

PRELIMINARY VERSION

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LEGISLATIVE SUMMARY

BILL C-17: AN ACT RESPECTING ADDITIONAL COVID-19 MEASURES

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Legislative Summary of Bill C-17
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-17 AN ACT RESPECTING ADDITIONAL COVID-19 MEASURES

1 BACKGROUND

Bill C-17, An Act respecting additional COVID-19 measures,¹ was introduced in the House of Commons on 10 June 2020 by the Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion, and given first reading the same day.

Unlike other pieces of legislation introduced during the COVID-19 pandemic, the first reading version of the bill failed to get the unanimous consent necessary for it to be expedited through all the stages of the legislative process.²

On 20 July 2020, the government introduced Bill C-20, An Act respecting further COVID-19 measures,³ containing some of the same provisions as those outlined in Bill C-17. Bill C-20 received Royal Assent on 27 July 2020. Bill C-17, however, died on the *Order Paper* when the first session of the 43rd Parliament was prorogued on 18 August 2020.

As indicated by its title, the purpose of Bill C-17 is to implement additional measures in response to the COVID-19 pandemic.

Bill C-17 has four parts:

- Part 1 amends the *Income Tax Act* to enact changes to the Canada Emergency Wage Subsidy's eligibility criteria, particularly with respect to amalgamated corporations, the baseline remuneration period, trusts, and the use of payroll service providers.
- Part 2 enacts the *Time Limits and Other Periods Act (COVID-19)*, which suspends certain time limits in relation to court proceedings and allows ministers to temporarily suspend or extend time limits and extend other periods in relation to specified Acts and regulations in order to respond to the exceptional circumstances of the COVID-19 pandemic.
- Part 3 amends the *Income Tax Act* and the *Children's Special Allowances Act* to allow for the disclosure of information for the purpose of a one-time payment to persons with disabilities.

- Part 4 amends the *Canada Emergency Response Benefit Act* to, among other aspects, modify the number of weeks in relation to which a worker may apply for an income support payment under the Act, provide that a worker is not eligible for an income support payment if they do not return to work when it is reasonable to do so, allow for a review of decisions made under the Act, and introduce enforcement-related provisions.

This document provides a brief description of the main measures proposed in the bill by summarizing the substance of each part. For ease of reference, the information is presented in the same order as it appears in the summary of the bill.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: AMENDMENTS TO THE *INCOME TAX ACT* REGARDING THE CANADA EMERGENCY WAGE SUBSIDY

2.1.1 Revenue for Amalgamated Corporations

Clause 1 of the bill amends section 87(2) of the *Income Tax Act* (ITA) to allow a corporation formed from an amalgamation of two or more corporations to calculate its revenue for the purposes of qualifying for the Canada Emergency Wage Subsidy (CEWS) by using the combined revenues of the formerly separate corporations. The amalgamated corporation will be ineligible from using this calculation if the main purpose for the amalgamation was to qualify for the CEWS.

2.1.2 Expanded Baseline Remuneration Period

The CEWS baseline remuneration period is the period – currently between 1 January 2020 and 15 March 2020 – in which an employee’s average salary is calculated for the purpose of determining the amount of the subsidy for which they are eligible. Clause 2(1) of the bill amends section 125.7(1) of the ITA to create a second baseline remuneration period for the CEWS meant to capture seasonal workers and other employees who did not have remuneration between January 2020 and March 2020. This change will allow employers to choose between the existing baseline remuneration period or the period from 1 March 2019 to 31 May 2019. Clause 2(1) also allows additional baseline remuneration periods to be added by regulation.

2.1.3 Eligibility of Trusts

Clause 2(2) amends the definition of eligible entity, with respect to the CEWS, in section 125.7(1) of the ITA in order to limit the trusts that qualify for the subsidy to:

- a trust that is not a public institution and is not exempt from tax under Part I of the ITA;

- a trust that is not a public institution and is exempt from tax under Part I of the Act because it is a registered charity or is one of the other types of eligible entities; or
- a trust that is a public institution if it is a prescribed organization.⁴

2.1.4 Payroll Service Providers

Under existing legislation, employers who use a payroll service provider to manage their employee payrolls may be ineligible to receive the CEWS because a condition thereof is to have a registered payroll account with the Canada Revenue Agency (CRA), which is held by its payroll service provider.

Clause 2(3) amends the definition of qualifying entity – with respect to the CEWS – in section 125.7(1)(a) to 125.7(1)(c) of the ITA to include an entity whose payroll for its employees is administered by a payroll service provider registered with a CRA payroll account in order to remit source deduction for the entity’s employees.

