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BUDGET IMPLEMENTATION BILL

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LEGISLATIVE SUMMARY

BILL C-69: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON APRIL 16, 2024

44-1-C69-E

31 May 2024

Research and Education

BUDGET IMPLEMENTATION BILL
UNEDITED

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ABOUT THIS PUBLICATION

Library of Parliament legislative summaries of budget implementation bills summarize budget implementation bills currently before Parliament and provide background information about them in an objective and impartial manner. They are prepared by Research and Education, which carries out research for and provides information and analysis to parliamentarians, Senate and House of Commons committees and parliamentary associations. Legislative summaries of budget implementation bills summarize only the version of bills tabled at first reading and are not revised to reflect amendments made to bills as they move through the legislative process.

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 Senate and House of Commons and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent and come into force.

Legislative Summary of Bill C-69
(Budget implementation bill)

44-1-C69-E

Ce document est également publié en français.

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LEGISLATIVE SUMMARY OF BILL C-69: AN ACT TO IMPLEMENT CERTAIN PROVISIONS OF THE BUDGET TABLED IN PARLIAMENT ON APRIL 16, 2024*

1 BACKGROUND

Bill C-69, An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024 (short title: Budget Implementation Act, 2024, No. 1),[1] was introduced in the House of Commons on 2 May 2024 by the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance. As suggested by the long and short titles, the purpose of the bill is to implement the government's overall budget policy, presented to the House of Commons on 16 April 2024. Bill C-69 is the first budget implementation bill of 2024. According to established legislative practice, a second similar bill may follow in fall 2024.

The bill has four parts:

- Part 1 implements various income tax measures through amendments to the *Income Tax Act* and related statutes and regulations, including increasing the home buyers' plan withdrawal limit and deferring the repayment period, creating the Canada Carbon Rebate for Small Businesses, and providing a refundable investment tax credit to qualified businesses for certain investments in clean technology manufacturing property (clauses 2 to 80).
- Part 2 enacts the Global Minimum Tax Act, which is a regime based on the rules of the Organization for Economic Co-operation and Development, that ensures that large multinational corporations are subject to a minimum effective tax rate of 15% on their profits wherever they do business (clauses 81 to 111).
- Part 3 repeals the temporary relief for supplies of certain face masks, respirators and shields from the Goods and Services Tax/Harmonized Sales Tax, and implements certain measures regarding excise duty in respect of tobacco and vaping products, beer, spirits and wine. It also implements certain changes to the Underused Housing Tax (clauses 112 to 148).
- Part 4, which is divided into 44 divisions, implements various measures. It amends numerous existing Acts that cover many areas of law. It also enacts the Consumer-Driven Banking Act (clauses 149 to 468).

This Legislative Summary provides a brief description of the main measures proposed in the bill. For ease of reference, the information is presented in the same order as it appears in the summary of the bill. Unless otherwise specified, provisions in this bill come into force on Royal Assent.

2 DESCRIPTION AND ANALYSIS

2.1 PART 1: IMPLEMENTATION OF VARIOUS INCOME TAX MEASURES

2.1.1 Denying Income Tax Deductions on Income from a Non-Compliant Short-Term Rental

A key feature of the taxation of income from a business or property is the intention to generally only tax "net income," which can be synonymous with "profit." As such, relevant costs and expenses are generally deductible. The income a taxpayer receives from operating short-term rental accommodation will be characterized as income from a business or property for tax purposes and the taxpayer will generally be allowed to deduct any reasonable expense incurred for the purpose of earning that income. For example, these deductible expenses can include financing costs such as the interest on a mortgage, the cost of repairs, or services provided to tenants.

Clause 16(1) of Bill C-69 adds new section 67.7 to the *Income Tax Act* (ITA)[2] to introduce expense deduction denial for operators of short-term rentals that do not comply with the registration, licensing and/or permit requirements that apply in the province or municipality in which the short-term rental is located.

New section 67.7(2) introduces the denial, such that no amount is deductible in calculating income in respect of a non-compliant short-term rental for a taxation year. New section 67.7(1) introduces definitions that are relevant to the application of this denial, such as "non-compliant short-term rental," being a short-term rental that:

- does not permit the operation of the short-term rental at the location of the short-term rental; or
- requires registration, a licence or a permit to operate the short-term rental, and the short-term rental does not comply with all applicable registration, licensing and permit requirements.

A "short-term rental" is defined as a residential property that is rented or offered for rent for a period of less than 90 consecutive days.

Clause 16(2) deems this measure to apply to expenses incurred after 2023, but new section 67.7(2) introduces transitional provisions where a rental unit will not be deemed non-compliant throughout the 2024 tax year if it complies with all registration, licensing and permit requirements before 2025.

2.1.2 Exempting from Taxation the International Shipping Income of Certain Canadian Resident Companies

Section 81(1) of the ITA exempts certain amounts from income tax, including a non-resident's income from international shipping. International shipping companies managed in Canada can access this exemption by being deemed non-resident if they meet the conditions in section 250(6) of the ITA, which requires that they be incorporated outside of Canada.

International shipping income is exempt from this the Global Minimum Tax Act (GMTA) introduced in Part 2 of Bill C-69 in accordance with the multilaterally agreed framework. However, international shipping companies managed in Canada that have structured their operations to align with the design of Canada's current international shipping exemption in the ITA would generally not be able to benefit from the exclusion in the proposed GMTA.

Clause 17(1) of Bill C-69 adds new section 81(1)(c.1) to the ITA to make the exemption for income from international shipping available to certain Canadian resident corporations, allowing international shipping companies managed in Canada to access the exemption without incorporating outside of Canada, as well as allowing international shipping companies that are subject to the GMTA to access both the exemption in the ITA and the exclusion in the GMTA.

To be eligible for the exemption, a corporation must be resident in Canada under the general common law test of central management and control, its principal business must consist of the operation of ships used primarily in transporting passengers or goods in international traffic, and all or substantially all of its gross revenue for the year must be from the operation of ships in transporting such passengers and goods.

Clause 17(4) deems this amendment to apply to taxation years that begin on or after 31 December 2023.

2.1.3 Exempting from Taxation the Income of Trusts Established under the First Nations Child and Family Services, Jordan's Principle, and Trout Class Settlement Agreement

A revised final settlement agreement totalling over $23 billion was reached by the Assembly of First Nations, Moushoom and Trout class actions plaintiffs, the First Nations Child and Family Caring Society, and Canada to compensate those harmed by discriminatory underfunding of the First Nations Child and Family Services program and those impacted by the federal government's narrow definition of Jordan's Principle.

Section 81(1)(g.3) of the ITA provides for an exemption from income tax for trusts established under certain settlement agreements. Clause 17(3) of Bill C-69 adds to this list the Settlement Agreement entered into by the Crown, dated effective as of 19 April 2023, in respect of the class actions relating to the First Nations Child and Family Services, Jordan's Principle and Trout Class.

Clause 17(5) deems this measure to have come into force on 1 January 2024.

2.1.4 Doubling the Volunteer Firefighters and Search and Rescue Volunteers Tax Credits

The Volunteer Firefighters Tax Credit and the Search and Rescue Volunteer Tax Credit allow eligible volunteer firefighters and search and rescue volunteers to claim a 15% non-refundable tax credit based on an amount of $3,000. Clauses 26(1) and 27(1) amend sections 118.06(2) and 118.07(2) of the ITA, respectively, to increase the amount that may be claimed under each tax credit from $3,000 to $6,000. Clauses 26(2) and 27(2) deem these changes to apply to the 2024 and subsequent taxation years.

2.1.5 Extending the Eligibility Period for the Canada Child Benefit upon the Death of a Child

The Canada Child Benefit (CCB) is a non-taxable benefit that is generally payable to the parent who resides with the qualified dependant under the age of 18 in Canada and is the dependant's principal caregiver. The amount of the CCB depends on an eligible individual's "adjusted income" (i.e., family net income), the number of qualified dependants, and the age of the qualified dependants.

If an eligible individual ceases to be eligible for the CCB for reasons other than the qualified dependant attaining the age of 18, such as upon the death of the qualified dependant, the individual must notify the Minister of National Revenue (in practice, the Canada Revenue Agency) before the end of the first month they become ineligible under section 122.62(4) of the ITA. Failing to do so causes subsequent CCB payments to be "overpayments" that would have to be repaid by the taxpayer.

Clause 31(1) of Bill C-69 adds new sections 122.62(9) and 122.62(10) to the ITA to deem a deceased child to be a qualified dependant, and deem an eligible individual to remain characterized as such, respectively, for each of the six months following the death of the child where the child was under 18 years of age and was a qualified dependant immediately prior to their death. These provisions allow an eligible individual to continue receiving the CCB for a deceased child for up to six months following the child's death. New section 122.61(11) provides for the calculation of the CCB in these circumstances to be determined by the age the qualified dependant

would have been had they not died. Consequential amendments are made by new section 122.61(12), which allow the disability supplement – an additional amount provided to families caring for a child eligible for the Disability Tax Credit which is included in CCB payments – to continue for each of the six months following the death of the child.

Clause 31(2) deems this measure to apply in respect of the death of a person that occurs after 2024.

2.1.6 Enhancing the Canada Journalism Labour Tax Credit

Section 125.6 of the ITA contains the labour tax credit for journalism organizations, which provides a refundable tax credit in respect of "qualifying labour expenditures" – generally the salary or wages payable by the organization to the employee – paid after 2018 by a "qualifying journalism organization" in a taxation year in respect of "eligible newsroom employees." The credit is computed by multiplying 25% by "qualifying labour expenditures" paid in a taxation year, subject to a maximum amount of $55,000 per "eligible newsroom employee" and the maximum annual tax credit per eligible employee is $13,750.

Clause 33 of Bill C-69 amends sections 125.6(1) and 125.6(2) of the ITA to increase the "qualifying labour expenditure" limit from $55,000 to $85,000 and temporarily raise the credit rate from 25% to 35% for a period of four years, after which it would return to 25% in 2027.

Clause 33(4) deems the changes to come into force on 1 January 2023. As corporations are generally free to choose their own tax years – as opposed to being a calendar year – transitional rules in new sections 125.6(2)(a) and 125.6(2)(c) of the ITA apply for qualifying journalism organizations with taxation years that include a period within the 2022 and 2027 calendar years, respectively, as the rate and credit applicable will vary by calendar year.

Coordinating amendments are made to section 125.6(2.1) of the ITA with respect to partnerships.

2.1.7 Extending the Eligibility Period for the Mineral Exploration Tax Credit

Flow-through shares facilitate the financing of exploration by allowing companies to transfer (renounce) unused tax deductions to investors. In addition to claiming regular flow-through deductions, individuals (other than trusts) who invest in flow-through shares of a corporation can claim a 15% non-refundable tax credit in respect of specified mineral exploration expenses incurred by the corporation and transferred to the individual under a flow-through share agreement.

Clauses 34(1) and 34(2) of Bill C-69 amend the definition of "flow-through mining expenditure" in section 127(9) of the ITA to extend the operation of Mineral Exploration Tax Credit by one year to include eligible expenses incurred by a corporation after March 2024 and before 2026, where the expenses are renounced under a flow-through share agreement entered into after March 2024 and before April 2025.

Clause 34(6) deems the measure to apply to expenses renounced under a flow-through share agreement entered into after March 2024.

2.1.8 Creating the Canada Carbon Rebate for Small Businesses

The federal fuel charge is implemented by the federal government in provinces and territories that request it or that do not have a carbon pricing system that meets the federal benchmark. These "designated provinces" currently include Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan.

Clause 35 of Bill C-69 adds new section 127.421 to the ITA to create the Canada Carbon Rebate for Small Businesses.

New section 127.421(2) provides a method for calculating the amount of the carbon rebate for the 2019 to 2023 calendar years. The amount determined for a corporation for a designated province for a calendar year is calculated by multiplying the "fuel return" specified by the Minister of Finance for the designated province for the calendar year by the total number of persons employed by the corporation in the calendar year in the designated province. An eligible corporation will receive the rebate for these years provided that it files a tax return on or before 15 July 2024 for a taxation year ending in 2023. New section 127.421(3) provides the same method for calculating the amount of the carbon rebate for 2023 and subsequent tax years.

New section 127.421(4) authorizes the Minister of Finance to specify the fuel return specified for a designated province for a calendar year. New section 127.421(5) provides that if the Minister of Finance does not specify the fuel return specified for a designated province for a calendar year under section 127.421(4), the rate for that calendar year for that province is deemed to be zero.

Eligible corporations are Canadian-controlled private corporations that employ fewer than 500 employees at any time in the calendar in the designated province by virtue of the carbon rebate calculations in sections 127.421(2) and 127.421(3) of the ITA.

Clause 60(3) makes consequential amendments to section 164(3) of the ITA.

2.1.9 Creating a Refundable Clean Hydrogen Investment Tax Credit

Clause 37(1) of Bill C-69 adds new section 127.48 to the ITA to create a refundable Clean Hydrogen Investment Tax Credit (CHITC). Portions of section 127.48 are duplicated from Bill C-59, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023,[3] which are common to the CHITC and other investment credits contained in that bill. In particular, the investment tax credit for investments in carbon capture, utilization and storage, as well as the investment tax credit for eligible investments in clean technology equipment. Furthermore, Bill C-69 contains duplicated provisions to account for both circumstances where Bill C-59 is enacted (clause 80(80)) and where this is not the case (clause 37). The following description is relevant to either clause or circumstance as each adds new section 127.48 to the ITA.

The definition of "eligible clean hydrogen property" in new section 127.48 makes the CHITC available for property that is acquired and that becomes available for use on or after 28 March 2023. The CHITC would generally be available for property situated in Canada that is used to produce hydrogen through electrolysis of water, or from eligible hydrocarbons so long as carbon dioxide is captured using carbon capture, utilization, and storage technology (see definition of "eligible pathway").

In general, the CHITC full credit rate varies between 15%, 25% and 40% depending on the expected "carbon intensity" of the hydrogen to be produced by the clean hydrogen project. The 15% rate applies to an expected carbon intensity equal to or greater than two, but less than four. The 25% rate applies to an expected carbon intensity equal to or greater than 0.75 and less than two, and the 40% for an expected carbon intensity of less than 0.75 (see definition "specified percentage" in new section 127.48(1)). A separate credit rate of 15% applies for certain clean ammonia equipment described in the definition of "eligible clean hydrogen property" provided certain conditions are met. "Carbon intensity" is defined as the quantity in kilograms of carbon dioxide equivalent created per kilogram of hydrogen produced by a clean hydrogen project. Accordingly, projects with a carbon intensity of four kilograms or higher of carbon dioxide equivalent per kilograms of hydrogen produced would not be eligible.

The definition of "specified percentage" in new section 127.48(1) reduces the aforementioned credit rates by half for 2034 and would no longer be available after 2034. Taxpayers will also only receive the aforementioned applicable credit rate if they satisfy the labour requirements in section 127.46 of the ITA. For taxpayers that do not elect to meet the labour requirements, each tax credit rate may be reduced by 10 percentage points (clauses 80(71) and 80(71)).[4]

In addition, the amount of the capital cost of property that is eligible for credit is reduced by an amount equal to any other government or non-government financial assistance provided for its purchase under new section 127.48(11) of the ITA.

2.1.10 Creating a Refundable Clean Technology Manufacturing Investment Tax Credit

Clause 38(1) of Bill C-69 adds new section 127.49 to the ITA to create a refundable Clean Technology Manufacturing (CTM) Investment Tax Credit for acquisitions of certain clean technology manufacturing property (CTM property) that is used in qualifying manufacturing and processing activities or the extraction and processing of certain critical minerals. New section 127.49(19) notes the "purpose of [section 127.49] is to encourage the investment of capital in Canada for a CTM use."

Under the definition of "specified percentage" in new section 127.49(1) of the ITA, the credit may apply to CTM property that is both acquired and becomes available for use on or after 1 January 2024. The credit rate is 30% for property acquired in 2024, 20% for property acquired in 2032, 10% for property acquired in 2033, 5% for property acquired in 2034, and zero for property acquired after 2034.

The definition of "CTM property" in new section 127.49(1) specifies that property eligible for the credit must be situated in Canada and be intended for use exclusively in Canada, must be included in certain classes of property under the *Income Tax Regulations* (ITR)[5] (listed in the paragraph d of the definition of "CTM property"), must be new equipment, and in the event that it is leased to another taxpayer or partnership, that taxpayer or each partner must be a taxable Canadian corporation (definition of "qualifying taxpayer"). Additionally, the property must be used for "CTM use" as defined in new section 127.49(1), generally being for qualified zero-emission technology manufacturing activities or in a "qualifying mineral activity" (also defined in subsection 127.49(1)) producing "qualifying materials" that include lithium, cobalt, nickel, copper, rare earth elements and graphite.

Similar to the CHITC, the amount of the capital cost of property that is eligible for credit is reduced by an amount equal to any other government or non-government financial assistance provided for its purchase under new section 127.49(5)(c) of the ITA.

Clause 38(2) deems the measure to come into force on 1 January 2024.

2.1.11 Excluding Bona Fide Concessional Loans with Reasonable Repayment Terms from Public Authorities from the Definition of Government Assistance

Bill C-69 introduces several amendments to the *Income Tax Act* (ITA) to clarify when loans from the government are not considered government assistance.

Section 12 of the ITA lists those amounts that must be included when computing the income of a taxpayer. Clause 5(3) adds section 12(1)(x)(ix) to the ITA to exclude from the calculation of income amounts received as an "excluded loan."

Clause 5(4) adds the definition "excluded loan" to section 12(11) of the ITA to describe loans, other than forgivable loans, made in writing, that are:

- directly from a government, municipality or other public authority in Canada or from the government but through a person or partnership resident in Canada;
- for which, at the time the loan was made, *bona fide* arrangements were made for repayment of the loan within a reasonable time; and
- the funds were used for the purpose of earning income from a business or property.

Clause 6(4) adds new section 13(7.1)(b.2) to the ITA, which provides reductions in the capital cost of a depreciable property for certain types of government assistance, to exclude an amount received that is an "excluded loan."

Clause 34(3) amends the definition of "government assistance" in section 127(9) of the ITA, which lists the various investment tax credits, to exclude an "excluded loan."

Clauses 5(3), 5(4), 6(4) and 34(3) are deemed to have come into force on 1 January 2020 and apply to loans made after 31 December 2019.

2.1.12 Implementing Certain Amendments to the Alternative Minimum Tax

Bill C-69 introduces several changes to the alternative minimum tax regime, which is found in Division E.1 of the ITA. In general, tax owing by individuals and trusts is calculated under the normal income tax and the alternative minimum tax regimes. The taxpayer will owe whichever calculation is higher, which in most cases is the amount of tax calculated under the normal income tax calculation. For high income earners, the alternative minimum tax may prevent them from paying little to no tax in a given taxation year.

Clause 40 makes three amendments to section 127.51 of the ITA, which provides the formula to calculate the alternative minimum tax. Clause 40(1) increases the tax rate percentage, represented by the letter A, from "the appropriate percentage for the

year," which is currently the lowest tax bracket percentage of 15%, to 20.5%. Clause 40(2) increases the basic income exemption amount, represented by the letter C, from $40,000, to "the first dollar amount for the year" referred to in section 117(2)(d) of the ITA. Section 117(2)(d) describes the fourth income tax bracket, and the first dollar amount is $173,205. Clause 40(2) also amends the letter C to provide that the basic exemption applies to a qualified disability trust.

