



**Report on
the subject matter of those elements contained in
Divisions 3, 28 and 19 of Part 4 of Bill C-43, *A second Act to
implement certain provisions of the budget tabled in Parliament
on February 11, 2014 and other measures***

Report of the
***Standing Senate Committee on Energy, the Environment and
Natural Resources***

November 2014

The Honourable Richard Neufeld, Chair
The Honourable Paul Massicotte, Deputy Chair

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The Standing Senate Committee on Energy, the Environment and Natural Resources concluded its pre-study of the subject matter of Divisions 3, 28 and 29 of Part 4 of Bill C-43, a second Act to implement certain provisions of the budget tabled in Parliament on 11 February, 2014 and other measures, on November 18, 2014. The committee held three meetings and heard from 24 witnesses across a range of stakeholder interests and received submissions of written evidence.

DIVISION 3 OF PART 4 – THE CANADIAN HIGH ARCTIC RESEARCH STATION ACT

In the 2007 Speech from the Throne, the federal government committed to build a “world-class Arctic research station that will be on the cutting edge of Arctic issues, including environmental science and resource development. This station will be built by Canadians, in Canada’s Arctic, and it will be there to serve the world.”¹ An Arctic research station is considered a key component of Canada’s Northern Strategy. Since that time, work and funding have been progressing on the Canadian High Arctic Research Station (CHARS) to be built in Cambridge Bay, Nunavut, and scheduled to open in 2017.

In 2012, the federal government announced funding of \$142.4 million over six years (beginning in 2012) for the construction, equipment, and fit-up of CHARS, with an additional \$46.2 million over six years (beginning in 2012) for the [CHARS Science and Technology Program](#).² An additional \$26.5 million per year has been set aside, as of 2018–2019, for the on-going program and operations of the station.³

CHARS will be integrated with the existing Canadian Polar Commission (CPC) to create a single large research hub for scientific research in the high Arctic of Canada.

Division 3 of Part 4 proposes the new Canadian High Arctic Research Station Act, intended to establish the governance structure for CHARS and establish CHARS as a departmental corporation and a separate agency with the status of a separate employer. The purpose of CHARS is to establish a hub for scientific research in the Canadian Arctic with a view to advancing knowledge of that area in order to improve economic opportunities, environmental stewardship and the quality of life of its residents and all other Canadians. The bill will repeal the *Canadian Polar Commission Act* (CPC Act).

The station is to undertake scientific research and develop technologies, publish and disseminate studies, and promote the testing, application and commercialization of technologies, among other things. Its powers include the ability to manage and operate its facilities and systems, provide services, to spend money it receives through its operations, enter into contracts and agreements, acquire and invest money, acquire, dispose of or license real property, and make available and receive payment for any patents or other similar property held by CHARS.

The designated Minister may require CHARS to provide him or her with reports on its activities and operations, and may make such reports available to the public.

The bill establishes a nine member Board of Directors to oversee CHARS, with a full time President and eight part-time members appointed by the Governor in Council. Board members must have knowledge or

¹ Privy Council Office, “[Speech from the Throne to Open the Second Session of the 39th Parliament of Canada](#)”.

² Prime Minister of Canada, “[The Canadian High Arctic Research Station](#),” *Backgrounders*, 23 August 2012.

³ Aboriginal Affairs and Northern Development Canada, “[Harper Government Introduces Legislation to Strengthen Canada’s Arctic Research Potential](#),” News release, 23 October 2014.

experience to support CHARS's purpose, and efforts must be made to ensure the Board is representative of the ethnic, linguistic and geographic diversity of Canada's Arctic. The Board of Directors may make bylaws for the administration, management and control of the business and operations of the station. CHARS will have authority over all matters related to human resources management, including recruitment, appointment and terms and conditions of employment of its employees.

Transitional amendments provide that persons who were members of the Board of Directors of the CPC (other than the Chairperson of that Board) before this part of the bill comes into force continue to hold that office on the Board of CHARS until the expiry of their appointment. Similar transitional provisions continue the employment of CPC and other employees through to CHARS and transfer current references, property and any legal proceedings from CPC to CHARS.