These clauses are deemed to have come into force on 11 April 2020, except that, in respect of the periods described in paragraphs (a) and (b) of the definition of a qualifying period in section 125.7(1) of the ITA, paragraphs (a) and (b) of the definition of an eligible entity in section 125.7(1) of that Act, as enacted by section 2(2), are to be read as follows:

- (a) a corporation, other than a corporation that is exempt from tax under this Part or is a public institution;
- (b) an individual.

2.2 PART 2: ENACTMENT OF THE *TIME LIMITS AND OTHER PERIODS ACT (COVID-19)*

Clause 4 of the bill enacts the *Time Limits and Other Periods Act (COVID-19)* (TLOPA).

The purpose of the TLOPA is to temporarily suspend and provide for the temporary suspension and extension of certain time limits in order to prevent exceptional circumstances produced by the COVID-19 pandemic from making it difficult or impossible to comply with those time limits. It also provides for the temporary extension of certain periods for the purpose of preventing any unfair or undesirable effects that may result from the expiry of those periods due to those exceptional circumstances (section 5(1)). The term “period” is defined as including the time during which a licence, permit or other authorization is valid (section 2).

The bill also introduces a schedule that sets out the Acts of Parliament and the regulations, together with their relevant provisions and regulations, in respect to

which time limits or other periods can be suspended or extended. Section 4 of the TLOPA, however, specifies that the TLOPA does not apply to investigations and the proceedings of an offence and to other time limits established under the *Corrections and Conditional Release Act*.

2.2.1 Time Limits Related to Proceedings

Section 6 of the TLOPA suspends any limitation period for commencing a court proceeding and any time limit in relation to a court proceeding, if those limitation periods or time limits are established through an Act of Parliament. Those suspensions are valid from 13 March 2020 to 13 September 2020, or on any earlier day fixed by order of the Governor in Council on the recommendation of the Minister of Justice (section 6(1)).

Courts may vary the suspension of time limits and make orders respecting the effects of a failure to meet a suspended time limit, such as an order that cancels or varies those effects. The TLOPA also authorizes the Governor in Council to lift a suspension, on the recommendation of the Minister of Justice (sections 6(2) to 6(4)).

The powers conferred to the Governor in Council under section 6 of the TLOPA must not be exercised beyond 30 September 2020 (section 9).

2.2.2 Other Time Limits and Periods

Section 7 of the TLOPA provides for the suspension or extension of time limits and the extension of other periods by a minister responsible for an Act of Parliament or for a regulation listed in the schedule of the TLOPA. Ministers may make orders to suspend or extend time limits and extend any other periods referred to in those Acts and regulations. They may also make orders to extend a suspension or extension. Ministerial orders do not apply to time limits or other periods that end on or after 31 December 2020 and the total duration of a suspension or extension must neither exceed six months nor continue after 31 December 2020. These orders are also subject to any restrictions and conditions the Governor in Council may establish by regulations on the recommendation of the Minister of Justice (sections 7(1) to 7(4) and 7(7)).

Ministerial orders may also:

- be retroactive, but not prior to 13 March 2020 (section 7(5));
- include provisions regarding the effects of a failure to meet the time limit or of the expiry of the period before the order was made, including provisions that cancel or vary those effects (section 7(5));

- require the consent of a specific person, court or body for a suspension or extension to apply, or require that a suspension or extension applies unless a specific person, court or body decides otherwise (section 7(6)); and
- stipulate that a specific person, court or body may vary the effects of the order (section 7(6)).

The powers conferred to the Governor in Council and ministers under section 7 of the TLOPA must not be exercised beyond 30 September 2020 (section 9).

2.2.3 Transparency and Parliamentary Oversight

The *Statutory Instruments Act* does not apply to orders made by a minister, a court and the Governor in Council under sections 6(1), 6(2), 6(3), 6(4), 7(1) and 7(2) of the TLOPA (section 8).

However, orders in council made under sections 6(1) and 6(4) of the TLOPA and ministerial orders made under sections 7(1) and 7(2), together with the reasons for making them, must be published:

- on a Government of Canada website within five days after the day on which it is made (section 10(1)); and
- in Part I of the *Canada Gazette* within 14 days after the day on which it is made (section 10(2)).

These orders must also be tabled in each House of Parliament within three days after the day on which they are made or, if a House is not sitting, “at the earliest opportunity.” An order tabled in a House of Parliament must also be referred to a committee of that House (section 11).