Clause 41 amends section 127.52 of the ITA, which sets out what amounts should be included and what deductions are permitted when calculating a taxpayer's "adjusted taxable income" for the purposes of the alternative minimum tax. Briefly, the amendments are as follows:

- Clause 41(1) amends section 127.52(1)(d)(i) to increase from 80% to 100% the inclusion rate for capital gains, allowable capital losses and gains from listed person property. Clause 41(1) also removes from this section allowable business investment losses and the exception for capital gains resulting from a donation to qualified donees.
- Clause 41(2) amends section 127.52(1)(d)(ii) to change the taxable capital gain inclusion rate for a taxable capital gain allocated by a trust to a beneficiary from 80% to 100%.
- Clause 41(3) adds new section 127.52(1)(d.1) to increase the taxable capital gains inclusion rate on the donation of publicly listed securities from 0% to 30%.
- Clause 41(4) amends section 127.52(1)(g)(ii) to increase a trust's deductions of relevant capital gains that are allocated to beneficiaries from 60% to 100%.
- Clauses 41(5) and 41(6) make minor corrections to the French versions of sections 127.52(1)(g)(ii)(A) and 127.52(1)(g)(ii)(B).
- Clause 41(7) amends sections 127.52(1)(h)(i) to 127.52(1)(h)(vi) to: increase to 140% the deductions allowed for vows of perpetual property, the lifetime capital gains exemption, and for donations of stock options for publicly traded shares; remove the deduction provided for stock options; add deductions for income earned by Canadian Forces and police for designated international missions; and reduce to 50% the Northern Residents deduction.
- Clauses 41(8) to 41(11) amend various parts of sections 127.52(1)(i)(i) and 127.52(1)(i)(ii) to limit to 50% deductions related to capital losses that are carried over from other years.
- Clause 41(12) amends section 127.52(1)(j) to remove the reference to the *Income Tax Application Rules*, which is no longer relevant, and replaces it with a 50% deduction for listed amounts, including office and employment expenses, certain interest and financing expenses, some Canada Pension Plan/Quebec

Pension Plan contributions on self-employed earnings, moving expenses, childcare expenses, and the disability supports deduction.

Clause 42 amends section 127.531 of the ITA, which sets out an individual's basic minimum tax credit for a taxation year for the purposes of the alternative minimum tax. The basic tax credit includes 50% of the amounts deducted in relation to the disability tax credit, the transfer of unused tuition credits, and amounts claimed in relation to other tax credits, except for the charitable donation tax credit and other amounts that arise upon emigration from Canada.

Clauses 43(1) to 43(3) clarify the definitions for "foreign taxes" and "foreign income" in section 127.54(1) of the ITA and update the formula used to calculate the special foreign tax credit in section 127.54(2)(b)(ii) to include the new 20.5% tax rate.

Clause 44 amends section 127.55(f) of the ITA to exclude many types of trusts from the application of the alternative minimum tax.

Clauses 40, 41, 42, 43(2), 43(3) and 44 apply to taxation years that begin after 31 December 2023.

2.1.13 Enhancing the Home Buyers' Plan

The Registered Retirement Savings Plan (RRSP) – Home Buyers' Plan allows individuals to make withdraws from their RRSPs to buy or build a qualifying home. Individuals have up to 15 years to repay the amounts withdrawn from their RRSP. Budget 2024 announced an increase to the withdrawal limit for the Home Buyers' Plan as well as a temporary extension of the repayment period.[6]

Clauses 49(1) and 49(2) amend paragraph (h) of the definition of "regular eligible amount" and paragraph (g) in the definition of "supplemental eligible amount," respectively, in section 146.01(1) of the ITA to increase the withdrawal limit for the Home Buyers' Plan from $35,000 to $60,000.

Clause 49(3) amends section 146.01(4) of the ITA, which sets out the minimum annual amount that must be repaid into the RRSP beginning the second taxation year after the withdrawal, to include reference to new section 146.01(4.1).

Clause 49(4) adds new sections 146.01(4.1) and 146.01(4.2) to the ITA. These sections defer for an additional three years the start of the 15-year repayment period for individuals who make the first withdrawal from their RRSPs between 1 January 2022 and 31 December 2025. Consequently, during this period, an

individual would not have to begin repayment until five taxation years after their first withdrawal.

Clauses 49(1) and 49(2) apply to the 2024 and subsequent taxation years in respect of amounts received after 16 April 2024.

Clauses 49(3) and 49(4) apply to the 2024 and subsequent taxation years.

2.1.14 Excluding the Failure to Report Under the Mandatory Disclosure Rules from the Application of the General Penalty in Section 238 of the Income Tax Act

Clause 73(1) amends section 238(1) of the ITA, which provides a penalty for persons who fail to file or make a return under the Act, to exclude information returns made under sections 237.3 or 237.4 of the ITA. These sections govern information returns for reportable and notifiable transactions and already include specific penalties for failures to make these returns.

Clause 73(2) indicates that clause 73(1) is deemed to have come into force on 22 June 2023.

2.1.15 Creating a Capital Gains Exemption on the Sale of a Business to an Employee Ownership Trust

Bill C-59, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023, introduced the taxation rules that would apply when using an employee ownership trust to acquire and hold shares of a qualifying business. Bill C-69 further adds a $10 million capital gains tax exemption on the sale of a business to an employee ownership trust, which is in effect for the 2024, 2025, and 2026 tax years.

Clause 80(37) introduces new section 110.61 to the ITA, which sets out the rules governing the $10 million capital gains deduction for a “qualifying business transfer.” A “qualifying business transfer,” as defined in Bill C-59, is a transaction involving the sale of shares of an active business corporation to an employee ownership trust.

New section 110.61(1) of the ITA lists the conditions that need to be met for the sale to be eligible for capital gains deduction:

- the claimant that is selling the shares must be an individual and the sale must occur between 2024 and 2026;

- the claimant has not previously claimed the capital gains deduction with respect to the sale of the shares;
- in the 24 months preceding the sale, the shares must not have been owned by anyone else other than the claimant and more than 50% of the fair market value of the shares was derived from assets used in an active business;
- the corporation cannot be a professional corporation, that is one that carries on the practice of an accountant, dentist, lawyer, medical doctor, veterinarian or chiropractor;
- the employee ownership trust cannot control a corporation who employees are beneficiaries of the trust;
- the claimant is over 18 years of age, the claimant or their spouse/common-law partner was actively involved in the business in the 24 months prior to the sale, and at least 75% of the beneficiaries of the trust are resident in Canada; and
- the claimant, the trust and any purchaser corporation owned by the trust must jointly elect to claim the capital gains deduction in the prescribed form, which would include indicating the amount of capital gains eligible for the deduction up to a maximum of $10 million.

New section 110.61(2) of the ITA sets out the formula for claiming the capital gains deduction, taking into account if more than one individual is entitled to claim the deduction.

New sections 110.61(3) and 110.61(4) of the ITA indicate that the capital gains deduction can be denied when a "disqualifying event" occurs, which could be an event that causes the trust to no longer be an employee ownership trust or if the qualifying business of the trust has less than 50% of the fair market value of the shares attributable to assets used principally in an active business. If the disqualifying event occurs within 24 months of the sale, the capital gains deduction is deemed to have never applied to the sale of shares. If the disqualifying event occurs after 24 months, then the trust will realize a capital gain equal to the elected amount of the deduction.

New section 110.61(5) of the ITA is an anti-avoidance rule which states that the deduction does not apply if the purpose of the transaction or series of transactions is to involve the trust in the sale of the shares in order to allow an individual to claim the capital gains deduction that would otherwise not be available to the individual, or if the purpose is to organize or reorganize a corporation, partnership or trust in a manner to allow the deduction to be claimed.

New sections 110.61(6) to 110.61(10) of the ITA indicate those circumstances where the capital gains deduction would not be permitted, including:

- if the individual knowingly fails to file an income tax return for that taxation year or fails to report the capital gain in their income tax return;
- if the individual's capital gains are the result of a conversion of the capital gains of the corporation;
- if the individual's capital gains are the result of the conversion of dividend income into capital gains; and
- if the individual acquires an interest in a partnership or trust, other than a personal trust, in order to receive a disproportionate percentage of the capital gain of the partnership or trust.

New section 110.61(11) of the ITA sets out the rules with respect to related persons for the purposes of the capital gains deduction.

Clause 80(144) of the bill indicates that clause 80(37) is deemed to have come into force on 1 January 2024.

2.1.16 Implementing Various Technical Amendments to Correct Inconsistencies and to Better Align the Law with its Intended Policy Objectives

A number of clauses in Part 1 of Bill C-69 make technical amendments to the ITA and the ITR in order to provide clarity or correct errors in the legislation.

The following clauses make technical amendments for clarification purposes:

- Clause 3(1) amends section 7(1.11) of the ITA to clarify when a mutual fund is at arm's length from a corporation. Clause 3(1) applies to rights exercised or disposed of after 2004 under agreements to sell or issues securities made after 2002.
- Clause 3(2) amends section 7(1.31) of the ITA, which addresses the disposition of newly acquired securities, in relation to employee stock options. Clause 3(2) is deemed to have come into force on 1 January 2023.
- Clauses 6(1) and 8(1) add new sections 13(4.01) and 44(1.01) to the ITA, which deal with recapturing depreciation upon the sale of depreciable property and incurring capital gains on the sale of certain capital property, respectively. These new sections indicate that the time period between 15 March 2020 and 12 March 2022 should not be included in calculations due to the challenges related to COVID-19. Clauses 6(1) and 8(1) are deemed to have come into force on 12 March 2020.

- Clauses 7 and 9 amend sections 39(1)(c)(iv)(C) and 50(1)(b)(ii) of the ITA to update the name of the *Winding-up and Restructuring Act*.[7]
- Clause 11 amends the definitions of "exemption threshold" and "fresh-start date" in the English version of the ITA to correct the spelling of "flow-through."
- Clauses 12, 13(2), 13(5), 70, 74(1), 74(2) and 74(3) amend sections 56(1)(a)(iv), 60(n), 60(v.1), 227(9.1), 241(1)(c), 241(3)(b) and 241(4(a) of the ITA, respectively, to remove reference to the repealed *Unemployment Insurance Act*, which is the statute that preceded the *Employment Insurance Act*.[8] As well, clause 69 repeals section 223(1)(b.1) of the ITA to remove reference to the *Unemployment Insurance Act*.
- Clause 13(1) adds new section 60(j)(iv)(C) to the ITA, which addresses deductions in relation to transfers to registered pension plans and registered retirement savings plans, to include an amount transferred from a foreign pension plan to a registered retirement income fund. Clause 13(1) is deemed to have come into force on 4 August 2023.
- Clause 13(3) adds new section 60(n.2) to the ITA to allow a deduction for the repayment of an overpaid benefit. Clause 13(3) applies to the 2019 and subsequent taxation years.
- Clause 13(4) repeals section 60(r) of the ITA as the program being referred to in that section no longer exists.
- Clause 14 amends section 66(12.73)(e) of the ITA, which addresses the renunciation of exploration expenses to flow-through shareholders, to clarify the circumstances of when a corporation fails to file a statement with respect to that renunciation. Clause 14 is deemed to have come into force on 4 August 2023.
- Clause 20 adds section 89(14.2) to the ITA to permit a late designation with respect to the designation of eligible dividends and the application of the definition "eligible refundable dividend tax on hand."
- Clause 21 amends section 95(2)(a)(ii)(D) of the ITA to clarify the recharacterization of certain income earned by foreign affiliates. Clause 21 is deemed to have come into force on 4 August 2023.
- Clause 23 adds new section 108(2.1) to the ITA, which indicates when certain amounts are to be included as trust income when dealing with interest rate hedging agreements. Clause 23 applies to taxation years that end after 2021.
- Clause 28 amends section 118.2(2)(v) of the ITA, which sets out the medical expense tax credit, to clarify that it applies to expenses related to obtaining embryos to enable the conception of a child. Clause 28 is deemed to have come into force on 1 January 2022.

- Clause 30 amends the definition of "shared custody parent" in section 122.6 of the English version of the ITA to correct the spelling of the word "cohabiting."
- Clause 32 amends section 122.92(1) of the ITA, which governs the multigenerational home renovation tax credit, to add a definition for "return of income" to clarify when an income tax return should be filed. Clause 32 is deemed to have come into force on 1 January 2022.
- Clause 45 amends paragraph (g)(i) of the definition of "excluded right" in section 128.1(10) of the English version of the ITA, which sets out the rules in relation to changing residence, to clarify the text describing provincial pension plans. Clause 45 is deemed to have come into force on 4 August 2023.
- Clause 46 adds new paragraph (a)(iii) to the definition of "eligible refundable dividend tax on hand" in section 129(4) of the ITA to include certain eligible dividends received by a private corporation. Clause 46 applies to taxation years beginning after 2018.
- Clause 47 adds new section 131(4.1)(c) to the ITA, which deals with mutual fund corporations, to specifically address the shares of Capital régional et co-opératif Desjardins. Clause 47 applies to the exchange or other disposition of a share on or after 25 October 2018.
- Clause 48(5) amends section 146(8.1) of the ITA, which deals with payments out of a registered retirement savings plan (RRSP), to allow an individual and the legal representative of a deceased RRSP account holder to jointly file for a deemed receipt of a refund of premiums in certain circumstances. Clause 48(5) is deemed to have come into force on 1 January 2020.
- Clause 48(8) amends section 146(21.2) of the ITA, which addresses specific pension plans, to include reference to section 60.011, and thus ensure that the rules for lifetime benefit trusts apply to specific pension plans. Clause 48(8) is deemed to have come into force on 4 August 2023.
- Clause 52 amends section 147.4(1)(c) of the ITA, which addresses registered pension plans' annuity contracts, to allow additional premiums to be paid to the annuity contract in order to acquire additional benefits consequential to proceedings under the *Bankruptcy and Insolvency Act*[9] or the *Companies' Creditors Arrangement Act*.[10] Clause 52 is deemed to have come into force on 1 January 2018.
- Clause 53 amends section 147.5(12) of the ITA, which deals with pooled registered pension plans, to include reference to section 60.011 and thus ensure the rules for lifetime benefit trusts apply to amounts transferred from a pooled registered pension plan account to a qualifying annuity where the trust is the annuitant. Clause 53 is deemed to have come into force on 4 August 2023.

- Clause 55 amends section 150(1.2) of the ITA, which sets out the rules for the filing of returns by trusts, to exempt from filing eligible trusts formed on the continuation of the Canadian Wheat Board. Clause 55 applies to the taxation years that end after 30 December 2023.
- Clause 57(1) amends section 153(1)(d.1) of the ITA, which addresses the withholding of tax from certain payments, to add reference to section 56(1)(a)(viii) of the Act, which is an income replacement benefit for veterans which was enacted in 2019. Clause 57(1) is deemed to have come into force on 1 April 2019.
- Clause 57(2) adds new section 153(1.04) to the ITA to address withholding tax and the Canada Emergency Wage Subsidy. Clause 57(2) is deemed to have come into force on 18 March 2020.
- Clause 60(1) amends section 164(3) of the ITA, which addresses interest on tax refunds, to add a reference to new section 60(n.2) of the Act, which was added by clause 13(3) of Bill C-69. Clause 60(1) applies to the 2019 and subsequent taxation years.
- Clause 62 amends section 204.2(1.2) of the ITA to clarify the rules for determining the amount of an individual's undeducted RRSP premiums in relation to contributions to pooled registered pension plans. Clause 62 applies to the 2012 and subsequent taxation years.
- Clause 65 adds new section 207.01(10)(d) to the ITA, to make technical amendments as well as to allow upon marital breakdown or death, a legal representative and the current or former spouse or common-law partner of an individual to make a joint election with respect to the transfer of property from an RRSP or registered retirement income fund. Clause 65 is deemed to have come into force 1 January 2020.
- Clauses 66(1) and 66(2) amend sections 207.5(2) and 207.5(2)(c) of the ITA, which deal with elections in respect of retirement compensation arrangements, to include reference to units of a mutual fund trust listed on a designated stock exchange. Clauses 66(1) and 66(2) apply to elections made in respect of the 2020 and subsequent taxation years.
- Clause 71 amends section 231.2(3) of the ITA, which deals with the requirement to provide information, in order to fix a typographical error.
- Clause 72 amends paragraph (a) in section 235 of the ITA, which addresses penalties for failing to file corporate returns, to clarify that taxable capital is interpreted as described in Part I.3 of the Act.
- Clause 74(5) renumbers section 241(4)(d)(vii.10) of the ITA as section 241(4)(d)(vii.91).

- Clauses 74(6) and 74(7) amend sections 241(4)(h) and the definition of "authorized person" in section 241(10) of the ITA to replace "Her Majesty" with "His Majesty" and to remove reference to the *Unemployment Insurance Act*.
- Clause 75 amends paragraph (d) of the definition of "automobile" in section 248(1) of the ITA to add reference to section 15, which sets out the shareholder benefit rules. Clause 75 is deemed to have come into force on 4 August 2023.
- Clause 77 adds paragraph (r) to the definition of "remuneration" in section 100(1) of the ITR, consequential to the addition of income replacement benefits for veterans. Clause 77 is deemed to have come into force on 1 April 2019.

The following clauses make amendments to better align the French and English versions of the ITA:

- clause 2 amends letters B and D in subsection 6(2) of the ITA, which involve income inclusion and the use of a company car;
- clause 4 amends sections 8(1)(f)(vi), 8(1)(g) and 8(1)(i), which describe deductions that can be claimed by salespersons, transport employees and deductions in relation to dues and other employment expenses;
- clauses 48(1), 48(2), 48(3) and 48(4) amend paragraphs (a)(ii), (c), (e)(i), (g) of the definition of "revenue gagné" in section 146(1), which governs RRSPs;
- clauses 48(6) and 48(7) amend sections 146(8.93) and 146(16), which also address RRSPs;
- clause 50 amends section 146.3(6.4), which deals with registered retirement income funds;
- clause 51 amends sections 146.4(4)(f) and 146.4(4)(g), which deal with registered disability savings plans;
- clause 61 amends section 204.1(4), which addresses tax in respect of over-contributions to deferred income plans;
- clause 63 amends 204.91(2), which deals with the waiver of tax for overcontributions to a registered education savings plan;
- clause 64 amends section 205(3), which deals with the waiver of tax for overcontributions to an advanced life deferred annuity; and
- clause 67 amends section 207.64(a), which addresses when to waive tax payable.

In addition, clause 25 amends sections 116(5)(a), 116(5.01)(a) and 116(5.3)(a) of the French version of the ITA, which address sales of property by non-residents, to replace "sérieuse" with "raisonnable."

Clause 54 amends section 149.1(14.1) of the French version of the ITA, which governs registered journalism organizations, to correct typographical errors.