DIVISION 28 OF PART 4 – THE EXTRACTIVE SECTOR TRANSPARENCY MEASURES ACT

In June 2013, the Government of Canada announced that it will “be establishing new mandatory reporting standards for Canadian extractive companies with a view to enhancing transparency on the payments they make to governments.”⁴

The purpose of the proposed Extractive Sector Transparency Measures Act is to fulfil this commitment. The Act requires Canadian oil and gas as well as mining companies to publish in annual reports payments of \$100,000 (either cumulative over the year or one-time payments)⁵ or more to all levels of governments, both domestic and abroad, including Aboriginal entities. The provisions of the Act will not apply to Aboriginal entities for two years following the date when the Act comes into force (which is expected to be in June 2015).

According to departmental information, it is the federal government's intention that Canadian extractive companies will be required to publicly report payments on a project-by-project basis.⁶ The legislation will affect public and private, medium and large companies operating in Canada that meet or exceed two of the following three thresholds: \$20 million in assets; \$40 million in revenue; or 250 employees. Annual reports must be available to the public.⁷

A payment consists of monetary payments or payments in kind including taxes, royalties, fees, production entitlements, bonuses, dividends, infrastructure improvements payments or any other prescribed payment.

A. Other Countries

According to departmental information, “the Government of Canada is aiming to align Canadian reporting requirements with those of the U.S. and EU to eliminate duplicative reporting to multiple jurisdictions, reducing the administrative and cost burden on governments and companies.”⁸

⁴ Government of Canada, “[Canada Commits to Enhancing Transparency in the Extractive Sector](#),” News release, 12 June 2013.

⁵ Natural Resources Canada, “[Developing Mandatory Reporting Standards in the Extractive Sector](#),” Consultation, March, 2014.

⁶ Natural Resources Canada, “[Mandatory Reporting in the Canadian Extractive Sector](#),” *The Media Room: Backgrounders*.

⁷ Ibid.

⁸ Government of Canada, “[Consultation – Mandatory Reporting Standards for the Extractive Sector](#),” *Open Government: Canada's Action Plan on Open Government*.

Mandatory reporting for the extractive sector is being implemented in the United States (U.S.) through the *Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)*. The American Securities and Exchange Commission (SEC) is expected to create new rules to implement the disclosure requirements in 2015. The European Union (EU) authorized a new reporting regime for its extractive industries through its Transparency and Accounting Directives. EU countries have until 2015 to incorporate the Directives in legislation⁹; some EU countries have already enacted draft legislation.

B. Enforcement

The Minister may designate persons or classes of persons to administer and enforce the Act. The designated official may enter any place in which there are reasonable grounds to believe there is anything to which the Act applies. Enforcement officials have access to company documents, computer systems, copying equipment and can remove anything from the place for the purpose of examination. Under the authority of a warrant, enforcement officials can enter dwellings of company personnel.

Fines for non-compliance with various provisions of the Act are set at not more than \$250,000 per offense. If an offence is committed or continued on more than one day, it constitutes a separate offence for each day on which the offence is committed.

C. Consultation

Beginning in April 2013, Natural Resources Canada conducted consultations with provinces and territories, industry and civil society. Engagement sessions were also held with Aboriginal groups including national-level industry and political organizations.¹⁰

DIVISION 29 OF PART 4 – JOBS AND ECONOMIC GROWTH ACT

In 2007, Atomic Energy of Canada Limited (AECL) consisted of two divisions: the Nuclear Laboratories and the CANDU Reactor Divisions. The Nuclear Laboratories, comprised mainly of laboratories in Chalk River, Ontario, and Pinawa, Manitoba, were responsible for nuclear science and technology development related to safety, security, health, the environment, waste management, clean energy technologies, and the production of medical isotopes. The primary responsibility of the CANDU Reactor Division was the design, sale and service of AECL's CANDU reactor technology. Beginning in 2009, the federal government began restructuring AECL with a view to increasing its competitiveness and limiting taxpayer liabilities.

