 adds new sections 71.07 to 71.1, 71.3 and 72.02 to the *Canada Oil and Gas Operations Act*. Clause 66 adds new sections 202.07 to 202.1, 202.3 and 202.93 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 102 adds new sections 207.07 to 207.1, 207.3 and 207.93 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

91. The competent court is the Federal Court for the purposes of the *Canada Oil and Gas Operations Act*, the Trial Division of the Supreme Court of Newfoundland and Labrador for the purposes of the *Canada–Newfoundland Atlantic Accord Implementation Act*, and the Supreme Court of Nova Scotia for the purposes of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*. (Clause 27 adds new section 71.5(5) to the *Canada Oil and Gas Operations Act*. Clause 66 adds new section 202.5(5) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 102 adds new section 207.5(5) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.)

92. Clause 27 adds new sections 71.2, 71.02(*d*) and 71.4 to 71.6 to the *Canada Oil and Gas Operations Act*. Clause 66 adds new sections 202.2, 202.02(*d*) and 202.4 to 202.6 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 102 adds new sections 207.2, 207.02(*d*) and 207.4 to 207.6 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

93. Clause 27 adds new sections 71.9 and 72 to the *Canada Oil and Gas Operations Act*. Clause 66 adds new sections 202.9 and 202.91 to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 102 adds new sections 207.9 and 207.91 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

94. In the case of the accord implementation Acts, before such regulations are made, the federal Minister of Natural Resources must consult with the minister's provincial counterpart with respect to the proposed regulations, which cannot be made without the provincial minister's approval. (Clause 38 amends section 7 of the *Canada–Newfoundland Atlantic Accord Implementation Act*; and clause 72 amends section 6 of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.)

95. Clause 27 adds new sections 72.01, 71.01(1)(*c*) and 71.02(*a*) to 71.02(*c*) to the *Canada Oil and Gas Operations Act*. Clause 66 adds new sections 202.92, 202.01(1)(*c*) and 202.02(*a*) to 202.02(*c*) to the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 102 adds new sections 207.92, 207.01(1)(*c*) and 207.02(*a*) to 207.02(*c*) to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

96. Clause 23(2) adds new definitions to section 29 of the *Canada Oil and Gas Operations Act*.

97. Clause 24 adds new sections 48.15 and 48.1 to the *Canada Oil and Gas Operations Act*.

98. Clause 24 adds new section 4.11 to the *Canada Oil and Gas Operations Act*.

99. Clause 24 adds new section 48.12 to the *Canada Oil and Gas Operations Act*.

100. Clause 24 adds new section 48.13 to the *Canada Oil and Gas Operations Act*.

101. Clause 24 adds new section 48.14 to the *Canada Oil and Gas Operations Act*.

102. Clauses 23(2) and 24, respectively, add a new definition in section 29 of and new sections 48.27(1) to 48.27(3) to the *Canada Oil and Gas Operations Act*.

103. Clause 24 adds new sections 48.27(4) to 48.27(8) to the *Canada Oil and Gas Operations Act*.

104. Under the *Canada Oil and Gas Operations Act*, s. 29,

> "unit agreement" means an agreement to unitize the interests of owners in a pool or a part of a pool exceeding in area a spacing unit …
>
> "spacing unit" means the area allocated to a well for the purpose of drilling for or producing oil or gas …
>
> "unit operating agreement" means an agreement, providing for the management and operation of a unit area and a unitized zone, that is entered into by working interest owners who are parties to a unit agreement with respect to that unit area and unitized zone …

Existing sections 40(2)(*a*) to (*d*) and 40(3)(*a*) to (*e*) of the *Canada Oil and Gas Operations Act* set out the details that must be included in a unit agreement and a unit operating agreement, respectively.

105. Clause 24 adds new sections 48.16 and 48.17 to the *Canada Oil and Gas Operations Act*.

106. An *interest owner* is a person or group of persons who hold an interest. Under the *Canada Petroleum Resources Act*, s. 2, an *interest* is "any former exploration agreement, former lease, former permit, former special renewal permit, exploration licence, production licence or significant discovery licence."