Clause 80 also consists of over 200 coordinating amendments to the ITA and the ITR that would apply if Bill C-59, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023, receives Royal Assent. A brief discussion of these amendments follows:

- clauses 80(2) to 80(11) are amendments related to the implementation of the investment tax credits introduced in Bill C-69;
- clauses 80(12) to 80(13) amend section 18.2 of the ITA, which is introduced in Bill C-59, to add references to new section 127.48, the Clean Hydrogen investment tax credit and new section 127.49, the Clean Technology Manufacturing investment tax credit;
- clauses 80(14) to 80(19) are amendments related to the implementation of the investment tax credits introduced in Bill C-69 and Bill C-59;
- clause 80(20) amends section 87(2)(j.6) of the ITA to add reference to the definition of "qualifying business transfer" in section 248(1) and new section 110.61, which is introduced in clause 80(37) of Bill C-69;
- clauses 80(21) to 80(36) are amendments related to the investment tax credits included in Bill C-69 and Bill C-59;
- clause 80(37) introduces new section 110.61 to the ITA, the capital gains deduction for employee ownership trusts, which is discussed in the subheading above;
- clauses 80(38) to 80(39) amend section 111(1)(e)(ii)(A) of the ITA to add references to all the investment tax credits in Bill C-69 and Bill C-59;
- clause 80(40) amends the definition of "non-capital loss" in section 111(8) of the ITA to correct an error in Bill C-59;
- clauses 80(41) to 80(43) amend the definition of "government assistance" in section 127(9) of the ITA to add references to the investment tax credits;
- clauses 80(44) to 80(62) amend section 127.44 of the ITA, which is introduced in Bill C-59, to implement the Carbon Capture, Utilization, and Storage investment tax credit;
- clauses 80(63) to 80(69) amend section 127.45 of the ITA, which is introduced in Bill C-59, to implement the Clean Technology investment tax credit;

- clauses 80(70) to 80(71) amend section 127.46 of the ITA, which is introduced in Bill C-59, to extend the labour requirements to the Clean Hydrogen investment tax credit;
- clauses 80(72) to 80(78) amend section 127.47 of the ITA, which is included in Bill C-59, to extend the partnership rules to the Clean Hydrogen and the Clean Technology Manufacturing investment tax credits;
- clauses 80(79) to 80(80) update new section 127.48 of the ITA, which is the Clean Hydrogen investment tax credit found in clause 37 of Bill C-69, to include references to provisions in Bill C-59;
- clauses 80(81) to 80(82) update new section 127.49 of the ITA, the Clean Technology Manufacturing investment tax credit enacted by clause 38 of Bill C-69, to include references to provisions in Bill C-59;
- clause 80(83) repeals section 127.491 of the ITA, which is enacted by clause 39 in Bill C-69 as a temporary section;
- clause 80(84), for alternative minimum tax purposes, provides a deduction of all gains that were subject to a deduction under new section 110.61(2) of the ITA, which introduces a capital gains deduction for employee ownership trusts in clause 80(37) of Bill C-69;
- clause 80(85) amends section 127.55(f) of the ITA to exempt employee ownership trusts from the alternative minimum tax found in section 127.5 of the ITA;
- clauses 80(86) and 80(87) include consequential amendments for section 152(1)(b) of the ITA related to the investment tax credits included in Bill C-69 and Bill C-59;
- clause 80(88) renumbers section 152(4)(b.10) of the ITA as section 152(4)(b.91);
- clause 80(89) adds new section 152(4)(b.94) to the ITA, to extend the reassessment period for taxpayers that claimed a capital gain deduction under new section 110.61(2), which provides a capital gains deduction for employee ownership trusts;
- clauses 80(90) to 80(96) are amendments related to the investment tax credits included in Bill C-69 and Bill C-59;
- clause 80(97) adds new section 160(1.6) to the ITA, which governs joint and several liability for taxes owed, for the purposes of employee ownership trusts;
- clauses 80(98) to 80(101) amend section 163(2)(d.1) of the ITA to include references to the investment tax credits included in Bill C-69 and Bill C-59;

- clauses 80(102) to 80(103) amend the definition for "reorganization transaction" found in section 183.3(1) of the ITA and add the definition for "reporting-due day" in section 211.92(1) of the ITA;
- clauses 80(104) to 80(105) amend section 220(2.2) of the ITA to include references to the investments tax credits in Bill C-69 and Bill C-59;
- clauses 80(106) to 80(107) add new sections 241(3.41) and 241(4)(d) to the ITA, which allow the publication of certain taxpayer information in relation to the "clean economy tax credit;"
- clauses 80(108) to 80(110) amend section 241(4)(d)(vi.2) of the ITA to include references to the investment tax credits included in Bill C-69 and Bill C-59;
- clause 80(111) amends the definition of "employee ownership trust" in section 248(1) of the ITA, as a consequence of the introductions of new section 110.61 in clause 80(37) of Bill C-69;
- clause 80(112) amends Class 57 of Schedule II to the ITR, consequential to the introduction of the definitions "distribution equipment" and "transmission equipment" in section 248(1) of the ITA in relation to a Carbon Capture, Utilization, and Storage project; and
- clauses 80(113) to 80(212) list the coming into force provisions for clause 80.

2.2 PART 2: ENACTMENT OF THE GLOBAL MINIMUM TAX ACT

2.2.1 Global Minimum Tax Act

The implementation of a global minimum tax is the second pillar of the international tax reform put forward by the Organisation for Economic Co-operation and Development (OECD) / Group of 20 Inclusive Framework on Base Erosion and Profit Shifting (the Inclusive Framework).

Broadly speaking, the global minimum tax "is intended to reduce the incentive for [multinational enterprises (MNEs)] to shift profits into low-tax jurisdictions and, at the same time, … [set] a floor"[11] on international tax competition by "ensur[ing] that large [MNEs] are subject to a minimum effective tax rate of 15 per cent on their profits in every jurisdiction in which they operate."[12]

To facilitate the coordinated and uniform implementation of Pillar Two, the Inclusive Framework adopted the Global Anti-Base Erosion Model Rules (the GloBE Rules). These rules, which are "the product of extensive international negotiation,"[13]

provide details of the two main mechanisms through which the global minimum tax is levied, namely:

- a primary taxation rule, the Income Inclusion Rule (IIR); and
- a secondary tax rule that acts as a backstop, the Undertaxed Profits Rule (UTPR).

In addition, countries can also levy an domestic minimum top-up tax (DMTT) on their national entities, subject to certain conditions.

It is in this context that clause 81(1) of Bill C-69, which enacts the Global Minimum Tax Act (GMTA), implements the IIR and the DMTT in Canada.[14] In accordance with clause 81(2) of the bill, the GMTA applies to fiscal years beginning on or after 31 December 2023. However, in accordance with clause 81(3) of the bill, any penalty imposed under the general anti-avoidance rule set out in section 54 of the GMTA applies only in respect of transactions occurring on or after the first day on which this bill and Bill C-59, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023, receive Royal Assent.

The GMTA is the responsibility of the Minister of National Revenue[15] (the Minister) and comprises 141 sections divided into six parts.

Unless otherwise indicated, terms in quotation marks in this part of the Legislative Summary are defined in section 2(1) of the GMTA.

2.2.2 Global Minimum Tax

Part 2 of the GMTA implements the global minimum tax. The following subsections summarize the main points.

As explained by the government,

> [i]n general terms, if the country where the ultimate parent entity of an MNE is located has implemented the IIR, it has the primary right to impose a top-up tax on the ultimate parent entity with respect to income from the MNE's operations in any jurisdiction where it is taxed at an [effective tax rate (ETR)] below 15%. The additional tax increases the ETR of this low-taxed income to 15%. If the ultimate parent jurisdiction has not implemented the IIR, the right to impose the top-up tax under the IIR shifts to the jurisdiction with the highest-level intermediate parent entity within the MNE's structure that has adopted the IIR.[16]

2.2.2.1 Liability for Tax

In general, the GMTA applies to "MNE groups," i.e., "groups" comprising at least one "entity" or "permanent establishment" that is not located in the jurisdiction where the group's "ultimate parent entity" is located and whose entities' financial statements are included in the "consolidated financial statements" of the ultimate parent entity.

Thus, a "person" (including a "corporation," partnership or trust) must pay tax in respect of an MNE group when the following two conditions are met:

- the MNE group is an "qualifying MNE group," meaning that
  - the consolidated financial statements of its ultimate parent entity report sales equal to or greater than €750 million (the "revenue threshold") in at least two of the last four "fiscal years;" and
  - the MNE group is not composed exclusively of "excluded entities,"[17] and
- the person
  - is a "relevant parent entity" of a MNE group that is located in Canada and holds a direct or indirect "ownership interest" in at least one "constituent entity" of the MNE group, which is not located in Canada and has a "top-up amount" for the fiscal year; or
  - would, under the "relevant assumptions,"[18] include in computing its income for the purposes of Part I of the ITA the income of a relevant parent entity that is located in Canada, that is not a corporation, partnership or trust and that holds a direct or indirect ownership interest in at least one constituent entity of the MNE, which is not located in Canada and has a top-up amount for the fiscal year.

2.2.2.2 Effective Tax Rate

Division 4 of Part 2 of the GMTA contains provisions for calculating the ETR of an MNE group, for a given jurisdiction and fiscal year. In general, and subject to adjustments in certain situations, the ETR is calculated by dividing the MNE group's "jurisdictional adjusted covered taxes" by the MNE group's "net GloBE income."

The jurisdictional adjusted covered taxes are determined by adding together the "adjusted covered taxes" for the fiscal year of a "standard constituent entity" of the MNE group located in the jurisdiction. Division 3 of Part 2 of the GMTA contains the rules for calculating the adjusted covered taxes of a constituent entity of an MNE group for a fiscal year. Generally speaking, it is the current tax expense, in respect of "covered taxes," to which certain adjustments are made. Of note, rules are established for allocating covered taxes to permanent establishments, "fiscally transparent entities," controlled foreign companies and "hybrid entities."

There are also rules for post-filing adjustments to a particular constituent entity of an MNE group and tax rate changes.

As for net GloBE income, it is determined by subtracting the "GloBE loss" of a standard constituent entity of the MNE group located in the jurisdiction from the "GloBE income or loss" of such an entity. Division 2 of Part 2 of the GMTA contains rules for calculating the GloBE income or loss of a constituent entity. Generally speaking, it is the "financial accounting income," to which certain adjustments are made. In addition, specific calculation rules are laid down, which vary according to the nature of the entity (e.g., whether it is a permanent establishment or a "flow-through entity") and the source of the income (e.g., a constituent entity's "net income or loss from international shipping" is excluded).

2.2.2.3 Top-up Amount

The top-up amount for a particular standard constituent entity of an MNE group located in a jurisdiction for a particular fiscal year is generally determined by multiplying the "jurisdictional top-up amount" for the MNE group by the "GloBE income" of the particular standard constituent entity. This result is then divided by the total GloBE income of each of the standard constituent entities of the MNE group located in the jurisdiction.

Generally speaking, the jurisdictional top-up amount for a fiscal year is the difference between 15% (the "minimum rate") and the ETR of the MNE group for the jurisdiction, multiplied by the "excess profit" for the jurisdiction. Certain adjustments are then made to this result, including a deduction for any amount payable under a "qualified domestic minimum top-up tax" of the jurisdiction.

The excess profit is determined by subtracting the "substance-based income exclusion amount" (SBIEA) of the MNE group for the jurisdiction from the net GloBE income of the MNE group for the jurisdiction otherwise calculated. Generally speaking, the SBIEA is equivalent to a deduction of 5% of total of the "eligible payroll costs" and the "eligible tangible asset" amount of the standard constituent entity. Specific calculation rules are provided for each of these items. This exclusion "is intended as a measure of the MNE's substantive economic activities in the jurisdiction."[19] Of note, Division 9 of Part 2 of the GMTA provides transitional rules for the tax attributes and rates applicable to the substance-based profit exclusion.

In addition, special rules are provided for certain types of entities, including "investment entities" and "joint venture entities." Divisions 5 to 7 of Part 2 of the GMTA also provide special rules relating to reorganizations and asset transfers, "multi-parented MNE groups" and elections in relation to investment entities, respectively, which are not dealt with in this legislative summary.

Finally, Division 8 of Part 2 of the GMTA implements permanent and transitional safe harbours. Permanent safe harbours include a deeming provision whereby the top-up amount of a constituent entity of an MNE group is deemed to be nil, in particular where a qualified domestic minimum top-up tax is levied and such tax has exempt status as determined by the Inclusive Framework and published on the OECD website.

2.2.2.4 Calculation of Top-up Tax Payable

In general, the amount of tax payable by a person part of an MNE group for a fiscal year is equal to the constituent entity's top-up amount multiplied by the relevant parent entity's "inclusion ratio" for the constituent entity, which ratio is calculated on the basis of certain sources of GloBE income of the constituent entity. From this amount is subtracted any portion of the constituent entity's top-up amount for the fiscal year that is included both in this allocable share and in the allocable share of a relevant parent entity of the MNE group through which the person or relevant parent entity, as the case may be, indirectly holds an ownership interest in the constituent entity.

2.2.3 Domestic Minimum Top-Up Tax

Part 3 of the GMTA implements a domestic minimum top-up tax. In general terms, and as explained by the government, this tax

> allows a jurisdiction to collect the top-up tax applicable to any low-taxed income of its domestic entities, rather than allowing the top-up tax to accrue to the treasuries of other countries under the IIR or UTPR.[20]

The GMTA further provides that the provisions of this part are to be interpreted consistently with the requirements outlined in the *Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two)*, published by the OECD on 14 March 2022, as amended from time to time.[21]

2.2.3.1 Liability for Tax

Generally speaking, a person must pay a tax in respect of a constituent entity of an MNE group equal to the constituent entity's "domestic top-up amount" for the fiscal year when

- the constituent entity is located in Canada for the fiscal year;
- the MNE group is a qualifying MNE group for the fiscal year; and

- the person
  - is the constituent entity; or
  - is resident in Canada for purposes of the ITA and, if the constituent entity is not a corporation, partnership or trust, would include, under the "relevant assumptions,"[22] in computing its income for the purposes of Part I of the ITA, the income of the constituent entity for the fiscal year.

2.2.3.2 Domestic Top-Up Amount

Generally speaking, the domestic top-up amount is equal to the amount that would be the entity's top-up amount for the fiscal year, calculated in accordance with the provisions of the GMTA, if that amount were required to be determined and certain rules applied. In addition, the domestic top-up amount of a constituent entity of a MNE group located in Canada is deemed to be nil in certain situations where an MNE group is in the initial phase of international activity.

2.2.4 Implementation, Administration and Enforcement

Part 5 contains provisions for the implementation, administration and enforcement of the GMTA.

The following paragraphs briefly and generally describe some of the provisions of Part 5 of the GMTA, as well as some of the specific provisions of parts 2, 4 and 6 of the GMTA.

Note that the GMTA also includes provisions on interest and penalties, refunds, charges under the *Financial Administration Act*,[23] objections to assessments and appeals, inspections, offences and penalties, procedure and evidence, confidentiality of information and collection. Most of these provisions are modelled on those of other existing tax laws.

2.2.4.1 Returns, Payments, Records and Assessments

In accordance with Division 2 of Part 5 of the GMTA, an information return in respect of a qualifying MNE group for a fiscal year, referred to as a "GIR," must be filed with the Minister in the prescribed manner on or before the "GIR due-date," which is the later of either 30 June 2026, or 15 or 18 months, as the case may be, after the last day of the fiscal year. The return must be filed by the ultimate parent entity, the filing entity or each constituent entity of the MNE group located in Canada, as the case may be. Returns pertaining to the global minimum tax and the domestic minimum top-up tax must also be filed with the Minister at the same time as the GIR, in the prescribed manner, by any person liable to pay these taxes. These returns must contain, among other things, an estimate of the tax payable. It is also possible to

designate entities for different purposes: a "designated local entity", a "designated notification entity" or a "Canadian filing entity."

In accordance with Division 2 of Part 5 of the GMTA, tax payable under the GMTA by a person in respect of a fiscal year must be paid in Canadian dollars at the same time as the GIR is filed. Payment must generally be made electronically when the amount payable is $10,000 or more. Cases of joint and several or solidary liability are also covered in this division.

In accordance with Division 7 of Part 5 of the GMTA, every person must keep and retain for a certain period of time all "records"[24] that are necessary to determine whether the person has complied with the GMTA, whether the person is or was a constituent entity of an MNE group and whether other constituent entities of the group have complied with the GMTA.

Finally, in accordance with Division 8 of Part 5 of the GMTA, the Minister may assess a person, vary an assessment, reassess a person or make additional assessments, to determine the tax or other amounts payable by a person under the GMTA. To do so, the Minister sends a notice of assessment to the person. The limitation period for assessments is seven years after the later of the following days: the day the return to which the tax or amount payable relates was filed and the day on which the Minister receives the GIR.

2.2.4.2 Anti-avoidance Rules

The GMTA contains several anti-avoidance rules, including rules that apply to certain non-arm's length transfers of property. In addition, in accordance with Part 4 of the GMTA (which contains only one section), the general anti-avoidance rule found in section 245 of the ITA applies in the context of the GMTA, with such modifications as the circumstances require.

2.2.4.3 Regulations

Part 6 of the GMTA authorizes the Governor in Council to make certain regulations, including regulations prescribing anything that, by the GMTA, is to be prescribed, determined or regulated by regulation as well as regulations to carry out the purposes and provisions of the GMTA.

2.2.5 Consequential Amendments

Further to the enactment of the GMTA, consequential amendments are made to several statutes to add references to the GMTA. More specifically, clauses 83 to 110 of the bill amend the following statutes: the *Access to Information Act*,[25]

the *Bankruptcy and Insolvency Act*,[26] the *Criminal Code*,[27] the *Excise Tax Act* (ETA),[28] the *Export Development Act*,[29] the *Financial Administration Act*, the *Tax Court of Canada Act*,[30] the *Customs Act*,[31] the ITA, the *Canada Revenue Agency Act*,[32] the *Air Travellers Security Charge Act*,[33] the *Excise Act, 2001*,[34] the *Underused Housing Tax Act*[35] and the *Select Luxury Items Tax Act*.[36]

With the exception of the amendment to the *Access to Information Act*, which is deemed to have come into force on 31 December 2023 (clause82(2) of the bill), all the amendments to the other acts come into force upon Royal Assent of the bill.

2.3 PART 3: REPEALING THE TEMPORARY RELIEF FOR SUPPLIES OF CERTAIN FACE MASKS, RESPIRATORS AND SHIELDS FROM THE GOODS AND SERVICES TAX / HARMONIZED SALES TAX, IMPLEMENTATION OF CERTAIN MEASURES REGARDING EXCISE DUTY IN RESPECT OF TOBACCO AND VAPING PRODUCTS, BEER, SPRITS AND WINE, AND IMPLEMENTATION OF CERTAIN CHANGES TO THE UNDERUSED HOUSING TAX

2.3.1 Division 1 – Repealing the Temporary Relief for Supplies of Certain Face Masks, Respirators and Shields from the Goods and Services Tax/Harmonized Sales Tax

Clause 112 of Bill C-69 repeals sections 2 to 5 of Schedule VI to the ETA in respect of supplies made after April 2024.

These items had been added to Schedule VI of the ETA by section 114 of the *Budget Implementation Act, 2021, No. 1*[37] in order to temporarily zero-rate[38] certain supplies of masks, respirators and face shields made after 6 December 2020. The goal was to "support public health during the COVID-19 pandemic"[39] and continue doing so "until their [these masks and face shields] use is no longer broadly recommended by public health officials for the COVID-19 pandemic."[40]

2.3.2 Division 2 – Implementing Certain Measures Regarding Excise Duty in Respect of Tobacco and Vaping Products, Beer, Spirits and Wine

2.3.2.1 Increase to the Excise Duty on Tobacco Products

As indicated in budget 2024, the excise duty on tobacco products is increasing "in addition to the automatic inflation adjustment … that took effect on April 1, 2024."[41]

Clause 120(1) of Bill C-69 amends certain provisions of Part 3.1 of the *Excise Act, 2001*, which imposes a tax on "inventories of cigarettes."[42] Pursuant to clauses 119(1) and 120(1) of the bill, this tax is increased by $0.02 per "taxed cigarette"[43] of a person held on 17 April 2024. Clauses 121(1) and 122(1) of the bill

also provide that a return must be filed with the Minister of National Revenue, and where tax is payable, it must be remitted to the Receiver General no later than 30 June 2024.