In 2011, the assets of AECL's former CANDU Reactor Division were sold to a wholly-owned subsidiary of SNC-Lavalin Group Inc., and, in 2012, the federal government began restructuring the Nuclear Laboratories. AECL's Nuclear Laboratories employees and operations were internally reorganised into Canadian Nuclear Laboratories (CNL), a wholly-owned subsidiary of AECL, to:

- focus the mandate of the Laboratories on decommissioning and waste management; science and technology (S&T) to meet core federal responsibilities; and enabling the CANDU fleet and technology;
- transition to full cost recovery for S&T services to third parties; and
- strengthen accountability.¹¹

⁹ Ibid.

¹⁰ Ibid.

It is the intention of the federal government to transfer the operation of CNL to a private sector company, which will then be responsible for the laboratories' activities and management. A competitive procurement process is currently underway to select the appropriate contractor.

This part of Bill C-43 makes amendments to the *Jobs and Economic Growth Act* to facilitate the restructuring of management of the nuclear laboratories of AECL. These amendments are in response to a February 2013 announcement by the federal government that it was seeking to implement a "Government-owned, Contractor-operated (GoCo) model" for CNL to bring "private sector rigor and efficiency" to CNL.¹²

Amendments provide for the transition of public service pension funds in the event that CNL becomes a GoCo entity. They state that CNL is an agent of the Crown but will cease to be an agent on the day on which AECL sells or disposes of CNL's shares. They provide that if that disposition occurs, CNL employees will continue to be members of the public service pension plan and CNL must make payments under the pension fund established under the *Public Service Superannuation Act* for a period of three years following the date of the disposition. During that three-year time frame, employees of CNL may, but are not required to, contribute to the public service pension fund. As CNL will be under new management after its management is transferred by contract, its new manager will need to establish a new pension plan. This three year period also provides time for CNL under the new management model to accomplish this. At the end of that transitional period, CNL employees will no longer be allowed to contribute to the public service pension fund and will instead contribute to the plan set up by the new management.

These provisions will come into force on the day on which AECL disposes of CNL, notice of which must be published in *the Canada Gazette* as soon as possible thereafter.

WHAT THE COMMITTEE HEARD

Witnesses appearing before the committee to discuss the bill included officials from Aboriginal Affairs and Northern Development Canada, Natural Resources Canada, Justice Canada, Treasury Board of Canada – Secretariat, the Canadian Polar Commission, municipal governments, Aboriginal and Inuit organizations, and representatives of industry and labour.

A. The Canadian High Arctic Research Station Act (Division 3 of Part 4)

Officials from Aboriginal Affairs and Northern Development Canada (AANDC) advised the committee that the Canadian High Arctic Research Station Act set out in this Part of Bill C-43 will create a new entity known as CHARS, merged with the Canadian Polar Commission (CPC) to conduct a broad range of prioritized science and technology research in Canada's North. When it is opened in 2017, it will be a state-of-the-art, world-class research station that will attract international researchers and enable Canada to become a world leader in Arctic science. A permanent, physical, strong presence; CHARS will enhance Canada's sovereignty in the North.

The committee was told that it will provide a strong focal point for federal Arctic science and technology, add to national and international networks, and provide a physical research presence in the Arctic, with space for 50 scientists. As a separate departmental corporation, it will operate independently from

¹¹ Natural Resources Canada, "[The Harper Government Announces New Direction for Nuclear Laboratories](#)," News release, 28 February 2013.

¹² Ibid.

government and undertake and publish research in accordance with its own mandate. Government officials indicated that there were many consultation and engagement activities with Arctic stakeholders nationally and internationally, including Aboriginal organizations, territorial governments, industry, and the academic community, throughout the development of CHARS.

CHARS has five research priorities, the result of multi-year consultations. These are: gathering baseline information in preparation for resource development; alternative and renewable energy; predicting the impacts of climate change; infrastructure for development, and underwater situational awareness (underwater research).