107. Clause 24 adds new section 48.18 to the *Canada Oil and Gas Operations Act*.

108. Under the *Canada Oil and Gas Operations Act*, s. 29,

> "royalty interest" means any interest in, or the right to receive a portion of, any oil or gas produced and saved from a field or pool or part of a field or pool or the proceeds from the sale thereof, but does not include a working interest or the interest of any person whose sole interest is as a purchaser of oil or gas from the pool or part thereof.

A *royalty owner* is a person, including Her Majesty in right of Canada, who owns a royalty interest.

109. Under the *Canada Oil and Gas Operations Act*, s. 29,

> "working interest" means a right, in whole or in part, to produce and dispose of oil or gas from a pool or part of a pool, whether that right is held as an incident of ownership of an estate in fee simple in the oil or gas or under a lease, agreement or other instrument, if the right is chargeable with and the holder thereof is obligated to pay or bear, either in cash or out of production, all or a portion of the costs in connection with the drilling for, recovery and disposal of oil or gas from the pool or part thereof.

A *working interest owner* is a person who owns a working interest.

110. Clause 24 adds new section 48.19 to the *Canada Oil and Gas Operations Act*.

111. Clause 24 adds new section 48.2 to the *Canada Oil and Gas Operations Act*.

112. Clauses 23(1) and 24 amend the definition of *unitization order* in section 29 and add new section 48.23(2), respectively, to the *Canada Oil and Gas Operations Act*.

113. Clause 24 adds new sections 48.21 and 48.26 to the *Canada Oil and Gas Operations Act*.

114. Clause 24 adds new sections 48.22, 48.23(1), 48.23(3) and 48.23(5) to the *Canada Oil and Gas Operations Act*.

115. Clause 24 adds new sections 48.23(2), 48.23(4) and 48.23(7) to the *Canada Oil and Gas Operations Act*.

116. Clause 24 adds new section 48.23(6) to the *Canada Oil and Gas Operations Act*.

117. Under the *Canada Oil and Gas Operations Act*, s. 29,

> "tract participation" means the share of production from a unitized zone that is allocated to a unit tract under a unit agreement or unitization order …
>
> "unit tract" means the portion of a unit area that is defined as a tract in a unit agreement.

For the purposes of new section 48.25 of the *Canada Oil and Gas Operations Act*, the tract participations are those indicated in the unit agreement when it became subject to the unitization order.

118. Clause 24 adds new sections 48.24 and 48.25 to the *Canada Oil and Gas Operations Act*.

119. *Canada Oil and Gas Drilling and Production Regulations*, SOR/2009-315, s. 15.

120. Clause 10 adds new sections 5.1(7), 5.1(8) and 5.1(12) to the *Canada Oil and Gas Operations Act*.

121. Clause 10 adds new sections 5.1(9) to 5.1(11) to the *Canada Oil and Gas Operations Act*.

122. Clause 11 adds new sections 5.2(4) to 5.2(6) to the *Canada Oil and Gas Operations Act*.

123. Clause 69 repeals parts V and VI of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 104 repeals parts V and VI of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

124. Clauses 105, 106 and 107 repeal section 246(2) and amend section 247(5) of and add new section 247.1 to the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

125. Clauses 31 and 33 amend sections 33 and 36, respectively, of the *Canada Petroleum Resources Act*. Clause 43(1) amends section 76(2) of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clause 78(1) amends section 79(2) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

126. *Frontier lands* is defined in the *Canada Petroleum Resources Act*, s. 2, and described in section 2.1.1 of this Legislative Summary. They are the lands and submarine areas that the federal government owns or for which it has the right to dispose of or exploit the natural resources.

127. *Interest* and *interest owner* are defined in endnote 106.

Clause 32 amends section 35(3) of the *Canada Petroleum Resources Act*.

128. Clauses 34(1) to 34(3) amend and replace definitions in section 101 of the *Canada Petroleum Resources Act*. Clauses 46(1) to 46(3) amend and replace definitions in section 119(1) of the *Canada–Newfoundland Atlantic Accord Implementation Act*. Clauses 82(1) to 82(3) amend and replace definitions in section 122(1) of the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act*.