Additionally, clauses 126(1), 127(1), 128(1), 129(1) and 130(1) of the bill increase the rates of duty on tobacco products and the additional duty on cigars provided for in schedules 1 and 2, respectively, of the *Excise Act, 2001*.

Pursuant to clauses 119(2), 120(2), 121(2), 122(2), 126(2), 127(2), 128(2), 129(2) and 130(2) of the bill, these changes are deemed to have come into force on 17 April 2024.

As indicated by the government, these measures are designed to

> protect the next generation from harmful, cancer-causing habits.
>
> …
>
> In addition to raising revenues, a more robust federal excise duty framework for tobacco and vaping products could help to lower smoking rates towards Canada's target of less than five per cent tobacco use by 2035, as well as lower vaping rates among younger Canadians.[44]

2.3.2.2 Amendment to the Process for Specifying Tobacco Product Brands Intended for the Export Market

Clauses 117(1) and 117(2) and 118(1) and 118(2) of the bill amend sections 38 and 58, respectively, of the *Excise Act, 2001* to empower the Minister of National Revenue to specify brands and "tobacco products"[45] not commonly sold in Canada and cigarettes exported under certain brand names that:

- are not required to comply with the provisions relating to the prescribed markings that must be printed on "containers"[46] of "manufactured tobacco"[47]; or
- are exempt from the special duty imposed under section 56 of that Act.

The government indicates that replacing the existing process of prescribing through regulation with the Minister's new power to specify will "improve the administration of the current process."[48] As such, clauses 133(1) and 135(1) repeal the *Regulations Relieving Special Duty on Certain Tobacco Products*[49] and the *Regulations Respecting Prescribed Brands of Manufactured Tobacco and Prescribed Cigarettes*, respectively.[50]

Under clauses 117(3), 118(3), 133(2) and 135(2) of the bill, these changes come into force on the first day of the month after the month in which the bill receives Royal Assent.

2.3.2.3 Authorization to Share Certain Information for the Administration or Enforcement of the *Tobacco and Vaping Products Act*

Clause 125 of the bill amends section 211(6)(e)(x) of the *Excise Act, 2001* to allow an "official" to provide any "confidential information," as those terms are defined in section 211(1) of the same Act, to another official for the administration or enforcement of the *Tobacco and Vaping Products Act*.[51]

This amendment comes into force on the date of Royal Assent and is intended to "strengthen cooperation between the Canada Revenue Agency and Health Canada in their respective responsibilities with respect to tobacco and vaping products."[52]

2.3.2.3.1 Harmonization of Information Return Filing Requirements for Tobacco and Vaping Product Excise Stamps

Clause 134(1) of the bill amends section 4.01 of the *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations*[53] to "require tobacco prescribed persons to file information returns for tobacco excise stamps."[54]

Pursuant to clause 134(2) of the bill, this measure comes into force on the first day of the month after the month in which the bill receives Royal Assent. The goal is to harmonize the obligations of prescribed persons that are issued vaping excise stamps with those of prescribed persons that are issued tobacco excise stamps, in order to "improve controls and accountability for tobacco excise stamps."[55]

2.3.2.4 Amendments to the Excise Duty Framework for Vaping Products

Clauses 131(1), 131(2), 132(1) and 132(2) of the bill increase by 12% the duty on "vaping products"[56] provided for in Schedule 8 of the *Excise Act, 2001*.

Pursuant to clauses 131(3) and 132(3) of the bill, this increase comes into force or is deemed to have come into force on 1 July 2024, "along with the implementation of a coordinated taxation regime in Ontario, Quebec, the Northwest Territories and Nunavut."[57]

2.3.2.5 Amendment to Excise Duties on Beer, Spirits and Wine

2.3.2.5.1 Extension of the 2% Cap on the Inflation Adjustment on Beer, Spirits and Wine Excise Duties

Clauses 113(1), 123(1) and 124(1) of the bill add sections 170.2(2.2) and 170(2.3) to the *Excise Act*[58] and sections 123.1(2.2), 123.1(2.3), 135.1(2.2) and 135.1(2.3) to the *Excise Act, 2001*, respectively. As a result of these changes, the rate used in each of the relevant formulas to calculate the annual adjustment of the duty on beer, malt liquor, ethyl alcohol, spirits and wine is temporarily capped at 2% for the years 2024 and 2025.

Clauses 113(2), 123(2) and 124(2) of the bill specify that these changes are deemed to have come into force on 1 April 2024.

2.3.2.5.2 Excise Duty Rate Reduced on the First 15,000 Hectolitres of Beer Brewed in Canada

Clauses 114(1), 115(1) and 116(1) of the bill temporarily reduce by half the rates of duty applicable to a hectolitre of beer or malt liquor under Part II of the *Excise Act* for the first 15,000 hectolitres of beer or malt liquor brewed in Canada. Pursuant to clauses 114(3), 115(3) and 116(3) of the bill, this change is deemed to have come into force on 1 April 2024.

Pursuant to clauses 114(2), 114(4), 115(2), 115(4), 116(2) and 116(4) of the bill, this reduction ends as of 1 April 2026.

2.3.3 Division 3 – Implementing Certain Changes to the Underused Housing Tax

2.3.3.1 Eliminating Filing Requirements for Certain Owners

In general, the underused housing tax (UHT) is an annual 1% tax on the value of residential real estate considered to be vacant or underused. Obligations to file documents and/or pay the tax will apply to property owners unless they are explicitly "excluded" by certain criteria in the *Underused Housing Tax Act* (UHTA), such as being a registered charity, or a Canadian company listed on a stock exchange. Residential property owners who are Canadian citizens or permanent residents are also excluded so long as they do not own the property through their capacity as a trustee of a trust (other than a personal representative in respect of a deceased individual) or as a partner of a partnership.

Properties that are not excluded may nevertheless be "exempt" from the tax in certain situations, such as being occupied at least 180 days in the calendar year, being inhabitable due to renovations for certain periods, or being inaccessible during certain

times of the year. Individuals and corporations that are not explicitly excluded must still file an underused housing tax return even if no tax is payable because they meet a listed exemption during that calendar year.

Clause 136(1) amends section 2 of the UHTA to broaden the definition of "excluded owners" to also include trustees of "specified Canadian trusts," partners of "specified Canadian partnerships," "specified Canadian corporations," and Canadian corporations with all or substantially all of the shares being owned or controlled by a trust and/or corporation that are excluded owners. Specified Canadian trusts, partnerships and corporations are already defined in section 2 of the UHTA for the purposes of exempting them from tax liability under the Act. Clarifying amendments are also made to the definitions of "specified Canadian partnership" and "specified Canadian trust" in section 2 by clause 136(4) and 136(5), respectively.

Clause 136(6) deems this measure to have come into force on 1 January 2023, and accordingly would apply in respect of 2023 and subsequent years.

2.3.3.2 Reducing Minimum Penalties for Failing to File a Return

Under section 47(1) of the UHTA, failing to file the required return under the UHTA carries a penalty equal to the greater of a fixed value of $5,000 for individuals – or $10,000 if the owner is not an individual – and 5% of the tax levied under the UHTA applicable for that calendar year, and 3% of the tax levied under the UHTA applicable to the property for the calendar year for each calendar month the declaration is past due.

Clause 141(1) amends section 47(1)(a) of the UHTA to reduce the fixed value portion of these penalties from $5,000 to $1,000 if the person is an individual, and from $10,000 to $2,000 if the person is not an individual.

Clause 141(3) deems this measure to have come into force on 1 January 2022.

2.3.3.3 Introducing a New Exemption for Residential Properties Held as a Place of Residence or Lodging for Employees

Properties that are not excluded from the application of UHTA may nevertheless be exempt from the tax in certain situations that are found in sections 6(7) to 6(9) of the Act. In particular, section 6(7)(m) of the UHTA specifies that no tax will be payable under the Act for a residential property that is located in a prescribed area under prescribed conditions.

Clause 146(3) amends section 2(3) of the *Underused Housing Tax Regulations*[59] to add to the prescribed areas and prescribed conditions applicable to section 6(7)(m)

persons – called "operators" – who are carrying on a business in Canada and are holding residential property primarily to provide a place of residence or lodging to their employees, contractors, and/or subcontractors in a location where they are required for the performance of their duties.

Clause 146(6) deems this measure to apply to the 2023 and subsequent calendar years.

2.3.4 Division 4 – Amendment to *Greenhouse Gas Pollution Pricing Act*

Clauses 147(1) to 147(3) of Bill C-69 amend section 107 of the *Greenhouse Gas Pollution Pricing Act*[60] (GGPPA) in order to enable federal officials to provide other federal officials with confidential information in respect of a provincial Crown, or its provincial Crown agent, that is not in compliance, or has publicly stated an intention of non-compliance with the fuel charge.

Clauses 147(4) and 148 of the bill add sections 107(9.1) and 107(9.2) and amend section 134(2) of the GGPPA to authorize the public disclosure by the Minister of National Revenue of certain information in respect of a provincial Crown, or its provincial Crown agent, that is not in compliance with the federal fuel charge requirements or has publicly stated an intention of non-compliance with those requirements. Once publicly disclosed by the Minister of National Revenue, the information is no longer considered confidential. Examples of information that may be published include the value of an amount payable, or the quantity of fuel or combustible waste delivered, imported or brought into a listed province, used or otherwise quantified for purposes of the GGPPA.

2.4 PART 4: IMPLEMENTATION OF VARIOUS MEASURES

2.4.1 Division 1 – Amendments to the *Budget Implementation Act, 2022, No. 1*

Clause 149 of Bill C-69 modifies section 237(2) of the *Budget Implementation Act, 2022, No. 1*[61] in order to extend the temporary prohibition on foreign investment in the Canadian housing sector from 1 January 2025 to 1 January 2027. The legislative change amends the repeal of the *Prohibition on the Purchase of Residential Property by Non-Canadians Act*[62] from the second to the fourth anniversary of the Act's coming into force, which was on 1 January 2023.

2.4.2 Division 2 – Amendments to the *National Housing Act* and the *Borrowing Authority Act*

Section 11 of the *National Housing Act* (NHA)[63] stipulates that the total of the outstanding insured amounts of all insured loans may not exceed $300 billion and any

additional amounts authorized by Parliament under an appropriation Act or other Act of Parliament on or after 1 April 1997. Additionally, for greater clarity, section 11.1 of the NHA sets the maximum total of the outstanding insured amounts of all insured loans at $750 billion.

Clause 150 of Bill C-69 amends section 11 of the NHA so that the total of the outstanding insured amounts of all insured loans may not exceed $800 billion (instead of $300 billion previously) and any additional amounts authorized by Parliament under an appropriation Act or other Act of Parliament on or after the day on which this bill comes into force.

Clause 151 repeals section 11.1 of the NHA regarding the $750-billion limit for the maximum total of the outstanding insured amounts of all insured loans.

Separately, the *COVID-19 Emergency Response Act* (CERA),[64] which came into force on 25 March 2020, contains provisions (sections 47(2), 49 and 50) stipulating that the $300-billion limit in section 11 of NHA be amended to $150 billion (section 47(2)) and section 11.1 be repealed (section 49) five years after the CERA comes into force (section 50). Clause 153 of Bill C-69 provides coordinating amendments related to the CERA. If clause 150 of Bill C-69 comes into force before section 47(2) of the CERA, all three aforementioned CERA provisions are repealed. If section 49 of the CERA comes into force before clause 151 of Bill C-69, clause 151 is deemed never to have come into force and is repealed. Finally, if section 49 of the CERA comes into force on the same day as clause 151 of Bill C-69, all three aforementioned CERA provisions are deemed never to have come into force and are repealed.

Section 4 of the *Borrowing Authority Act* (BAA)[65] stipulates the maximum amount of money that the government is allowed to borrow and the types of borrowing that are included in the borrowing limit. Specifically, section 4(b) states that the money borrowed by way of the issue and sale of Canada Mortgage Bonds that are guaranteed by the Canada Mortgage and Housing Corporation counts towards the borrowing limit.

Clause 152 of Bill C-69 amends section 4(b) of the BAA to exclude Canada Mortgage Bonds that are purchased by Minister of Finance and are not resold from the calculation of the borrowing limit except for the purpose of providing a source of temporary liquidity.

2.4.3 Division 3 – Authorizing the Making of Payments to the Provinces for the National School Food Program

Clause 154 authorizes the Minister of Families, Children and Social Development to enter into bilateral agreements with provinces regarding a national school food program. Clause 154 also provides that any amount payable for the 2024–2025 fiscal year under such an agreement is payable out of the Consolidated Revenue Fund and that the maximum aggregate amount that may be paid for all provinces is $70.1 million.

2.4.4 Division 4 – Amendments to the *Canada Student Loans Act* and the *Canada Student Financial Assistance Act*

Canada Student Loan forgiveness is available to eligible health professionals working in underserved rural or remote communities. Eligible professions include:

- family doctors;
- family medicine residents in training with an accredited medical school in Canada;
- licensed practical nurses;
- nurse practitioners;
- registered nurses;
- registered practical nurses; and
- registered psychiatric nurses.

Through this program, family doctors or residents can receive up to $60,000 in loan forgiveness over five years, and nurses and nurse practitioners can receive up to $30,000.[66]

Division 4 of Part 4 amends the *Canada Student Loans Act* (CSLA)[67] and the *Canada Student Financial Assistance Act* (CSFAA)[68] to extend eligibility for Canada Student Loan forgiveness to additional professions in child care, health and social services. When announcing this measure in budget 2024, the government highlighted its intention to "increase access to early learning and child care in rural and remote communities,"[69] as well as to address "workforce challenges in rural and remote communities … so that all Canadians can benefit from greater access to the full suite of health and social services they need."[70]

The CSLA applies to loans issued to students up to 1 August 1995, while the CSFAA applies to financial assistance issued to students as of 1 August 1995.

Clause 156 of Bill C-69 amends section 11.1(1) of the CSLA to allow the Minister of Employment and Social Development to forgive portions of guaranteed student loans for eligible borrowers in 10 additional professions:

- early childhood educators;
- dental hygienists;
- dentists;
- midwives;
- personal support workers;
- pharmacists;
- physiotherapists;
- psychologists;
- social workers; and
- teachers.

Similarly, clause 160 amends section 9.2(1) of the CSFAA to allow the Minister to forgive portions of student loans for the same 10 professions.

Further, clause 157 amends section 17(r) of the CSLA to allow Governor in Council to make regulations defining each of the 10 professions added by the bill. Similarly, clause 158 amends section 2(2) of the CSFAA to indicate that each of the 10 professions have meanings assigned in the *Canada Student Financial Assistance Regulations*.[71]

Clause 161 indicates that these changes come into force on a day fixed by an order of the Governor in Council.

2.4.5 Division 5 – Amendments to the *Canada Education Savings Act* and the *Income Tax Act*

A Registered Education Savings Plan (RESP) is a federal-government-sponsored long-term savings account that allows individuals to save for a child's, or their own, education after high school. The Canada Learning Bond (CLB) is a benefit that an eligible child may receive in their RESP. Eligible adults born in 2004 or later may also receive the CLB for themselves until the age of 21. The CLB can provide a lifetime maximum of $2,000.[72] Among other requirements, the beneficiary must be from a family with low income.[73]

In budget 2024, the federal government committed to "introduce automatic enrolment in the CLB for eligible children who do not have a RESP opened for them by the time the child turns four,"[74] noting that it would allow 130,000 additional children to receive the CLB. It also announced that it would "extend the age from 20 to 30 years to retroactively claim the Canada Learning Bond," allowing "those who start their post-secondary education later to benefit from the government's contribution to their education savings."[75]

2.4.5.1 Automatic Enrolment in the Canada Learning Bond

Clause 163(2) of Bill C-69 adds new sections 6(1.1) to 6(1.4) to the *Canada Education Savings Act* (CESA)[76] to provide for automatic enrolment in the CLB for eligible children. Specifically, new section 6(1.1) stipulates that if a child is born after 2023, the child's Social Insurance Number has been provided to the Minister of Employment and Social Development, and the child is not a beneficiary under an RESP, but would otherwise be eligible for a CLB, then the Minister must notify the child's primary caregiver that the child is eligible and that an RESP will be opened for the child for the purpose of paying the CLB.

New sections 6(1.2) to 6(1.4) of the CESA outline requirements pertaining to the opening of an RESP by the Minister. Section 6(1.2) specifies when the Minister must open an RESP for an eligible child. If the child is younger than three years old on the day the Minister determines they are eligible, the Minister must open the RESP no earlier than the day the child turns four, or no earlier than another day determined by the Minister (section 6(1.2)(a)). If the child is three years old or older, the Minister must open the RESP no earlier than 365 days after the Minister determines the child to be eligible, or no earlier than another day determined by the Minister (section 6(1.2)(b)).

New section 6(1.3) indicates that a child's primary caregiver or the primary caregiver's cohabiting spouse or common-law partner may refuse the payment of a CLB, in which case the Minister must not open an RESP in respect of that child. However, new section 6(1.4) clarifies that this refusal does not prevent an application for the CLB from being made in respect of the child. In addition, section 6(1.3) indicates that the Minister must not open an RESP for a child if that child is already a beneficiary.

Clause 163(3) adds section 6(1.5) to the CESA, clarifying that if the Minister opens an RESP as described above, the Minister may make CLB payments into the RESP. Further, clause 165 adds new section 7.01 to the CESA to specify that a CLB paid by the Minister as a result of automatic RESP enrolment may only be paid in respect of a beneficiary who is resident in Canada immediately before the payment is made.

Clause 166 adds new section 7.1 to the CESA, indicating that the Minister may enter into an agreement with a person regarding the administration of an RESP, and providing for payment from the Minister to the person responsible for the administration of the RESP. This applies to RESPs opened by the Minister under the new automatic enrolment provisions, or "any other registered [RESP] identified by the Minister." Clause 167 amends section 9 of the CESA to specify that payment made under such an agreement must be paid out of the Consolidated Revenue Fund.

Clause 168 adds new section 12.2 to the CESA permitting the Minister to collect the Social Insurance Number of a person who would be eligible for the CLB if they were a beneficiary, and – if that person is a child – of their primary caregiver and the primary caregiver's cohabiting spouse or common-law partner.

Clause 169 adds new sections 13(c.1) to 13(c.5), as well as section 13(c.31), to the CESA to give regulatory powers to the Governor in Council pertaining to the new provisions on automatic enrolment.

Clause 170 makes consequential amendments to the definitions of "education savings plan" and "subscriber" in section 146.1(1) of the *Income Tax Act*.

2.4.5.2 Age Limit for Applying for the Canada Learning Bond

Clause 163(1) amends section 6(1) of the CESA to extend the maximum age that a person can apply for a CLB from 20 to 30.

2.4.5.3 Coming into Force

Clause 171 indicates that the amendments in clauses 162, 163(2), 166, 167, 168, 169(1) and 170 come into force on a day to be fixed by an order of the Governor in Council. Clauses 163(1), 163(3), 163(4), 164, 165 and 169(2) come into force on a day to be fixed by order of the Governor in Council that is later than the day fixed in relation to the clauses listed above, and is also later than 31 March 2028.

2.4.6 Division 6 – Amendments to the *Bretton Woods and Related Agreements Act*

Clause 172 amends section 8.3(5) of the *Bretton Woods and Related Agreements Act*.[77] The maximum amount of financial assistance that may be provided under section 8.3(5)(a) of the Act in respect of any particular foreign state is increased from $7 billion to $15 billion. The maximum amount of financial assistance that may be provided under section 8.3(5)(b) of the Act in respect of all foreign states is increased from $14 billion to $22 billion.