Officials from CPC explained how the merging of CPC into CHARS will create a new enhanced and more efficient polar organization that is greater than the sum of its parts. CHARS will take advantage of and build on current partnerships, networks and infrastructure to enhance Canada's international polar profile. The CPC suggested that CHARS should adopt an integrated, whole-of-government approach to reporting Arctic science and technology programs. They said this is important because currently there are many departments and agencies that perform a wide variety of Arctic research and technology development activities. They would like to see CHARS reports integrate and synthesize scientific information and knowledge gathering approaches across disciplines and share this information at the national level. This would be useful to the Arctic research community, territorial/provincial governments, Inuit and First Nation organizations, international partners and businesses.

There is a clear link between CHARS and Northerners. The committee heard that at its core, the station is intended to be part of the northern community, and indeed the participation and contribution of Northerners is a primary objective. Researchers will work with Northerners to incorporate traditional knowledge with scientific research for a broader understanding of the northern environment. This will help fill gaps in baseline environmental knowledge to better understand the impacts of resource development and it will assist it in designing measures to minimize these impacts.

The committee was told that CHARS will help build local capacity in scientific, administrative, logistic and construction expertise throughout the North and across a variety of applications. Going forward, Northerners will participate in CHARS's management or undertake advisory positions, with the goal of influencing the priorities of the research agenda and identifying leveraging opportunities through their own research.

The Inuit Tapiriit Kanatami (ITK) noted the growing global interest in the Arctic, driven by resource extraction, modernization, sovereignty and climate change, and the desire to obtain the best available knowledge to increase our understanding of these issues. The organization said the demand for Inuit involvement and knowledge in Arctic research has never been greater and, indeed, it is impossible to have a discussion about what could or should be happening in the Arctic without involving the indigenous people who live there. They have been working to develop innovative partnerships between Inuit and academic researchers to establish best research processes and practices across Nunavut. ITK suggested Inuit are the most invested researchers given that the Arctic is their home and it is vital to their way of life.

They stated they are particularly interested in ensuring that Inuit knowledge, which they assert is currently undervalued, is recognized as multi-faceted and nuanced, and that its stewardship requires consideration, support and fostering of distinct local world views, language and culture rather than simply being incorporated into mainstream methods and systems of western science. At the same time,

continually increasing research interest has stretched capacity of the Inuit to contribute in terms of both numbers and funding.

In noting that CHARS represents a unique opportunity, they suggested that if it is to be a significant, world-class science and technology initiative, Canada must increase its recognition of the involvement and capacity of Inuit in the process in a transparent and timely fashion. ITK expressed surprise about the CHARS - CPC merger, saying they had not been part of those discussions and it was unclear how they would be engaged in the process. They noted that the CPC has an Antarctic as well as a high Arctic mandate and wondered what will become of the research priorities and how Inuit will be involved once the two entities are merged. They said that they currently have many questions about both the merger and the governance structure. They would like to be more engaged in these processes and felt the current level of engagement was not sufficient. They expressed the hope that CHARS will keep Inuit at the forefront of Arctic research and that their participation is included and maintained.

The Mayor of Cambridge Bay applauded how the community was invited to participate in the design and integration of CHARS within the hamlet. She spoke enthusiastically about the benefits to the region, particularly noting the additional employment and capacity-building opportunities for local residents to work in science and technology programs, allowing them to stay in the region.

The Mayor of Cambridge Bay also highlighted the importance of research into creating and maintaining healthy communities, which meshes with priorities outlined by the Northwest Territories and Nunavut Chamber of Mines (the Chamber). The committee was told that the Chamber is interested in research that provides scientific evidence to support mining's contributions to healthier communities, such as a potential survey of seasonal workers of their views on food security and housing. Accordingly, the Chamber could assist in linking industry members interested in partnering with CHARS's Science and Technology program and communities to advance new knowledge in areas of mutual priority.

The Chamber also noted that industry can provide a further outlet for science and environmental technologies expertise acquired in the North. In addition to working at CHARS or with other members of the Arctic knowledge community, graduates of Nunavut Arctic College's environmental technologies foundation program could opt to work in environmental management positions within mining projects. This diversity of employment opportunities was seen as a means to strengthen communities and further enhance local capacity.