129. *Nova Scotia and Newfoundland and Labrador Additional Fiscal Equalization Offset Payments Act*, S.C. 2005, c. 30, s. 85.

130. Clauses 110 to 115 repeal the definitions of *fiscal equalization offset payment* in sections 4 and 18, remove references to that term from sections 8 and 22 and repeal sections 11 and 25 of the *Nova Scotia and Newfoundland and Labrador Additional Fiscal Equalization Offset Payments Act*.

131. *Budget and Economic Statement Implementation Act, 2007*, S.C. 2007, c. 35.

132. *Federal–Provincial Fiscal Arrangements Act*, R.S.C., 1985, c. F-8, s. 3.7. (Section repealed by *Economic Action Plan 2013 Act, No. 1*, S.C. 2013, c. 33.)

133. Clause 116 repeals section 174 of the *Budget and Economic Statement Implementation Act, 2007*.

134. Bill C-5: An Act to amend the Canada–Newfoundland Atlantic Accord Implementation Act, the Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act and other Acts and to provide for certain other measures, 2nd Session, 41st Parliament.

135. Bill C-15: An Act to replace the Northwest Territories Act to implement certain provisions of the Northwest Territories Lands and Resources Devolution Agreement and to repeal or make amendments to the Territorial Lands Act, the Northwest Territories Waters Act, the Mackenzie Valley Resource Management Act, other Acts and certain orders and regulations, 2nd Session, 41st Parliament.

136. Clause 117 contains amendments to coordinate the coming into force of provisions in each of bills C-5 and C-22.

137. The term *onshore* is defined in section 2 of the new *Northwest Territories Act*, which is enacted by clause 2 of Bill C-15.

138. Clause 118 contains amendments to coordinate the coming into force of provisions in each of bills C-15 and C-22.

139. The provisions discussed in this section are found in Clause 119 of Bill C-22.

140. *Nuclear Liability Act*, R.S.C., 1985, c. N-28.

141. *Nuclear Safety and Control Act*, S.C. 1997, c. 9.

142. Solidary liability is the civil law (Quebec) equivalent of joint and several liability, discussed in section 2.1.5.2 of this Legislative Summary.

143. Roughly speaking, a coastal state's exclusive economic zone is an area of the sea that lies beyond the country's territorial sea and that extends to a distance of roughly 200 nautical miles off the state's coast. While the exclusive economic zone is not part of the state's territory, the state enjoys certain sovereign rights in the exclusive economic zone, such as for the purposes of managing natural resources. See *United Nations Convention on the Law of the Sea*, Part V. In relation to Canada, the exclusive economic zone is also defined in the *Oceans Act*, S.C. 1996, c. 31, s. 13.

144. In this context, the term *operator* means a person who is designated or recognized under the laws of a Contracting State (other than Canada) as operating a nuclear installation as defined in Article 1.1(b) of the Annex to the *Convention on Supplementary Compensation for Nuclear Damage*. See section 9(1)(*b.1*)(i) of the *Nuclear Liability and Compensation Act*.

145. Ibid.

146. Ibid. See section 9(4)(*b*)(i) of the *Nuclear Liability and Compensation Act*.

147. Ibid.

148. As discussed in section 2.2.9 of this Legislative Summary, under clause 129(2) of Bill C-22, sections 9(4) to 9(6) of the Act come into force after the *Convention on Supplementary Compensation for Nuclear Damage* comes into force on a day to be fixed by order of the Governor in Council.

149. *Declaring the United States to be a Reciprocating Country for Purposes of the Act*, SI/78-179, and *Canada–United States Nuclear Liability Rules*, C.R.C., c. 1240.

150. Clauses 121 and 122, repealing sections 9(1)(*b*)(ii), 9(3) and 70 of the Nuclear Liability and Compensation Act.

151. Clause 129(3) states that clauses 121 and 122 come into force on a day or days to be fixed by order of the Governor in Council.

152. Other than a department listed in the *Financial Administration Act*, R.S.C., 1985, c. F-11, Schedule I.

153. Canada is a Contracting State.

154. A national of a state includes any subdivision of the state and any entity that is established or incorporated in that state (see section 71(4) of the Act).