2.4.7 Division 7 – Amendments to the *Bretton Woods and Related Agreements Act*, the *International Development (Financial Institutions) Assistance Act* and the *European Bank for Reconstruction and Development Agreement Act*

Clauses 173, 174 and 175 amend the *Bretton Woods and Related Agreements Act*, the *International Development (Financial Institutions) Assistance Act*,[78] and the *European Bank for Reconstruction and Development Agreement Act*,[79] respectively.

2.4.7.1 Amendments to the Bretton Woods and Related Agreements Act

Clause 173 amends section 7 of the *Bretton Woods and Related Agreements Act*. The amount of the payment that the Minister of Finance may provide to the International Monetary Fund (IMF) in respect of Canada's quota is increased from 11,023,900,000 Special Drawing Rights (SDRs) to 16,535,900,000 SDRs. The SDR is an international reserve asset created by the IMF. Its value is based on five currencies: the United States dollar, the euro, the Chinese renminbi, the Japanese yen and the British pound sterling. Quotas determine the maximum amount of financial resources a member is obliged to provide to the IMF.[80]

2.4.7.2 Amendments to the *International Development (Financial Institutions) Assistance Act*

Clause 174(1) amends section 3(c) of the English version of the *International Development (Financial Institutions) Assistance Act* to refer to "His" Majesty.

Clause 174(2) amends section 3 of the Act to increase the range of financial instruments that the Minister of Foreign Affairs may use to provide financial assistance under section 3 to the international financial institutions listed in the Act's Schedule. The amendments make provision for the Minister of Foreign Affairs, with the written concurrence of the Minister of Finance, to provide such financial assistance by way of the issuance of guarantees and in any other manner that the Minister of Foreign Affairs considers appropriate.

2.4.7.3 Amendments to the *European Bank for Reconstruction and Development Agreement Act*

Clause 175 amends section 6(2) of the *European Bank for Reconstruction and Development Agreement Act*. Clause 175(1) amends section 6(2) of the Act to replace a provision for the Minister of Finance to "provide further payments to the Bank, in respect of supplementary subscriptions of shares" with a provision for the minister to "provide financial assistance to the Bank."

Clause 175(2) amends section 6(2) of the Act to increase the range of financial instruments that the Minister of Finance may use to provide financial assistance to the European Bank for Reconstruction and Development under section 6 of the Act. The amendments make provision for the Minister of Finance to provide such assistance through the purchase of shares on behalf of the Crown, the issuance of guarantees, and in any other manner that the Minister of Finance considers appropriate.

Clause 175(3) amends section 6(3) of the Act, which sets limits on the payments the Minister of Finance may make for the purposes of section 6(2). The limit on payments of US$85,988,945.20, or any greater amount that is specified in an appropriation Act, is replaced by an aggregate amount not exceeding, in any given period, the amount specified in respect of that period in an appropriation by Parliament.

2.4.8 Division 8 – Amendments to the *International Financial Assistance Act*

Clause 176 adds new section 7.1 to the *International Financial Assistance Act*,[81] which provides that foreign exchange losses accrued in transactions made under sections 3, 4 or 5 of the Act must be charged to the Consolidated Revenue Fund.[82]

Clause 176 also adds new section 7.2 to the *International Financial Assistance Act*, which authorizes the Minister of International Development to make payments to Development Finance Institute Canada (FinDev) in relation to programs referred to in sections 4 and 5 of the Act. These payments may not exceed $720 million in the aggregate, or any greater amount specified in an appropriation Act, and are to be paid out of the Consolidated Revenue Fund. FinDev is required to maintain a separate account of all amounts received in this way, as well as certain related amounts and disbursements, and may be required to pay any such amount to the Receiver General for credit to the Consolidated Revenue Fund. New section 7.2 also adds a definition of FinDev.

Clause 177 adds new section 9 to the *International Financial Assistance Act*. New section 9 authorizes the Governor in Council, on the recommendation of the Minister of Foreign Affairs and the Minister for International Development and with the concurrence of the Minister of Finance, to regulate payments made under new section 7.2.

2.4.9 Division 9 – Amendments to the *Export Development Act*

Clause 178(1) amends section 24(1) of the *Export Development Act* by lowering the limit for total liabilities and obligations allowed in respect of Canada Account[83] transactions from $115 billion to $100 billion. The Canada Account is used to support export transactions that exceed the financial or risk capacity of

Export Development Canada's corporate account, but that have been determined by the Minister for International Trade to be in Canada's national interest.

Clause 178(2) repeals sections 24(1.1) and 24(1.2) of the Act, which made provision for the Minister of Finance to determine the limit for total liabilities and obligations under section 24 of the Act and to have that limit published in the *Canada Gazette*.

2.4.10 Division 10 – Amendments to the *Financial Administration Act* (Exemption Related to Certain Crown Corporations)

Division 10 of Part 4 amends section 85(2) of the FAA to exempt Crown corporations incorporated or acquired by or on behalf of the Communications Security Establishment from divisions I to IV of the FAA. Division I of the FAA concerns the corporate affairs of Crown corporations, including their accountability to Parliament; Division II concerns Crown corporations' directors and officers; Division III concerns Crown corporations' financial management and control; and Division IV concerns general provisions for Crown corporations, including provisions for commercially detrimental information, sanctions and fraud.

Section 85(2) of the FAA currently allows the same exemptions for Crown corporations incorporated or acquired by the Royal Canadian Mounted Police and by "any service established by an Act of Parliament to collect information and intelligence respecting the security of Canada."

2.4.11 Division 11 – Amendments to the *Financial Administration Act* (Information Disclosure Requirements)

The FAA "provides the cornerstone of the legal framework for financial management within the Government of Canada."[84] Specifically, section 35 of the FAA provides a definition of "instruction for payment," while section 159 provides a definition of "other financial institution" that accepts or receives an instruction payment pursuant to section 35, as well as prohibits any charge for certain cheques except arrangements between the Government of Canada and a bank or other financial institution concerning compensation for its services or interest on deposits of the Government of Canada. Section 160 allows the Governor in Council to make regulations with respect to the provisions of the FAA.

Clause 180 of Bill C-69 adds new section 159(4) to the FAA to require deposit-taking financial institutions to disclose information as prescribed by the regulations in customer account statements and other transaction records.

Clause 181 adds new section 160(2) to the FAA to allow the Governor in Council to make regulations prescribing classes of financial institutions information disclosure requirements as referred to in section 159(4).

2.4.12 Division 12 – Amendments to the *Federal–Provincial Fiscal Arrangements Act*

In its 7 February 2023 plan regarding health funding to provinces and territories, the federal government indicated that it would guarantee that the Canada Health Transfer (CHT) will grow at a minimum rate of 5% per year over the 2023–2024 to 2027–2028 period, which "will be provided through annual top-up payments as required."[85] Previously, CHT payments have been growing in line with the three-year moving average of nominal GDP growth, but not less than 3% per year.

Section 24.1 of the *Federal–Provincial Fiscal Arrangements Act*[86] (FPFA) provides the formula for calculating total annual CHT payments. Clause 182 adds new section 24.1(1)(a)(vi), which provides a formula for calculating an annual CHT top-up payment to qualifying provinces and territories so that CHT payments grow at a minimum rate of 5% per year over the 2024–2025 to 2027–2028 period. It also adds new sections 24.1(1)(a)(vii) and 24.1(1)(a)(viii) to provide that the last CHT top-up payment grows in line with the three-year moving average of nominal GDP growth, but not less than 3% per year, in 2028–2029 and subsequent fiscal years. The term qualifying province, defined under new section 24.1(1.1), is a province or territory that has taken steps to implement certain measures respecting the collection, sharing and use of certain health information in accordance with the plan announced on 7 February 2023, as confirmed by the federal Minister of Health to the Minister of Finance before 1 December 2024.

Lastly, clause 183 adds new section 24.21(2) to provide that the new annual CHT top-up payments are to be allocated on an equal per capita basis among provinces and territories, like existing CHT payments, and make other clarifying amendments to section 24.21.

2.4.13 Division 13 – Amendments to the *Pension Benefits Standards Act, 1985* and the *Pooled Registered Pension Plans Act*

Fall Economic Statement 2023 announced the federal government's intentions to introduce legislation that will "require large federally-regulated pension plans to disclose the distribution of their investments, both by jurisdiction and asset-type per jurisdiction, to the Office of the Superintendent of Financial Institutions " According to the fall economic statement, "[t]his information will be made publicly available, and the government will engage with provinces and territories to discuss similar disclosures by Canada's largest pension plans in a simple and uniform format."[87]

Clause 184 adds section 40.1 to the *Pension Benefits Standards Act, 1985*[88] to require that the Superintendent of Financial Institutions publish certain information relating to pension plan investments of federally regulated pension plans. It is assumed that forthcoming regulations will clarify the level of detail the information will contain and whether it will, indeed, require disclosure of distribution of investments by jurisdiction and asset type as stated in the fall economic statement.

Clause 185 adds section 43.1 to the *Pooled Registered Pension Plans Act*[89] to require that plan administrators of federally regulated pooled registered pension plans provide information related to a member's right to terminate their membership as well as other required information about the plan that is set out in the *Pooled Registered Pension Plans Regulations*[90] when they become members of a pooled registered pension plan. This amendment ensures that members who join a federally regulated pooled registered pension plan, through other means than through their employer, receive this information, as these individuals are not currently covered by this provision in the legislation.

Clause 186 specifies that these changes come into force on a day to be fixed by order of the Governor in Council.

2.4.14 Division 14 – Amendments to the *Canada Pension Plan* and the C*anada Pension Plan Regulations*

Division 14 of Part 4 introduces amendments to the *Canada Pension Plan* (CPP)[91] as recommended by federal and provincial finance ministers following their 2022–2024 triennial review of the plan.[92]

Clauses 187(1) and 187(2) of Bill C-69 revise the definitions of "child" and "dependent child" in section 42(1) of the CPP to include parenting time and decision-making responsibility, on the one hand, and part-time attendance at a recognized educational institution, on the other. The definition for "decision-making responsibility" is derived from the *Divorce Act*, while clause 187(3) amends section 42(1) of the CPP to clarify that "parenting time" includes time under the care of the parent when that parent is not physically present.

Clause 188 adds new section 44.2 to stipulate that, as of 1 January 2025, the survivor pension is not payable after a legal separation (without divorce) where there has been a division of their CPP pensionable earnings.

Clause 189 adds new section 57(1.2) to grant a $2,500 top-up to the death benefit (for a total death benefit of $5,000) for a death after 31 December 2024 in cases where the contributor had not received a CPP or provincial retirement or disability pension and no survivor pension is payable.

Clause 190 amends section 59 to specify that the monthly benefit for a disabled contributor's dependent child (or orphan) who is a part-time student amounts to half the benefit of a full-time student.

Clause 191, by amending sections 60(3) and 60(5)(b) of the CPP, replaces "custody and control" of a child with "decision-making responsibility," and specifies that a person with a disability who has decision-making responsibility for a child must share at least 20% of parenting time for that child in order to receive the benefit. The clause also adds new section 60(11.1) to remove the time limit for applying for the disabled contributor's child benefit in cases where the contributor is deemed "incapable of forming or expressing an intention to make an application."

Clause 194(1) amends section 76(1)(c) to maintain eligibility for the disabled contributor's child benefit after the contributor transitions from the disability benefit to the Old Age Security benefit at age 65.

Clause 195 makes consequential amendments to definition of "child" in the *Canada Pension Plan Regulations*.[93]

Clause 196 notes that these amendments will come into force on a day to be fixed by the Governor in Council, except those relating to the new terminology and application time limit for child benefits, which would come into force on Royal Assent of this bill.

2.4.15 Division 15 – Amendments to the *Public Sector Pension Investment Board Act*

Since 1 April 2000, the Public Sector Pension Investment Board (PSPIB) has managed the amounts transferred to it by the Government of Canada on behalf of the three public sector pension plans: the public service pension plan, the Canadian Forces pension plan and the Royal Canadian Mounted Police pension plan. Pension benefits for beneficiaries of the public sector pension plans are paid by active contributions from the employer and plan members. Net contributions are then sent to the Public Service Pension Investment Board for investment in capital markets.

Clause 197 adds section 5.2(1) to the *Public Sector Pension Investment Board Act*[94] to provide a mechanism for the recall of funds from the Public Sector Pension Investment Board to the Consolidated Revenue Fund under the *Canadian Forces Superannuation Act*,[95] the *Public Service Superannuation Act*,[96] and the *Royal Canadian Mounted Police Superannuation Act*.[97] Section 5.2(2) is also added to specify that the respective ministers of the pension plans be consulted prior to a recall occurring.

2.4.16 Division 16 – Amendments to the *Consumer-Driven Banking Act* and the *Financial Consumer Agency of Canada Act*

Consumer-driven banking, sometimes referred to as open banking, is a framework that allows individuals to transfer their financial data through an application programming interface (API) to approved service providers, such as financial services companies, when they choose to do so. According to the Department of Finance, consumer-driven banking "enables consumers to securely use data-driven financial services that can help them better manage their finances and improve their financial outcomes."[98] In 2018, an Advisory Committee on Open Banking was tasked by the government to conduct a review into the merits of open banking. It released its report on 4 August 2021.[99]

On 9 November 2023, Ryan Williams, Member of Parliament for Bay of Quinte, Ontario, introduced Bill C-365, An Act respecting the implementation of a consumer-led banking system for Canadians,[100] which would require the Minister of Finance to table a report in the House of Commons and the Senate if the federal government had not introduced legislation implementing consumer-driven banking within six months of the introduction of Bill C-365. In *Fall Economic Statement 2023*, the federal government announced its intentions to introduce legislation through budget 2024 to establish a consumer-driven banking framework.[101]

As part of budget 2024, the federal government released its plan for the implementation of a consumer-driven banking framework with six core framework elements: governance, scope, accreditation, common rules, national security and a technical standard.[102] The document also noted that legislative implementation will occur in two phases with the governance, scope, and criteria and process for the technical standard being included in the first phase and that the remaining elements of the framework will be introduced in the fall of 2024. Division 16 of Part 4 of Bill C-69 contains the first of these two phases with the establishment of the Consumer-Driven Banking Act (CDBA) and amendments to the *Financial Consumer Agency of Canada Act* (FCACA).[103]

2.4.16.1 Establishment of the Consumer-Driven Banking Act

Clause 198 establishes the Consumer-Driven Banking Act and sets out elements pertaining to the scope and process for the designation of the technical standards body. Section 2 of the CDBA specifies that it applies in respect of data that relates to the following financial products:

- deposit accounts;
- registered and non-registered investment accounts;

- payment products, including credit cards and pre-paid payment instruments;
- various lending products, such as lines of credit, mortgages, and other loans; and
- additional products or services to be provided for in the regulations.

The CDBA explicitly excludes "derived data," defined in section 2 as data that has been enhanced by a participating entity to significantly increase its usefulness or commercial value. Section 5 also specifies that data is to be shared "in a manner that does not enable the participating entity that receives the data to edit the data on servers that are used by the participating entity that provides the data." Furthermore, section 7 of the CDBA requires the Financial Consumer Agency of Canada (FCAC) to maintain a public registry of participating entities in the consumer-driven banking framework.

Section 8 of the CDBA also authorizes the Minister of Finance to designate a technical standards body responsible for creating, maintaining, and overseeing the technical standards that facilitate secure data flow within the scope of the CDBA. This body will set the rules for data exchange between participating entities. According to section 8(3) of the CDBA, the process for designating the technical standards body is by order, which must be published in the *Canada Gazette*. Other key obligations of the technical standards body in section 8 of the CBDA include submitting annual reports to the newly created Senior Deputy Commissioner of the FCAC and promptly notifying of any significant changes impacting the technical standards body or the technical standards. When designating the technical standards body, section 8(2) indicates that the Minister of Finance must consider the following principles:

- the need to ensure the safe and efficient sharing of data among participating entities;
- the principles of fairness, accessibility, transparency and good governance;
- any other principles that the Minister considers relevant; and
- any other principles provided for by regulations.

Sections 9 and 10 of the CDBA specifies that this designation must be reviewed every three years by the Minister of Finance and that the designation may be revoked on the advice of the Senior Deputy Commissioner, if the Minister is of the opinion that the designation poses a risk to national security or to the integrity or security of the financial system in Canada, or if it is no longer consistent with the principles outlined above.

2.4.16.2 Related Amendments to the *Financial Consumer Agency of Canada Act*

The FCAC has existing supervision powers under the FCACA to safeguard consumers in their interactions with financial institutions. These powers include imposing penalties, imprisonment, publicly naming violators and directing banks to take specific actions to rectify violations. Division 16 of Part 4 broadens its mandate to capture activities under the consumer-driven banking framework and the technical standards body.

Clause 199 adds the definition of "participating entity," "Senior Deputy Commissioner," and "technical standards body" to section 2 of the FCACA. Clause 200 amends section 2.1 of the FCACA, outlining the purpose of the Act, to add participating entities and the technical standards body to the list of entities supervised by the FCAC, and adds the "safety and security of consumer-driven banking" to the list of items to which the FCAC contributes protection. Clause 201 adds section 3(4) to the FCACA to include the objects of the FCAC in relation to consumer-driven banking:

- supervise the participating entities, the external complaints body and the technical standards body;
- monitor and evaluate trends and emerging issues that may have an impact on consumers of consumer-driven banking; and
- foster participation in and understanding of consumer-driven banking.

Clause 202 adds consumer-driven banking to the items of concern in section 5.1(1) for which the Minister of Finance may give written direction to the FCAC.

Clause 203 adds a new section 7.2 to the FCACA, which creates a "Senior Deputy Commissioner for Consumer-Driven Banking," who will be responsible for the supervision of the framework. While the Commissioner of the FCAC retains full administrative control of the FCAC and will continue to report to the Minister of Finance and to Parliament, the new Senior Deputy Commissioner is responsible for the supervision of consumer-driven banking, with powers to collect necessary personal information and to publish prescribed information in respect of consumer-driven banking. Given that the consumer-driven banking framework will permit credit unions regulated by provincial governments to opt into the federal framework, the Senior Deputy Commissioner would regulate such entities solely for the purpose of consumer-driven banking and would not subject them to direct oversight by the FCAC.

Clauses 204 to 207 provide the Senior Deputy Commissioner with the powers necessary for human resources and personnel, for the establishment of necessary

advisory committees and for remuneration. Clauses 209 to 211 amend sections 14 and 16 of the FCACA to include the Senior Deputy Commissioner to the sections that prohibit the Commissioner of the FCAC in holding interest in, receiving grants or gratuities from any of the organization for which it is responsible.

Clause 212 adds new sections 17(5) and 17(6) to the FCACA to specify that specified information received from a participating entity, the external complaints body, or the technical standards body in performing his or her duties under the Act is confidential.

Clause 213 amends section 18(1) of the FCACA to provide for the assessment and collection of expenses with respect to participating entities.

Clauses 214 to 226 provide for the powers of the Senior Deputy Commissioner with respect to violations of the CDBA and to determine respective penalties under the FCACA and other authorities of the FCAC such as the publication of the violations. They also prohibit non-participating entities from claiming that they are part of the framework and any participating entity from knowingly providing false or misleading information.

2.4.16.3 Coming into Force

Clauses 213 to 221 and 224 come into force on dates to be fixed by order of the Governor in Council.