B. The Extractive Sector Transparency Measures Act (Division 28 of Part 4)

Witnesses were supportive of the proposed Extractive Sector Transparency Measures Act. The committee heard that the lack of robust systems of transparency in the management of natural resources in some resource-rich countries has allowed revenues to be misallocated or diverted. Raising global standards of transparency was viewed as a critical step in improving accountability in the sector and helping deter corruption and other illicit activities. Witnesses believed that in implementing this Act, Canada was demonstrating leadership on extractive transparency.

According to officials from Natural Resources Canada (NRCan) and Justice Canada, the federal government has consulted with provincial, territorial, municipal, Aboriginal governments and organizations, industry and civil society on this initiative in an ongoing process, and was seeking feedback as it moves forward with developing reporting standards. They said that the requirements of the Act are broadly aligned with reporting requirements in the EU and the U.S. to ensure a level playing

field. The federal government will continue to work with industry and other stakeholders to develop templates detailing how payments are to be reported. Officials told the committee that the reporting requirements would be outlined in administrative guidance documents, which allow greater flexibility to respond to changing circumstances than if these details were embedded in legislation. The committee takes note of the federal government's intention that companies subject to the Act will be required to publicly report payments on a project-by-project basis.¹³

The Act provides for a two-year transitional period before it applies to payments made to Aboriginal governments. NRCan and Justice Canada officials said this deferral period arose as a result of concerns expressed by Aboriginal governments, industry and some provinces about how the Act will affect impact benefit agreements. In many cases, these agreements are confidential and therefore stakeholders need to work out how information will be reported. Although consultation sessions have already taken place, more are planned over the coming months.

Both the Mining Association of Canada (MAC) and Publish What you Pay Canada (PWYPC) were part of a global network of organizations that campaigned for increased transparency and accountability in the extractive sector and they both commended the federal government for this legislation. The Canadian Association of Petroleum Producers (CAPP) also commended the government leadership on this issue. While welcoming the legislation and expressing broad support for it, they all raised issues concerning the proposed Act.

MAC noted that the Act captures any extractive company that does business in Canada or has a place of business in Canada and meets certain thresholds. This includes large multi-national companies for which Canada is but one place of business. These companies will be subject to reporting requirements in Canada as well as the U.S. and EU. MAC told the committee that it was important to get the equivalency provisions in the Act right in order to ensure reporting consistency across the industry and within companies. If data are reported differently in different jurisdictions – for example, if there are differences in payment categories or the way in which a project is defined – then the reports would be less useful. MAC stated that while the Act contains appropriate mechanisms to recognize reporting in other jurisdictions, it is necessary to ensure these are consistent so that the information is useful and administrative burden of double-reporting is avoided. CAPP echoed MAC's desire to ensure that the Act is harmonized with legislation in other jurisdictions in order to minimize the administrative burden of the legislation and recommended that government work collaboratively with industry in designing the industry guidance material. CAPP hopes to be engaged in the process of developing regulations under the legislation to ensure the federal government understands the complexities of their industry and ensure the intended consequences are properly met and any unintended consequences are properly managed.

CAPP further noted that the financial reporting standard set out in the proposed Act is more stringent than other major financial disclosure legislation. It requires an attestation that the information reported is "true, accurate and complete." CAPP said that reporting qualifying payments to multiple entities around the world could be very complex, and that a due diligence defence that the information is accurate "to the best of my knowledge and belief" would be reasonable.

The Assembly of First Nations (AFN) also suggested the Act could impose additional administrative burdens, noting that First Nations are already subject to numerous transparency and accountability

¹³ Natural Resources Canada, "[Mandatory Reporting in the Canadian Extractive Sector](#)," *The Media Room: Backgrounders*.

provisions, including the *First Nations Financial Transparency Act* and the *Federal Accountability Act*, and questioned whether this new legislation is necessary. With more and more First Nations getting into business and entrepreneurship and hence subject to the Act, they felt that these additional requirements could lead to a convoluted reporting mechanism subject to errors. Moreover, they felt that the reporting requirements could be seen as a message that First Nations are not to be trusted or permitted to have business agreements with the corporate community. Noting that the Act will not apply to Aboriginal governments for two years, the AFN recommended that the federal government use this transition period to fully consult with First Nations and understand the implications of the legislation, a recommendation CAPP also endorsed, given how closely CAPP members works with First Nations.