2.3 PART 3: AMENDMENTS TO THE *INCOME TAX ACT* AND THE *CHILDREN’S SPECIAL ALLOWANCES ACT*

Clause 5 amends section 241(4) of the ITA, which sets out the circumstances when government officials can disclose taxpayer information. Clause 5 allows an official to use taxpayer information, or share taxpayer information with an official of a department or agency of the Government of Canada, if it is necessary for a purpose relating to the administration or enforcement of a program that provides a one-time payment to persons with disabilities for reasons related to COVID-19.

Clause 6 amends section 10(2) of the *Children’s Special Allowances Act*. The federal Children’s Special Allowances program provides payments to federal and provincial agencies and institutions that care for children. Section 10(2) states when information is obtained by or on behalf of the Minister of National Revenue in the course of the administration and enforcement of the Act, it can only be released if it is necessary

for the administration or enforcement of certain statutes. Clause 6 provides that information may also be released to the Department of Employment and Social Development, if the information is required for the administration of a program to provide a one-time payment to persons with disabilities for reasons related to COVID-19.

2.4 PART 4: AMENDMENTS TO THE *CANADA EMERGENCY RESPONSE BENEFIT ACT*

Clauses 7 to 16 of the bill amend the *Canada Emergency Response Benefit Act* (CERBA). The CERBA was introduced through the *COVID-19 Emergency Response Act*⁵ and came into force on 25 March 2020. It authorizes income support payments, which the federal government calls the Canada Emergency Response Benefit (CERB), to workers who suffer a loss of income for reasons related to COVID-19. The CERB amounts to \$500 per week and, at the time of the introduction of Bill C-17, was payable for up to 16 weeks.⁶

2.4.1 Application for Income Support Payments

Clause 7 of the bill amends section 5(1) of the CERBA to modify the number of weeks in relation to which a worker may apply for an income support payment under the Act. Currently, a worker may apply for an income support payment for any four-week period from 15 March 2020 to 3 October 2020. Clause 7 amends this provision to allow a worker to apply for an income support payment:

- for any four-week period from 15 March 2020 to 4 July 2020 (renumbered section 5(1)(a)); and
- for any two-week period from 5 July 2020 to 3 October 2020 (renumbered section 5(1)(b)).

These amendments are deemed to have come into force retroactively, on 25 March 2020, pursuant to clause 16 of the bill.

2.4.2 Eligibility for Income Support Payments

Clause 8 of the bill amends section 6 of the CERBA, which sets out the eligibility criteria for income support payments under the Act, to reflect the changes to the application provision as discussed above. Currently, a worker is eligible for an income support payment if they have ceased working for at least 14 consecutive days within a four-week period from 15 March 2020 to 3 October 2020. Under the amended provisions, a worker is eligible for an income support payment if:

- in relation to the first application made for any four-week period from 15 March 2020 to 4 July 2020, they ceased working for at least 14 consecutive days (renumbered section 6(1)(a)(i)); or

- in relation to any other application made for any four-week period from 15 March 2020 to 4 July 2020, or for any two-week period from 5 July 2020 to 3 October 2020, they ceased working for the period in respect of which they are applying (renumbered section 6(1)(a)(ii)).

These amendments are also deemed to have come into force retroactively, on 25 March 2020, pursuant to clause 16 of the bill.

Clause 8 further amends section 6 of the CERBA by expanding the circumstances that would disqualify a worker from receiving income support payments. Specifically, a worker is not eligible for an income support payment if they do not return to work or resume self-employment when it is reasonable to do so, or if they decline a reasonable job offer when they are able to work (new sections 6(2.1)(a) to 6(2.1)(c)).

2.4.3 Request for Review

Clause 9 of the bill adds section 8.1 to the CERBA to allow a person who has applied for an income support payment to request a review of a decision made in respect of that application. This request for review may be made to the Minister of Employment and Social Development within 30 days of having been informed of the decision or within any longer prescribed period (new section 8.1(1)).

Upon completion of the review, the minister must confirm, vary or rescind the decision (new section 8.1(2)) as well as notify the person who requested the review about the outcome (new section 8.1(3)). The minister's confirmation, variation or rescission is final (new section 8.1(4)).

The new provisions regarding request for review apply regardless of the date on which the decision was made, in accordance with clause 13.

Clause 11 of the bill amends section 13(6) of the CERBA to provide that the running of the limitation period regarding monies owing under the Act is suspended, not just while it is prohibited to commence or continue an action against the person, but now also while a review of a decision establishing the person's liability for money owing is pending (renumbered sections 13(6)(a) and 13(6)(b)). The limitation period on actions taken to recover monies owing has been set at six years under the Act.