2.4.17 Division 17 – Amendments to the *Bank Act*

After the global financial crisis, the Financial Stability Board recommended reform of major interest rate benchmarks to ensure their robustness and reliability. As part of this reform, the Canadian Alternative Reference Rate Working Group, which is co-chaired by representatives from the Bank of Canada and the banking sector, is replacing the Canadian Dollar Offered Rate (CDOR) with the Canadian Overnight Repo Rate Average, known as CORRA, effective 28 June 2024. Budget 2024 proposes changes to the *Bank Act*[104] to update certain definitions to reflect the phase-out of CDOR.

Clause 228(1) amends the definition of "deposit-type instrument" in section 627.01(1) of the *Bank Act* to replace "bankers' acceptance rate" with "interest rate benchmark." Clause 228(2) proposes the same amendment for the definition of "principal-protected note" in section 627.01(1) of the *Bank Act*.

Clause 228(3) defines "interest rate benchmark," which is added to section 627.01(1) of the *Bank Act*, as:

> a rate that is determined from time to time by reference to an assessment of one or more underlying interests, is made available to the public, either free of charge or on payment, and is used for reference for determining the interest payable, or other sums that are due, under loan agreements or other financial contracts or instruments.

Clause 229 amends sections 627.78(1)(b)(ii) and 627.78(1)(b)(iii) of the *Bank Act*, which address the issuance of deposit-type instruments, principal-protected notes or another prescribed product, to also replace "banker's acceptance rate" with "interest rate benchmark."

2.4.18 Division 18 – Amendments to the *Office of the Superintendent of Financial Institutions Act*

Clause 230 amends section 17(3) of the *Office of the Superintendent of Financial Institutions Act*[105] to increase the maximum amount that can be advanced to the Office from the Consolidated Revenue Fund from $40 million to $100 million.

2.4.19 Division 19 – Amendments to the *Bank of Canada Act*

Section 18 of the *Bank of Canada Act* sets out the business and powers of the Bank of Canada (the Bank). In particular, section 18(c) and 18(d) provide that the Bank may buy and sell securities issued or guaranteed by the Government of Canada, any province, the United States, Japan, the United Kingdom, or any member state of the European Union. Section 18(g) describes the circumstances under which the Bank may buy and sell from or to any person, securities and any other financial instruments for the purposes of conducting monetary policy or promoting the stability of the Canadian financial system. Clause 231 adds new section 18.01 to clarify that the Bank may enter into a repurchase, reverse repurchase or buy-sellback agreement in exercising these powers. Clause 231 also adds new section 18.02 which states that no act of the Bank, including a transfer of property, is invalid only because the Bank was without the capacity or power to so act.

2.4.20 Division 20 – Amendments to the *Canada Business Corporations Act*

Clauses 232 and 233 of Bill C-69 increase the maximum fine from $5,000 to $100,000 for a corporation that is found guilty of an offence under the *Canada Business Corporations Act*[106] relating to the register and disclosure of information regarding individuals with significant control, (amended sections 21.1(6) and 21.31(5)). This ensures that penalty provisions are consistent with those under section 21.21 of the *Canada Business Corporations Act*.

Clause 234 amends section 21.4(5) of the *Canada Business Corporations Act* to align it with Canada's criminal sentencing policy.[107] The clause distinguishes between punishment terms on summary conviction and on indictment for a person who commits an offence under section 21.4, relating to sending information regarding individuals with significant control.

2.4.21 Division 21 – Amendments to the *Canada Labour Code* for Improving Access to Protections for Employees

The *Canada Labour Code* (CLC)[108] is divided into four parts: Part I (Industrial Relations), Part II (Occupational Health and Safety), Part III (Labour Standards) and Part IV (Administrative Monetary Penalties). Parts I to IV of the CLC apply to workplaces in the federally regulated private sectors. The federally regulated public sector, which includes the federal public service and Parliament, is only covered under Parts II and IV of the CLC.[109]

Clauses 235, 239 and 242 of Bill C-69 amend the application provisions of Parts I, II and III of the CLC to introduce provisions related to a presumption of employee status. These presumption provisions state that "a person who is paid remuneration by an employer is presumed to be their employee unless the contrary is proved by the employer" (new sections 6.1(1), 123.2(1) and 167.01(1)).

For the purposes of Part I of the CLC, the presumption does not apply to a person who performs management functions or is employed in a confidential capacity in matters relating to industrial relations (new section 6.1(1)). In addition, the presumption does not apply for the purposes of a prosecution under Part I, II or III of the CLC (new sections 6.1(2), 123.2(2) and 167.01(2)).

These clauses also provide that if, in any proceeding other than a prosecution, or in any proceeding under Part IV regarding a violation related to Part II or III of the CLC, an employer alleges that a person is not their employee, the burden of proof is on the employer (new sections 6.2 and 123.3, and amended section 167.2).

Clauses 236, 240 and 242 introduce or modify prohibition provisions, whereby "an employer is prohibited from treating an employee as if they were not their employee" (new sections 96.1 and 125.4, and amended section 167.1). Note that the current version of section 167.1 prohibits the employer from treating their employee as if they were not their employee "in order to avoid their obligations under this Part or to deprive the employee of their rights under this Part." The requirement that the employer prove that they intended to misclassify the employee is therefore removed.

Clauses 237, 238 and 241 of the bill introduce or amend provisions with regard to complaints under Parts I and II of the CLC, as follows.

Clause 237 of the bill amends section 97(1)(a) of the CLC to allow a person or an organization to make a complaint in writing to the Canada Industrial Relations Board about the contravention of the new prohibition provision under Part I of the CLC. Clauses 238(1) and 238(2) allow the Board, through an order, to require the employer to cease the contravention and to pay the employee a sum that is equivalent to the salary that would have been paid to that person but for the contravention (amended section 99(1) and new section 99(1)(g)).

Clause 241(2) of the bill introduces new section 127.1(8.1) to allow an employee to make a complaint in writing to the Head of Compliance and Enforcement if they believe that their employer has contravened the new prohibition provision under Part II of the CLC. They must do so within six months of learning about the action or circumstance giving rise to the complaint. Clause 241(1) amends section 127.1(1) of the CLC to allow an employee to exercise this recourse without having to first make the complaint to their supervisor. Finally, clause 241(3) amends section 127.1(9) to require the Head to investigate the complaint unless it relates to an occurrence of harassment and violence.

Clauses 243 and 244 of the bill are transitional provisions stipulating that the presumption of employee status and the burden of proof provisions do not apply to any proceedings started before the bill receives Royal Assent, and that the amended prohibition provision under Part III of the CLC only applies to proceedings regarding a contravention occurring on or after the date of Royal Assent.

2.4.22 Division 22 – Amendments to the *Canada Labour Code* Regarding the Policy on Disconnecting and Other Measures

2.4.22.1 Policy on Disconnecting – Work-related Communication

Clause 248 of Bill C-69 introduces a new division under Part III of the CLC: Division I.2, entitled “Policy on Disconnecting – Work-related Communication” (new sections 177.2 to 177.8). New Division I.2 requires an employer to establish a policy on disconnecting, which must include the following elements listed under new section 177.2(1) of the CLC:

- a general rule about work-related communication outside scheduled hours of work, including the employer’s expectations and opportunities for employees to disconnect;
- any exceptions to the general rule and the reasons for the exceptions;

- the effective date of the policy on disconnecting; and
- any other elements as prescribed by regulation.

The employer must update the policy every three years (new section 177.3). The development and update of the policy must be done in consultation with employees or, where employees are unionized, with the trade union (new sections 177.4(1) and 177.4(3)). The employer must also keep a record of information related to the consultation process and to the policy development and updates (new section 177.5). Finally, the employer must post the policy where it can be easily accessed and provide a copy of the policy (in paper, electronic form, or other accessible format) to every employee (new section 177.6).

The employer may exclude from the application of the policy any employees who are already exempted from certain hours of work provisions under Division I of Part III of the CLC or to whom Division I does not apply (new section 177.2(2)). The new division will not apply to employees subject to collective agreements where the parties agree, in writing, that the collective agreement meets the policy requirements under new section 177.2(1) of the CLC (new section 177.2(3)).

New section 177.8 stipulates that the Governor in Council may make regulations to prescribe the form of the policy and any updates, any other elements that are to be included in the policy and the way the policy is to be posted. Clause 255 of the bill provides that the Governor in Council may also make regulations defining the terms "disconnect," "scheduled hours of work," and "work-related communication" for the purposes of Part III of the CLC (new section 264(1)(g.1)).

Clause 258 of the bill provides that clause 248 setting out new Division I.2 will come into force on a day to be fixed by order of the Governor in Council.

2.4.22.2 Individual Terminations of Employment and Severance Pay

The bill also makes amendments to Division X (Individual Terminations of Employment) and Division XI (Severance Pay) of Part III of the CLC.

Clauses 249 and 250 of the bill introduce clarification provisions to stipulate that the employer's obligation to give notice or wages in lieu of notice in the case of an individual termination of employment, and to provide severance pay, apply regardless of whether there are options for redress available to the employee, including the right to make an unjust dismissal complaint (new sections 230(1.01) and 235(1.1)).

Clauses 251, 253 and 254 indicate that, for greater certainty, employer compliance with Divisions X and XI does not affect the rights of an employee to make an unjust dismissal, reprisal or genetic testing complaint, or prevent the Canada Industrial

Relations Board from making a determination in this regard or from issuing the appropriate orders (new sections 240(1.01), 246.1(1.1) and 247.99(1.1)). Clause 252 of the bill provides that, when making an order for compensation within the context of an unjust dismissal, the Board may consider any amount paid by the employer related to the individual termination of employment or severance pay (new section 242(5)).

Pursuant to clause 256 of the bill, the new clarification provisions must be considered in monetary complaints related to severance pay or pay in lieu of notice of termination of employment that were still ongoing when the relevant provisions came into force, and in any new monetary complaints with respect to a termination of employment that happened before the relevant provisions came into force.

Clause 257 provides that, on the day on which both clause 249 of the bill and section 480 of the *Budget Implementation Act, 2018, No. 2*,[110] are in force, a new clarification provision will also apply with respect to group termination of employment (new section 212.1(1.1)). Furthermore, on the day that both provisions are in force, the Board may also consider any amount paid by the employer related to the group termination of employment when making an order for compensation within the context of an unjust dismissal (amended section 242(5)).

2.4.22.3 Other Amendments

Clauses 245, 247 and 255 of the bill introduce new regulation-making powers for the Governor in Council. These include the power to make regulations specifying a time limit for filling a vacant health and safety representative position under Part II of the CLC (new section 136(11)(d)), defining the terms “shift” and “work period” for certain hours of work provisions under Part III of the CLC (new section 175(1)(b.2)), and specifying the activities that are or are not considered work for the purposes of Part III of the CLC (new section 264(1)(g)). Clause 258 indicates that these amendments come into force on a day to be fixed by order of the Governor in Council.

2.4.23 Division 23 – Amendments to the *Employment Insurance Act*

Effective since 2018, additional weeks of Employment Insurance (EI) regular benefits are provided to eligible seasonal workers in 13 EI economic regions with highly seasonal economies.[111] Division 23 of Part 4 of Bill C-69 amends the *Employment Insurance Act* (EIA) to extend these temporary provisions set to expire on 26 October 2024. Through this measure and according to Schedule V of the EIA, eligible claimants have access to a maximum entitlement of 45 weeks of EI regular benefits.[112]

Section 12(2.3)(a)(i) of the EIA establishes the time period within which a seasonal claimant's benefit period must occur for that claimant to be entitled to additional weeks of benefits. Division 35 of *Budget Implementation Act, 2023, No. 1* previously extended the prescribed period from 28 October 2023 to 26 October 2024.[113] Clause 259 of Bill C-69 further amends section 12(2.3)(a)(i) to extend the end of this period from 26 October 2024 to 24 October 2026, thereby allowing eligible seasonal workers to access additional weeks of benefits by approximately two years.

2.4.24 Division 24 – Amendments to the *Act for the Substantive Equality of Canada's Official Languages*

Division 24 of Part 4 of Bill C-69 amends section 61 of the *Act for the Substantive Equality of Canada's Official Languages*[114] This Act, which received Royal Assent on 20 June 2023, provides for the enactment of the *Use of French in Federally Regulated Private Businesses Act* (UFFRPBA).[115] The latter is not yet in effect, as no Governor in Council decree has been issued in this regard.

The amendment set out in Division 24 of Part 4 adds a reference to sections 18(1.1) and 18(1.2) of the UFFRPBA to section 19(1). This amendment corrects an omission that occurred during the parliamentary process leading to the adoption of Bill C-13, Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts[116], which resulted in the enactment of the *Act for the Substantive Equality of Canada's Official Languages*.

Section 19(1) of the UFFRPBA makes it possible for an employee of a federally-regulated private business located in Quebec, when the UFFRPBA comes into effect, to file a complaint with the Commissioner of Official Languages about their relative rights in terms of language of work in the same way as an employee of a federal institution. If the business breaches their rights, the employee may seek legal recourse once the complaint has been investigated. In addition, section 61 of the *Act for the Substantive Equality of Canada's Official Languages* provides for a subsequent amendment to section 19(1) of the UFFRPBA so that it applies to businesses located in a region with a strong francophone presence[117] two years after the UFFRPBA comes into force.

As Bill C-13 was being studied, section 18 of the UFFRPBA was amended to include sections 18(1.1) and 18(1.2), which address former and potential employees, and subjected them to the application of section 19(1) for businesses located in Quebec. In other words, former employees and those with a genuine interest in a position within the business have the same legal right to file a complaint with the Commissioner of Official Languages as current employees. However, clause 61 of

Bill C-13 has not been amended in the same way. As drafted, it does not recognize the same legal rights for former and potential employees of a business located in a region with a strong francophone presence. Moreover, it creates a situation in which, two years after the UFFRPBA comes into force, former and potential employees of businesses located in Quebec would lose their legal right to file a complaint and seek legal recourse.

The amendment to Division 24 of Part 4 of Bill C-69 ensures that all employees of federally regulated private businesses located in Quebec or a region with a strong francophone presence – whether current, former or potential – may file a complaint and seek legal recourse if the business violates the language of work rights set out in the UFFRPBA.

2.4.25 Division 25 – Creating the Indigenous Loan Guarantee Program

Clause 261(1) of Bill C-69 authorizes a newly created corporation incorporated as a wholly owned subsidiary of the Canada Development Investment Corporation (the new subsidiary corporation) to issue and administer loan guarantees through an Indigenous loan guarantee program. This new subsidiary corporation will be an agent of the Crown, ensuring that the new subsidiary corporation can benefit from the Government of Canada's credit and secure lower interest rates for borrowers.

As explained in budget 2024, the loan guarantee program will provide loan guarantees to Indigenous communities for natural resource and energy projects across Canada.[118] Budget 2024 connects the loan guarantee program with economic reconciliation noting that, "Indigenous communities need to be able to share in the benefits of natural resource and energy projects in their territories and on their own terms."[119] Under the program, Natural Resources Canada will be responsible for capacity building and intake while the new subsidiary corporation would "provide due diligence on the applications and administer the portfolio of loan guarantees."[120]

Clause 261(1) specifies that the total amount of the loan guarantees including principal and interest must not exceed $5 billion or any greater amount that may be authorized by the Governor in Council following a recommendation of the Minister of Finance.

Clause 261(2) authorizes the Minister of Finance to pay amounts to the new subsidiary corporation from the Consolidated Revenue Fund as required for the payment of principal and interest of loan guarantees and for all other amounts required by the new subsidiary corporation to discharge its obligations under the loan guarantees, exercise rights or protect the interests of the Crown.

Clause 263(1) states the sections 91 and 100(1) of the FAA do not apply to the new subsidiary corporation or to any of the new subsidiary corporation's wholly owned subsidiaries. Section 91(1) of the FAA lists a series of actions by parent Crown corporations or wholly owned subsidiaries of a parent corporation that require approval by the Governor in Council. Examples include procuring the "incorporation of a corporation any shares of which, on incorporation, would be held by, on behalf of or in trust for the corporation or subsidiary"; acquiring shares of a corporation which "on acquisition would be held by, on behalf of or in trust for the corporation of subsidiary"; selling or otherwise disposing of shares of a wholly-owned subsidiary of the corporation; and acquiring all or substantially all of the assets of another corporation. Section 100(1) prevents agents of Crown corporations from using corporate property as security for debts or the performance of other obligations.

Clause 263(2) specifies that sections 89(1), 89(4), 89(6) and 89.1 of the FAA apply to the new subsidiary corporation as if it were a parent corporation. Section 89(1) of the FAA provides that if the Governor in Council believes it is in the public interest, it may, on the recommendations of the minister,[121] give a directive to any parent Crown corporation. The appropriate minister must table any directive given to a parent Crown corporation in Parliament (section 89(4)). A parent Crown corporation is required to notify the appropriate minister following the implementation of the directive (section 89(6)). The directors of a parent Crown corporation must ensure any directives given are implemented promptly (section 89.1(1)).[122] The directors are not accountable for consequences resulting from the implementation of the directive should they act in accordance with section 115 (section 89.1(1)). Section 115 describes the duty of care of directors and officers, including that they act honestly and in good faith to the best interests of the corporation. Compliance with a directive is considered in the best interests of the corporation (section 89.1(2)).

2.4.26 Division 26 – Creating a Regional Pilot for Red Dress Alert

A Red Dress Alert system is an alert that notifies the public of a missing Indigenous woman, girl or person who is Two-Spirit, lesbian, gay, bisexual, trans, queer, questioning, intersex, asexual or who has other gender or sexual identity (2SLGBTQQIA+). Budget 2024 proposes to provide $1.3 million over three years to carry out engagement on a pilot project for the creation of a regional Red Dress Alert and for making direct payments to participating individuals and organizations. This is reflected in clause 264 of Bill C-69. The funds are intended to support consultations and engagement with Indigenous people around the development of a pilot regional Red Dress Alert, as well as an assessment at the end of the pilot.

According to self-reported and self-identifying data collected by Statistics Canada, Indigenous women and girls are more likely to have experienced sexual assault and

intimate partner violence after the age of 15, and are six times more likely to be murdered compared to non-Indigenous women and girls.[123] Many reports have flagged the disproportionate rates of violence and disappearance faced by Indigenous women, girls and 2SLGBTQQIA+ people, including the National Inquiry into Missing and Murdered Indigenous Women and Girls' final report.[124]

In May 2023, the House of Commons unanimously adopted to a motion declaring that the murders and disappearances of Indigenous women and girls in Canada is an emergency.[125] The motion called for "immediate and substantial investment, including in a red dress alert system, to help alert the public when an Indigenous woman, girl or two-spirit person goes missing."[126]

Budget 2024's allocations for the Red Dress Alert build upon commitments made in budget 2023, where $2.5 million was allotted to hold discussions on the Red Dress Alert at the National Indigenous-Federal-Provincial-Territorial Roundtable on Missing and Murdered Indigenous Women and Girls and 2SLGBTQQIA+ People.[127] In his appearance before the House of Commons Standing Committee on the Status of Women in April 2024, Gary Anandasangaree, Minister of Crown-Indigenous relations, stated that "over 16 engagements [sessions had been held] in the different regions of the country."[128] A "What we heard" report was produced following those discussions.[129] They revealed priorities for Indigenous peoples with regards to the Red Dress Alert, including:

- enhancing safety in communities;
- raising public awareness about missing and murdered Indigenous women and girls and 2SLGBTQQIA+ people and responding to this violence;
- protecting victims and their data against offenders; and
- access to wraparound services for families and survivors.