PWYPC was concerned that the Act, as currently drafted, does not require that payments be disaggregated and reported on a project, payment category, country and level of government basis. Rather, the Minister may specify the way this information must be reported. PWYPC noted that this is inconsistent with similar measures in the U.S. and the EU. For PWYPC, project-level reporting is central to the efficacy of the Act to achieve its mandate of enhancing transparency and deterring corruption. They said that in order for the information to be useful in holding governments to account, it must be disaggregated on a project-level and country-by-country basis. While PWYPC took some comfort in the understanding that administrative guidance documents will detail project-by-project reporting, they suggested that the legislation should be strengthened to include a mandate for project-level reporting and reference the type of disaggregation of information that will be required. MAC also supported project-level reporting.

PWYPC was further concerned that regulations can grant exemptions from the reporting requirements of the Act, such as where payments are prohibited to be disclosed by legislation or by confidentiality agreements in contracts. They said that broad exemptions could undermine the purpose of the transparency legislation, noting the EU legislation did not provide exemptions. They asked that this particular provision be removed.

On the other hand, CAPP supported exemptions for certain payments where disclosure is prohibited by legislation or confidentiality agreements. They stated that compliance with the proposed Act could require Canadian companies to breach confidentiality provisions and force them to choose between complying with this Canadian law or that of a foreign jurisdiction. They were also concerned that the Act might oblige the disclosure of commercially sensitive information.

C. The Jobs and economic Growth Act (Division 30 of Part 4)

With respect to this Part of Bill C-43, officials from NRCan, AECL and Treasury Board of Canada - Secretariat advised the committee that this part of the bill provides transitional pension coverage for employees who would continue in the public service pension plan for a period of three years from the date in which CNL ceases to be a Crown corporation. Officials reassured the committee that pension benefits that have been accrued and earned by contributors to the public service pension plan up to that point will be protected and guaranteed by the Government of Canada.

Going forward, it will be the responsibility of CNL to establish its own pension plan. While the structure and terms of the new pension plan are unknown at this time, officials assured the committee that employees could transfer their accrued benefits from the public service pension plan to that of the new employer if they wished. Again, they emphasised that benefits accrued up to the point where CNL ceases to be a Crown agency will be guaranteed by the government.

The Professional Employees Group of the Professional Institute of the Public Service of Canada (PIPSC) represents nuclear engineers, scientists and technicians employed at the Chalk River and Whiteshell laboratories. They noted that while existing employees of CNL may continue to contribute to the public service pension plan for the three-year transitional period after CNL ceases to be a Crown agency, employees hired during this period will not. PIPSC stated that there is no requirement for the new employer to maintain a similar standard of defined benefit pension as that of the public service plan once the transition is complete. As a result, employees hired during the transition may not have an equivalent or comparable pension plan to that of existing employees. For PIPSC, this creates a two-tier pension system that would be divisive in the workplace and affect collective agreement negotiations. They told the committee that the differences in pension will be a factor in the ability of the laboratories to recruit and retain highly-skilled nuclear scientists, engineers and technicians, and ultimately affect Canada's nuclear capacity. PIPSC recommended that participation in the public service pension plan be extended to employees hired during the transition period so that all employees will be under the same pension plan going forward in negotiations with CNL's new management.

CONCLUSION

The committee has given careful consideration to all evidence received and comments raised and is comfortable with the legislation, with a dissenting opinion, and makes the following observations.

The committee highlights the government's stated intention that companies subject to the Extractive Sector Transparency Measures Act will be required to publicly report payments on a project-level basis. According to government officials, this requirement will be outlined in future regulatory documents under the Act. The committee emphasizes that the regulations should require that qualifying payments be reported on a project-by-project and country-by-country basis, and that all stakeholders continue to be involved in the regulation-making process.