2.4.4 Penalties

Clause 10 of the bill adds sections 12.1 to 12.6 to the CERBA in relation to penalties. Specifically, under new section 12.1(1), the minister may impose a penalty on a person who has applied for an income support payment, or on someone acting on their behalf, for each of the following acts or omissions:

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- knowingly making a false or misleading representation in relation to the application (new section 12.1(1)(a));
- upon being required under the Act to provide information, knowingly providing information or making a representation that was false or misleading (new section 12.1(1)(b));
- knowingly failing to declare all or some of the person's income for the period in relation to which they applied for an income support payment (new section 12.1(1)(c));
- knowingly making an application or declaration under the Act that was false or misleading owing to the non-disclosure of facts (new section 12.1(1)(d));
- knowingly receiving an income support payment for which they were not eligible (new section 12.1(1)(e)); or
- participating in, assenting to or acquiescing in an act or omission mentioned above (new section 12.1(1)(f)).

The amount of the penalty for each act or omission may be set by the minister at a maximum of three times the amount of an income support payment for a week (new section 12.1(2)).

The penalty constitutes a debt due to the Crown that may be recovered by the minister (new section 12.5(1)) and that may be subject to garnishment (new section 12.6). However, no interest is payable on a penalty imposed under the Act, pursuant to clause 12 (amended section 14). Similar provisions exist with regards to monies owing as a result of an erroneous payment or overpayment.

In certain circumstances, such as upon the presentation of new facts, the minister may rescind or reduce the penalty (new section 12.3). The minister may also choose to issue a warning instead of a penalty (new section 12.4). A penalty, however, must not be imposed if a prosecution for the act or omission has been initiated (new section 12.2(a)) or if 36 months have passed since the act or omission occurred (new section 12.2(b)).

New sections 12.1 and 12.4 apply regardless of the date on which the act or omission occurred, in accordance with clause 14 of the bill. Similarly, new section 12.6 (garnishment) applies regardless of the date on which the debt arose, pursuant to clause 15 of the bill.

2.4.5 Offences

Clause 12 of the bill adds sections 14.1 to 14.3 to the CERBA in relation to offences. Specifically, under the new provisions, a person who commits any of the acts or omissions cited above is guilty of an offence (new section 14.1(1)) and will be prosecuted unless a penalty has already been imposed for that conduct (new section 14.1(2)). This person is liable on summary conviction to:

- a fine of up to \$5,000 plus up to double the amount of the income support payment that was or would have been paid in connection with the offence (new section 14.1(3)(a)); or
- both the fine and imprisonment for a maximum of six months (new section 14.1(3)(b)).

Further, a person who contravenes a provision of the Act or the regulations, or who delays or obstructs an investigator designated for the enforcement of offences, is guilty of an offence (new sections 14.2(1) and 14.2(2)). Where no penalty is provided, this person is liable on summary conviction to a fine of up to \$2,000, to imprisonment for a maximum of six months, or to both (new section 14.2(3)).

An information⁷ or complaint about an offence may be heard, tried or determined by any provincial court judge if the accused is resident, carrying on business, found, apprehended or in custody in the judge's territorial jurisdiction (new section 14.3(3)). Proceedings with respect to an offence may be commenced within five years from the day the minister became aware of the subject matter of the prosecution (new section 14.3(4)).

NOTES

1. [Bill C-17, An Act respecting additional COVID-19 measures](#), 1st Session, 43rd Parliament.
2. House of Commons, [Debates](#), 1st Session, 43rd Parliament, 10 June 2020.
3. [Bill C-20, An Act respecting further COVID-19 measures](#), 1st Session, 43rd Parliament.
4. Canada Revenue Agency, "[Are all trusts eligible to claim the wage subsidy?](#)" *Frequently asked questions – Canada emergency wage subsidy (CEWS)*.
5. [COVID-19 Emergency Response Act](#), S.C. 2020, c. 5, s. 8.
6. For additional information about the Canada Emergency Response Benefit, please refer to the following source: Government of Canada, [Canada Emergency Response Benefit \(CERB\)](#).
7. An information is a document produced by someone with information about a criminal offence. The information must be made in writing and under oath, and it may charge more than one offence or relate to more than one matter of complaint. Summary conviction proceedings under Part XXVII of the *Criminal Code* commence by the laying of an information in the prescribed manner. See [Criminal Code](#), R.S.C., 1985, c. C-46, ss. 788 and 789.