In April 2024, Minister Anandasangaree indicated that active discussions were being held with potentially interested provincial and territorial partners in relation to a pilot Red Dress Alert.[130] News reports from May 2024 indicate that the federal government has partnered with Manitoba to launch a regional Red Dress Alert pilot.[131]

2.4.27 Division 27 – Establishing a Subsidiary of VIA Rail Canada as a Federal Agency and Allowing It to Contract with Federal Agencies as Though It Were Not Such an Agent

Clause 266 of Bill C-69 establishes that VIA HFR – VIA TGF Inc. (VIA HFR), a subsidiary of VIA Rail Canada Inc., is an agent of the Crown. VIA HFR was

established to manage the development of a high-frequency rail project between the cities of Toronto and Québec.[132]

This status of agent of the Crown means that the Government of Canada is fully liable for all actions taken by the agent while it is operating under its mandate. Meanwhile, the agent benefits from the same constitutional immunities, privileges, and prerogatives as the Crown.[133]

It is also possible for a Crown corporation to be granted a partial agent status, that is, a status that is applicable only in certain circumstances or with certain exceptions. Such an exception is made under clause 267, which stipulates that VIA HFR may enter into contracts, agreements, or other arrangements (such as leases) with the Government of Canada. This is typically not permitted for agents of the Crown.

Under clause 268, both status and the above-mentioned exception are retroactively deemed to have been in force since VIA HFR's incorporation on 29 November 2022.

2.4.28 Division 28 – Amendments to the *Impact Assessment Act*

The *Impact Assessment Act* (IAA),[134] which relates to federal environmental assessment of projects, was introduced in 2018 through the former Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts,[135] which received Royal Assent in June 2019. The IAA replaced the *Canadian Environmental Assessment Act, 2012*.[136]

Alberta's Lieutenant Governor in Council referred two questions about the constitutionality of the IAA and the *Physical Activities Regulations*[137] made pursuant to the IAA to the Alberta Court of Appeal. The majority of that court found the IAA was unconstitutional in its entirety,[138] and the Attorney General of Canada appealed that advisory opinion. In October 2023, the Supreme Court of Canada released its opinion in *Reference re Impact Assessment Act*,[139] concluding that parts of the IAA intruded on provincial jurisdiction. While confirming that Parliament can enact legislation to protect the environment, Chief Justice Wagner (for the majority) concluded that:

> The pith and substance of [the] designated projects scheme is to assess and regulate designated projects with a view to mitigating or preventing their potential adverse environmental, health, social and economic impacts. In my view, Parliament has plainly overstepped its constitutional competence in enacting this designated projects scheme. This scheme is *ultra vires* for two overarching reasons. First, it is not in pith and substance directed at regulating "effects within federal

> jurisdiction" as defined in the IAA because these effects do not drive the scheme's decision-making functions. Second, I do not accept Canada's contention that the defined term "effects within federal jurisdiction" aligns with federal legislative jurisdiction. The overbreadth of these effects exacerbates the constitutional frailties of the scheme's decision-making functions.[140]

Since this was a reference to the Supreme Court of Canada, the majority's opinion did not result in the provisions that intruded on provincial jurisdiction being struck down. Division 28 of Part 4 of Bill C-69 is the Government of Canada's response to the Supreme Court of Canada's opinion.

Key amendments contained in Division 28 relate to definitions. Clause 271 replaces two definitions contained in section 2 of the IAA in order to narrow their scope from "effects" to "adverse effects." Specifically, the phrase "direct or incidental effects" is replaced by "direct or incidental adverse effects," and a reference to "non-negligible adverse effects" is also added to that definition. The phrase "effects within federal jurisdiction" is replaced by "adverse effects within federal jurisdiction." Similar to the revised definition of "direct or incidental adverse effects," the new definition "adverse effects within federal jurisdiction" adds a reference to "non-negligible adverse effects" to some of the existing descriptions listed under "effects within federal jurisdiction."

The definition of "mitigation measures" is also amended to, among other things, specify that the section relates to adverse effects "within federal jurisdiction" (clause 271(2)).

The IAA's long title is *An Act respecting a federal process for impact assessments and the prevention of significant adverse environmental effects*. This title is replaced by a new title, "An Act respecting a federal process for impact assessments and the prevention or mitigation of significant adverse effects within federal jurisdiction" to reflect the narrowed scope of the law and to include a reference to mitigation (clause 269). The narrowed scope of the IAA is also reflected in changes to the Preamble which, among other things, is revised to qualify that Parliament's (formerly, the Government of Canada's) commitment to an impact assessment process relates to one "that prevents or mitigates significant adverse effects within federal jurisdiction" (clause 270).

Clause 272 shortens the "Purpose" section of the IAA, including by deleting section 6(1)(c), which refers to ensuring that impact assessments of designated projects take into account all possible effects of a project – both positive and negative. The revised "Purpose" is now "to prevent or mitigate significant adverse effects within federal jurisdiction." The revised "Purpose" also refers to "significant

direct or incidental effects that may be caused by designated projects and significant adverse environmental effects."

Clause 273(1) amends section 7(1) of the IAA, which provides that certain projects are prohibited if they might cause one of the effects listed in sections 7(1)(a) to 7(1)(e), unless one of the criterion in section 7(3) is met. The exceptions listed in section 7(3) include, for example, that the Impact Assessment Agency of Canada has determined that no impact assessment is required (section 7(3)(a)). The amendment specifies that certain projects are prohibited if they might cause "adverse effects within federal jurisdiction," rather than effects more generally (clause 273(1)). This is consistent with the revised definitions that refer to "adverse effects." The exceptions in section 7(3) would continue to apply.

Budget 2024 states that amendments to the IAA "will provide certainty for businesses and investors through measures that include increasing flexibility in substitution of assessments to allow for collaboration and avoid interjurisdictional duplication."[141] Section 9 of the IAA provides that the Minister of the Environment can designate a project as one to which the IAA applies. Clause 275 amends the factors to be considered by the minister before making such a designation to include whether there are alternatives to an impact assessment that would allow a jurisdiction to address the adverse effects within federal jurisdiction. In other words, where these alternatives exist, the minister may decide to not require an assessment under the IAA, thereby avoiding interjurisdictional duplication. Clause 277(2) also adds a reference to alternatives to an impact assessment as a factor to be considered by the Agency when deciding whether an impact assessment is required (new section 16(2)(f.1)).

Existing section 14 of the IIA requires that the Agency provide the project proponent with a summary or relevant issues that need to be addressed. Section 15 requires the project proponent to notify the Agency as to how it will address those issues that have been raised. Clause 276 amends section 15 to specify that the project proponent must explain how it will address issues relating to adverse impacts on the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Finally, clauses 302 to 319 set out a number of transitional provisions, including for projects that are currently in the impact assessment process.

2.4.29 Division 29 – Amendments to the *Judges Act*

Section 24 of the *Judges Act*[142] provides for a number of salaries to be paid to additional judges appointed to the superior courts following the passage of provincial legislation. Division 29 of Part 4 of Bill C-69 amends this section with a view to reallocating additional salaries paid to family court judges to judicial positions at

superior courts of first instance. According to budget 2024, this reallocation results from the fact that "Alberta has been allocated judicial seats which they have chosen not to create," leaving 17 unused judicial seats intended for unified family courts vacant[143].

Thus, clause 320(1) of the bill amends current section 24(3)(b) of the *Judges Act* to increase the number of additional salaries payable to superior court judges from 62 to 79 salaries. Conversely, clause 320(2) of the bill amends section 24(4) of the *Judges Act* to reduce the number of additional salaries payable to family court judges from 75 to 58.

2.4.30 Division 30 – Amendments to the *Tax Court of Canada Act*

Division 30 of Part 4 of Bill C-69 amends current section 17.1 of the *Tax Court of Canada Act*. Current section 17.1(1) of the *Tax Court of Canada Act* provides that parties to proceedings before the Tax Court of Canada under the general procedure may appear in person or be represented by counsel. Clause 321 of the bill amends this section to specify that it applies to individuals who are parties to proceedings before the Court. Clause 321 of the bill also creates new section 17.1(1.1), which provides that a party who is not an individual must be represented by counsel, unless the Court, in special circumstances, authorizes the party to be represented by one of its directors, officers, employees, members or associates.

2.4.31 Division 31 – Amendments to the *Food and Drugs Act*

The *Food and Drugs Act* (FDA)[144] applies to all food, drugs, cosmetics and medical devices sold in Canada. This Act and its associated regulations help to ensure the safety of such products by governing their sale and advertisement.[145]

Division 31 of Part 4 of Bill C-69 amends the FDA to, among other things, authorize the Minister of Health to:

- make rules to address the risk to health that may arise when a therapeutic product is used in a way other than as intended, or the risk to human beings, animals or the environment that may arise through the use of a drug intended for an animal;
- exempt any food, therapeutic product, person or activity from the application of certain provisions of the FDA or associated regulations; and
- deem, by relying on information or decisions of a foreign regulatory authority, that a therapeutic product or food meets certain requirements of the FDA or associated regulations.

2.4.31.1 Inconsistency in a Definition

Section 2 of the FDA sets out definitions that apply in that Act. Clause 322(1) of Bill C-69 amends section 2 to add the words "fabriqués, prepares ou" to paragraph (c) of the definition of "drogue" in the French version. This addition rectifies an inconsistency between the English and French versions.

2.4.31.2 Regulation-Making Authority to Prevent Shortages of Foods for a Special Dietary Purpose

In budget 2024, the government announced that it would amend the FDA "to expand the Governor-in-Council regulation-making authority related to drug and medical device shortages to include foods for a special dietary purpose, such as infant formulas and human milk fortifiers."[146]

Section 30(1.4) of the FDA authorizes the Governor in Council to make regulations to prevent shortages of therapeutic products in Canada or alleviate those shortages or their effects, to protect human health. Clause 325(3) of the bill amends this section to add that the Governor in Council may also make such regulations with respect to foods for a special dietary purpose. "Food for special dietary use" is defined in the *Food and Drug Regulations* to mean

> food that has been specially processed or formulated to meet the particular requirements of a person
>
> (a) in whom a physical or physiological condition exists as a result of a disease, disorder or injury, or
>
> (b) for whom a particular effect, including but not limited to weight loss, is to be obtained by a controlled intake of foods.[147]

2.4.31.3 New Specific Regulation-Making Authority

Clause 325(1) amends section 30(1) of the FDA by adding new section 30(1)(j.1), authorizing the Governor in Council to make regulations respecting orders referred to in new sections 30.01 and 30.02 (addressing unintended uses of therapeutic products and drugs meant for animals) and new sections 30.05 and 30.06 (exempting persons or products from certain requirements under the FDA and/or its regulations). These new sections are discussed below.

2.4.31.3.1 Supplementary Rules: Preventing Unintended Uses of Therapeutic Products

A "therapeutic product," under the FDA, "means a drug or device or any combination of drugs and devices."[148] In budget 2024, the government announced that it would amend the FDA "to address and prevent unintended and harmful uses

of therapeutic products, such as preventing addictive nicotine replacement therapies from being marketed to youth."[149]

Clause 326 adds these new supplementary rules after section 30 of the FDA. New section 30.01 addresses unintended uses of therapeutic products:

- New section 30.01(1) provides that if the minister believes that the use of a therapeutic product, other than the intended use, may present a risk to health, the minister may, by order, establish rules regarding the importation, sale, conditions of sale, advertising, manufacture, preparation, preservation, packaging, labelling, storage or testing of the therapeutic product, to prevent or manage that risk.
- New section 30.01(2) specifies that, in the order, the minister may establish rules to prevent the therapeutic product from being promoted for an unintended use or to prevent this unintended use from being appealing.
- New section 30.01(3) states that the minister may make the order despite any uncertainty regarding the risk to health that the unintended use may pose.

New section 30.02 addresses drugs meant for animals. The provision states that if the minister believes that the use of a drug meant for an animal of a particular species may present a risk to human beings, animals of a different species or the environment, the minister may, by order, establish rules in respect of the importation, sale, conditions of sale, advertising, manufacture, preparation, preservation, packaging, labelling, storage or testing of the drug, to prevent or manage that risk. The minister may do so despite any uncertainty regarding the risk that the use may pose.

Clause 326 also adds new sections 30.03 and 30.04. Section 30.03 provides that an order made under section 30.01 or 30.02 that applies to only one person is not a statutory instrument within the meaning of the *Statutory Instruments Act*.[150] According to new section 30.04, the minister must nevertheless ensure that any such order is publicly available, although it may exclude personal information and confidential business information.

2.4.31.3.2 Exemption Authority

In budget 2024, the government announced that it would amend the FDA to authorize the minister

> to exempt a person or product from certain requirements in the *Food and Drugs Act* and/or its regulations by Ministerial Order. This amendment would improve transparency when the Minister chooses to exempt health products, such as infant formulas, from certain Canadian requirements to increase supply in the event of a shortage.[151]

Thus, clause 326 of the bill adds new section 30.05(1), which provides that the minister may, by order, exempt a class of foods, therapeutic products, persons or activities from the application of:

- all or any provisions of Part I of the FDA (relating to foods, drugs, cosmetics and devices);
- section 37 of the FDA (relating to costs); or
- the regulations.

The minister may, in the order, impose any conditions that the minister considers necessary. However, this order cannot relate to cosmetics.

New section 30.05(2) stipulates that the minister may make the order only if the minister believes that:

- it is necessary for health or safety or is otherwise in the public interest; and
- it is unlikely to lead to unacceptable health, safety or (if applicable) environmental risks, or to an unacceptable degree of uncertainty respecting such risks.

Section 30.05 is, in turn, separately modified by clause 327, which comes into force on a day to be fixed by order of the Governor in Council, according to clause 333. Clause 327(1) amends section 30.05 to add section 30.05(1.1), which mirrors section 30.05(1) in all respects, except that it pertains to the exemption of a person.

Clause 327(2) amends section 30.05(2) accordingly, to reflect the addition of this exemption in relation to a person.

Clause 327(3) adds, after section 30.05(3), new sections 30.05(4) and 30.05(5). These provisions state that an order made under section 30.05(1.1) that applies to only one person is not a statutory instrument within the meaning of the *Statutory Instruments Act*, and that the minister must ensure that any such order is publicly available, although it may exclude personal information and confidential business information.

Finally, clause 323 amends section 23(1) of the FDA, which provides that, to ensure compliance with that Act or its regulations, inspectors may enter any place in which they believe, on reasonable grounds, that one of the three situations listed in that section applies. Clause 323 adds, through new section 23(1)(d), a fourth situation: that it is a place in which "an activity could be conducted as a result of an exemption that is under consideration by the Minister."

2.4.31.4 Power to Rely on a Foreign Authority

In budget 2024, the government announced that it would amend the FDA to authorize the minister "to rely on information or decisions of select foreign regulatory authorities in specific instances to satisfy requirements in the *Food and Drugs Act* and/or its regulations."[152]

Thus, clause 322(2) of the bill amends section 2 of the FDA, which sets out definitions that apply in that Act, to add the term "foreign regulatory authority," defined to mean "a government agency or other entity outside Canada that controls the manufacture, use or sale of therapeutic products or foods within its jurisdiction."

Clause 328 amends the FDA by adding, after section 30.05, new section 30.06. Section 30.06(1) provides that the minister may, by order, deem that a therapeutic product, or food that belongs to a specified class, meets requirements of the FDA or associated regulations, relying on information or a decision of a foreign regulatory authority.

New section 30.06(2) stipulates that the minister may make the order only if the minister believes that:

- it is necessary for health or safety or is otherwise in the public interest; and
- it is unlikely to lead to unacceptable health, safety or (if applicable) environmental risks, or to an unacceptable degree of uncertainty respecting such risks.

New section 30.06(3) authorizes the minister to impose, in the order, any conditions that the minister considers necessary.

2.4.31.5 Reference to Regulations and Repealed Provisions

Clause 328 also adds new section 30.07, which states that for the purposes of any provision of the FDA, other than sections 30.01, 30.02, 30.05 and 30.06, any reference to regulations made under this Act is deemed to include orders made under section 30.01, 30.02, 30.05 or 30.06.

Clause 329 amends section 30.1(5), which is a deeming provision specifying notably that, for the purpose of any FDA provision – excluding section 30.1 itself and section 30.05 – any reference to regulations made under this Act is deemed to include interim orders.

Clause 324 relates to section 29.2 of the FDA. Under section 29.1(1) of the FDA, the minister may establish a list of prescription drugs, classes of prescription drugs or

both. Section 29.2 provides that a regulation made under the FDA may incorporate this list by reference. Clause 324 repeals section 29.2.

Clause 325(2) repeals section 30(1)(r) of the FDA, pertaining to the Governor in Council's power to make regulations respecting marketing authorizations. According to clause 333, clause 325(2) comes into force on a day to be fixed by order of the Governor in Council.

Clause 330 repeals the provisions on marketing authorizations (sections 30.2 to 30.4), together with the heading preceding those sections. According to clause 333, clause 330 comes into force on a day to be fixed by order of the Governor in Council. As a transitional provision, clause 332 provides that marketing authorizations that had been issued under section 30.2 or 30.3 of the FDA (before the day on which section 330 comes into force) and that had not been repealed before that day are deemed to be made under section 30.05(1) of that Act.

2.4.31.6 Technical Amendments

In budget 2024, the government announced that it would amend the FDA

> to make the process of updating performance standards documents related to the remittance of fees more efficient and less labour intensive by ensuring the Act always refers to the latest version of performance standards documents incorporated by reference, rather than static documents only effective as of a certain date.[153]

These technical amendments are carried out through changes made:

- first, to section 30.5 of the FDA by clause 331(1); and
- subsequently to section 30.5(1) of the FDA by clause 331(2), which comes into force on a day to be fixed by order of the Governor in Council, according to clause 333.

2.4.32 Division 32 – Amendments to the *Tobacco and Vaping Products Act*

Division 32 of Part 4 amends the *Tobacco and Vaping Products Act* (TVPA) to support the administration of the Act and the implementation of a tobacco and vaping cost recovery framework. This framework was first announced in the 2021 mandate letter from the prime minister to the Minister of Mental Health and Addictions and Associate Minister of Health and was further elaborated in budget 2023 and the *Fall Economic Statement 2023*.[154]

Bill C-59which has not yet become law, amends the TVPA to provide the Minister of Health with the authority to make regulations respecting fees or charges to be paid by tobacco and vaping product manufacturers to recover the costs incurred by the Government of Canada in implementing the TVPA.

Clause 334 of Bill C-69 adds new section 42.6 to the TVPA allowing the Minister of Health to request and receive "customs information," as defined in the *Customs Act*, from the Minister of Public Safety for the purposes of administration and enforcement of the TVPA. In addition, new section 42.7 authorizes the disclosure of information collected under the TVPA to any other federal minister to verify compliance with other Acts of Parliament that apply directly or indirectly to tobacco or vaping products and activities using them.

Clause 335 introduces a coordinating amendment if Bill C-59 receives Royal Assent. It amends section 42.5 of the TVPA to provide greater flexibility to the Minister of Health to update documents and forms related to the tobacco and vaping cost recovery framework without requiring amendments to the regulations.

2.4.33 Division 33 – Amendments to the *Criminal Code* Regarding the Criminal Rate of Interest

Clauses 336(1) and 336(2) and section 337 of the bill amend clauses 347(1), 347(2) and 347.1(2) of the *Criminal Code* to broaden the criminal interest rate offence to prohibit a person from offering to enter into an agreement or arrangement to receive interest at a criminal rate and from advertising an offer to enter into an agreement or arrangement that provides for the receipt of interest at a criminal rate.

Clause 336(3) of the bill repeals clause 347(7) of the *Criminal Code*, which had required the consent of the Attorney General prior to commencing criminal proceedings relating to the criminal interest rate offence.

Sections 338 and 339 of the bill contain provisions to coordinate with the criminal interest rate amendments made to the *Budget Implementation Act, 2023, No. 1*, so that the amendments come into force, in a manner consistent with the associated regulations, on a date or dates to be fixed by the Governor in Council. Clauses 336(1), 336(2) and 337 come into force on a day to be fixed by order in council, and clause 336(3) on the 30th day after the day on which this bill receives Royal Assent.

2.4.34 Division 34 – Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, the *Personal Information Protection and Electronic Documents Act*, the *Cross-border Currency and Monetary Instruments Reporting Regulations*, the *Income Tax Act* and the *Excise Tax Act*

2.4.34.1 Subdivision A – Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* Regarding Information Sharing Between Reporting Entities

Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime seeks to detect, deter, investigate and prosecute money laundering and terrorist financing activities. In essence, money laundering is the process used to disguise the source of money or other assets derived from criminal activities.

The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA)[155] pursues these objectives in three main ways: by establishing record keeping and client identification standards, by requiring reporting from intermediaries, and by creating the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) to oversee those intermediaries, which are referred to as "reporting entities." They are listed in section 5 of the PCMLTFA.

Section 8 of the *Canadian Charter of Rights and Freedoms*[156] enshrines reasonable expectations of privacy into Canadian law. Additionally, the *Personal Information Protection and Electronic Documents Act* (PIPEDA)[157] addresses private-sector organization's collection, use and disclosure of personal information in the course of commercial activities across Canada.

The statutory framework for information sharing between private-sector organizations is found in section 7(3) of PIPEDA, which permits such organizations to exchange personal information without informed consent in certain listed circumstances. In particular, section 7(3)(i) allows for this disclosure if "required by law."

Clause 341 of Bill C-69 adds new section 11.01(1) to the PCMLTFA to permit reporting entities to disclose an individual's personal information to another reporting entity without the individual's knowledge or consent if:

- the information was collected in the course of the reporting entity's activities;
- the disclosure is reasonable for the purpose of detecting or deterring money laundering, terrorist activity financing or sanctions evasion;

- making the disclosure with the individual's knowledge or consent would risk compromising the ability to detect or deter money laundering, terrorist activity financing or sanctions evasion; and
- the disclosure is made in accordance with the regulations.

New section 11.01(2) allows the reporting entity receiving the disclosed information to use it so long as the information's collection and/or use occurs in accordance with the regulations. New section 11.01(3) specifies that no criminal or civil proceedings may be brought against reporting entities for sending, receiving or using that information in good faith.

Clause 344 adds new section 73(1)(i.1) to the PCMLTFA to allow the Governor in Council to make regulations concerning the disclosure of information under section 11.01(1) or the collection or use of information under section 11.01(2), including the establishment and implementation of codes of practice by reporting entities and respecting the roles of the Privacy Commissioner of Canada and FINTRAC in relation to those codes.

Clause 347 makes consequential amendments to section 7 of PIPEDA. Clause 350 makes coordinating amendments to section 27.1 of the proposed Consumer Privacy Protection Act in the event that Bill C-27[158] receives Royal Assent prior to or after Bill C-69 receives Royal Assent.

Clause 351(3) deems these measures to come into force on a day to be fixed by order of the Governor in Council.

2.4.34.2 Disclosure of Information to Provincial and Territorial Civil Forfeiture Offices and to the Department of Immigration, Refugees and Citizenship

FINTRAC is Canada's financial intelligence unit; it is led by the Department of Finance Canada. Under the PCMLTFA, FINTRAC is authorized to disclose only "designated information." In particular, section 55(3) allows FINTRAC to disclose designated information relevant to investigating or prosecuting a money laundering offence or a terrorist activity financing offence to certain agencies and ministers.

Clauses 342(1) and 343 of Bill C-69 add new sections 55(3)(d.1) and 55.1(1)(c.1) to the PCMLTFA, respectively, to add the Department of Immigration, Refugees and Citizenship to the list of entities to which FINTRAC is permitted to disclose designated information. To make such a disclosure, FINTRAC must determine that

the information is relevant to the Department of Immigration, Refugees and Citizenship's determination regarding:

- whether an individual has obtained, retained, renounced or resumed their citizenship by false representation or fraud, or by knowingly concealing material circumstances;
- for the purposes of granting citizenship, whether an individual is a threat to the security of Canada, or is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of any indictable offence; or
- for the purposes of granting citizenship, whether an individual is under a probation order, is a paroled inmate, is serving a term of imprisonment, or is generally being investigated for, charged with or on trial for various offences listed in section 22(1) of the *Citizenship Act*.[159]

Clause 342(2) adds new section 55(3)(g.1) to the PCMLTFA to add "an agency or body that administers the civil asset forfeiture legislation of a province" to the list of entities to which FINTRAC is permitted to disclose designated information. Clause 351(2) deems this measure to come into force on a day to be fixed by order of the Governor in Council.

2.4.34.3 Publishing Additional Information Pertaining to Violations of the Act

Since 2008, FINTRAC has had the legislative authority to issue administrative monetary penalties to reporting entities that are not complying with the PCMLTFA and associated regulations. In addition, if a reporting entity violates the PCMLTFA or defaults on a compliance agreement it has entered into with FINTRAC, section 73.22 of the PCMLTFA allows FINTRAC to make public the name of the reporting entity, the nature of the violation or default, and the amount of the penalty levied against the entity, if applicable.

Clause 345 of Bill C-69 adds new section 73.22(2) to the PCMLTFA to specify that FINTRAC may also make public the reasons for its decision, including the relevant facts, analysis and considerations that formed part of the decision.

2.4.34.4 Application of the Act to Cheque Cashing Businesses

FINTRAC ensures that reporting entities, which are listed in section 5 of the PCMLTFA, comply with their obligations under that Act. These entities include businesses such as banks, credit unions, life insurance companies, money services businesses and accounting firms.

Clause 340(1) of Bill C-69 amends sections 5(h) and 5(h.1) of the PCMLTFA to add, to the list of reporting entities, businesses that are engaged in transporting currency or money orders, traveller's cheques or other similar negotiable instruments. This amendment applies to businesses that provide these services whether they have a place of business in Canada or they do not have a place of business in Canada but direct and provide their services to individuals or entities in Canada.

Clause 351(1) deems this measure to come into force on the later of 1 July 2024 and the day on which Bill C-69 receives Royal Assent.

2.4.34.5 Subdivision B – Amendments to the *Income Tax Act* and the *Excise Tax Act* Regarding Warrants

Clauses 353 and 355 add new section 231.31 to the *Income Tax Act* (ITA) and new section 290.1 to the *Excise Tax Act* to allow the Canada Revenue Agency (CRA) to apply for a general warrant under section 487.01(1) of the *Criminal Code*. Under a general warrant, CRA investigators and analysts may use any device or investigative technique described in the warrant, other than video surveillance. The ITA and the *Excise Tax Act* currently authorize the CRA to obtain and execute search warrants to investigate offences under their respective legislation, such as tax evasion or tax fraud; these search warrants are generally limited to the search of a building or place and seizure of documents or other things. A general warrant under the *Criminal Code* could authorize the CRA to conduct a wider range of investigative activity, without relying on police assistance to obtain and execute a general warrant in its stead.

The same clauses also add new section 231.32 to the ITA and new section 290.2 to the *Excise Tax Act* to allow property that was seized under a warrant to be returned to its owner, without a court order.

2.4.34.6 Subdivision C – Amendments to the *Criminal Code* Regarding Orders to Keep Accounts Open

Currently, section 487.013 of the *Criminal Code* outlines how, on *ex parte* application made by a peace officer or public officer, a justice or judge may order a person to preserve computer data that is in their possession or control when they receive the order. This section was added by former Bill C-13 to create a new investigative tool to preserve evidence in electronic form, which may otherwise be easily destroyed or altered.[160]

Clause 356 of Bill C-69 adds another investigative tool to the *Criminal Code*. New section 487.0131 introduces a tool by which, on *ex parte* application made by a peace officer or public officer, a justice or judge may order a person to keep an account specified in the order open or active unless the holder of the account requests

that the person close or deactivate the account. The bill does not define the term "account."

Bill C-69 includes two forms, *Form 5.0031 – Information To Obtain a Keep Account Open or Active Order* and *Form 5.0032 – Keep Account Open or Active Order*. Before the justice or judge makes the order in Form 5.0032, they must be satisfied by the information in Form 5.0031 that there are reasonable grounds to suspect[161] that an offence has been or will be committed, and that the open or active account will assist in the investigation of the offence (new section 487.0131(2) of the *Criminal Code*). Unless it is revoked earlier, the order expires 60 days after the day on which it is made (new section 487.0131(6)).

2.4.35 Division 35 – Amendments to the *Criminal Code* Regarding Motor Vehicle Theft

Division 35 of Part 4 of Bill C-69 creates new offences relating to motor vehicle theft, namely possession and distribution of an electronic device, vehicle theft with violence (commonly called vehicle misdirection or carjacking), and vehicle theft for a criminal organization. The bill provides for harsher prison sentences ranging from 10 to 14 years.

2.4.35.1 Motor Vehicle Theft with Use, Attempt or Threat of Violence and Criminal Organizations

Clause 369 of the bill adds sections 333.1(3) and 333.1(4) to the *Criminal Code* to create a new offence of theft of a motor vehicle while using, attempting or threatening violence. This offence is punishable by up to 14 years' imprisonment. The new section 333.1(4) establishes that anyone who commits vehicle theft for the benefit or at the direction of a criminal organization is liable to imprisonment for a term not exceeding 14 years. "Criminal organization" is defined in section 467.1(1) of the *Criminal Code*.

2.4.35.2 Possession or Distribution of an Electronic Device for the Purpose of Committing Theft

Clause 370 of the bill introduces section 333.2 to the *Criminal Code*. The new section 333.2(1) prohibits the possession of an electronic device for the purpose of committing theft of a motor vehicle. The Crown must show that the device may be used to commit vehicle theft, and that the intent to commit theft is present.

New section 333.2(2) prohibits making, repairing, selling, offering for sale, importing into Canada, exporting from Canada, distributing, or making available an electronic device suitable for committing theft of a motor vehicle. The Crown will be required to demonstrate the accused's knowledge that the device may be used to commit

vehicle theft, and his intention to use it to that end. The illegal nature of the device stems from its usefulness in committing theft, accompanied by the intention to use it for this purpose. The term "without lawful excuse" has been interpreted by the Supreme Court of Canada to include "all defences which are commonly considered to be lawful excuses."[162] The accused may therefore submit defences that are distinct from those generally provided for by law.

New section 333.2(3) stipulates that these new offences may be prosecuted either by indictment, leading to a maximum of 10 years' imprisonment, or by summary conviction, leading to a maximum fine of $5,000 and imprisonment for a maximum of two years less a day, or both.

New sections 333.2(4) and 333.2(5) assign a new discretionary power to the court, allowing it to order the forfeiture of the electronic device used in the commission of the offence, but solely if it belongs to persons who were parties to any of the offences set out in sections 333.2(1) and 333.2(2).

2.4.35.3 Laundering Proceeds of Crime

Clause 371 of the bill creates the offence of money laundering for or at the direction of a criminal organization, punishable by a maximum of 14 years' imprisonment (new section 462.31(2.1) of the *Criminal Code*). An exception is provided to allow a peace officer to engage in money laundering activities for a criminal organization for the purposes of an investigation without being held criminally liable.

At the same time, Clause 376 of the bill amends section 2(1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* to include this new *Criminal Code* offence in the definition of "money laundering offence" in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

Clause 377 of the bill amends section 9(3) of the *Crimes Against Humanity and War Crimes Act* (CAHWCA)[163] to include a mention of the new offence of money laundering for the benefit of a criminal organization. Crown prosecutions in connection with this new *Criminal Code* offence may be instituted where it is alleged that the proceeds of crime were obtained or derived from the commission of an offence under the CAHWCA.

2.4.35.4 Aggravating Circumstances

Clause 374 of the bill adds section 718.2(a)(ii.2) to the *Criminal Code* to include as an aggravating circumstance, to be taken into account by the court at sentencing, evidence that the offender involved a person under the age of 18 years in the commission of the offence.

The bill also includes consequential amendments to the *Criminal Code* and other statutes to facilitate investigations into vehicle theft and money laundering.

2.4.36 Division 36 – Amendments to the *Radiocommunication Act*

Clauses 380 and 381 of Bill C-69 amend the *Radiocommunication Act*[164] to prohibit the manufacture, import, distribution, lease, offer for sale, sale or possession of certain devices that are specified by the Minister of Industry by way of an order (new sections 4(5) and 5.01). In doing so, the minister may incorporate documents by reference, but shall ensure that they are accessible (new section 5.02). These amendments follow budget 2024's announcement of the Government of Canada's intention to regulate devices used in harmful or criminal activity such as auto theft.[165]

2.4.37 Division 37 – Amendments to the *Telecommunications Act*

As announced in budget 2024, Bill C-69 amends the *Telecommunications Act*[166] to better support consumer choice within Canada's telecommunications services market.[167] Clause 383 of Bill C-69 introduces new sections that:

- require a telecommunications service provider to offer a self-service mechanism to its subscribers, which they can use to modify or cancel their plan (new section 27.01);
- oblige a telecommunications service provider to notify its subscribers before the expiry of their contract (new section 27.02);
- prohibit a telecommunications service provider from charging fees to subscribers that purposely discourage them from modifying or cancelling their plan (new section 27.04); and
- require the Canadian Radio-television and Telecommunications Commission to specify, for the purpose of sections 27.01, 27.02 and 27.04, what constitutes self-service and the requirements related to self-service mechanisms, the form and manner in which a notice of expiry is provided, and the types of prohibited fees.

Clause 384 indicates that these amendments to the *Telecommunications Act* come into force on a day to be fixed by order of the Governor in Council.

2.4.38 Division 38 – Amendments to the *Immigration and Refugee Protection Act*

Division 38 of Part 4 of Bill C-69 makes substantial changes to the *Immigration and Refugee Protection Act* (IRPA)[168] that affect Canada's asylum system. These changes stem from findings in a 2019 report by the Auditor General of Canada[169] and the conclusions of the 2023 Strategic Immigration Review conducted by Immigration, Refugees and Citizenship Canada.[170]

2.4.38.1 Representative for Minors or Persons who are Unable to Understand

Clause 386 of the bill adds section 6.1(1) to the IRPA, allowing the Minister to appoint a representative for a minor or a person who, in the opinion of the Minister of Immigration, Refugees and Citizenship or the Minister of Public Safety, is unable "to appreciate the nature of the proceeding or application" in any prescribed proceeding or application. New section 6.1(3) allows the Minister to prescribe in the *Immigration and Refugee Protection Regulations* (IRPR)[171] the circumstances in which a representative may be appointed.

2.4.38.2 In-Canada Claim for Refugee Protection and the Minister's Powers

Clause 389 of the bill adds section 23.1 to the IRPA, allowing an officer to authorize a person to enter and remain in Canada, if the person's refugee claim is determined to be eligible and he or she is not the subject of a report on inadmissibility. The issuance of a removal order against a claimant will therefore be deferred until the end of the refugee claim process, if the claim is rejected. However, under clause 397 of the bill, which adds section 47(b.1) to the IRPA, a person who makes a claim for refugee protection in Canada loses his or her temporary resident status, if applicable.

Clause 408 repeals section 99(3.1) of the IRPA, removing the requirement for a person making a claim for refugee protection inside Canada "other than at a port of entry" to comply with different time limits and rules for providing documents. These claimants will therefore be subject to the same requirements as those who file their claims at an official port of entry operated by the Canada Border Services Agency.[172]

Clause 409 of the bill amends the section on "Examination of Eligibility," renaming it "Consideration of Claims Prior to Referral." Under clause 410(1) of the bill, which replaces section 100(1) of the IRPA, if a claim is determined by an officer to be eligible, "the Minister must consider it further." Under new section 100(3) of the IRPA, which is introduced by clause 410(4) of the bill, after such consideration, the Minister of Immigration, Refugees and Citizenship may determine that a claim is ineligible. The Minister will be able to specify the deadlines and rules for the production and submission of documents (e.g., electronic submission methods) under new section 100(4) of the IRPA, as amended by clause 410(5). Consideration by the Minister is mandatory for all claims referred to the Immigration and Refugee Board of Canada (IRB), in accordance with new section 100.1(2), which is introduced by clause 411 of the bill. The Minister may also require a foreign national to undergo an "examination" under new section 100.1(1)(c). Because clause 410(6) of the bill repeals section 100(4.1) of the IRPA, it is no longer the officer who refers the claim to the IRB, but rather the Minister after further consideration. The officer is no longer responsible for fixing the dates of IRB hearings.

Clause 412 of the bill also amends section 102 of the IRPA, allowing the Minister to transmit a claim for refugee protection to the IRB to determine whether the "proceeding" has been "abandoned" if the claimant fails to provide the required information or appear for an examination in the context of the Minister's consideration. Under new section 102.2(1) of the IRPA, while the claim is being considered by the Minister, the latter may determine that it has been withdrawn if the claimant provides the Minister with written notice of withdrawal.

Finally, clause 414 of the bill adds section 104.1 to the IRPA, suspending the IRB's consideration of claims for refugee protection and appeals (other than appeals brought by the Minister), in cases where the claimant is not "physically present" in Canada.

2.4.38.3 Withdrawal

Clause 390 of the bill amends section 24(4) of the IRPA, prohibiting a foreign national from entering and staying temporarily in Canada if, within the last 12 months, the Minister of Immigration, Refugees and Citizenship determined the person's claim for refugee protection to be "withdrawn" (in accordance with section 170 of the IRPR), and no application was made for judicial review of the withdrawal.

2.4.38.4 Inadmissibility and Inadmissibility Reports

Under clause 391 of the bill, which amends section 25(1.2)(b) of the IRPA, the Minister may no longer consider the humanitarian and compassionate considerations relating to a foreign national in Canada who is inadmissible if his or her claim for refugee protection has been determined to be eligible to be referred to the IRB.

Clause 393 of the bill adds section 42.2 to the IRPA, which stipulates that a refugee claimant will be inadmissible if his or her claim is determined to be ineligible, is rejected by the IRB (including on appeal), or is declared to be withdrawn or abandoned. A removal order will be made against such inadmissible refugee claimants pursuant to clause 396 of the bill, which adds section 45.1 to the IRPA. Under new section 45.1(3), this removal order is not subject to judicial review.

However, clause 395 of the bill adds section 44.1 to the IRPA, which states that when the Minister is of the opinion that an inadmissibility report that has been received is well-founded, the Minister may not refer the matter to the IRB for an admissibility hearing if the person who is the subject of the report is not physically present in Canada.

Finally, clause 400 of the bill amends section 53 of the IRPA, allowing the Minister to establish by regulation any definitions the Minister considers necessary for interpreting the IRPA and to modify the powers conferred on the government with regard to inadmissibility reports.

2.4.38.5 Removal Orders

The bill clarifies the IRPA with regard to the enforcement of removal orders. Clause 398 of the bill clarifies and standardizes the provisions that trigger the enforcement of removal orders in certain circumstances related to the status of a refugee protection claim (set out in section 49 of the IRPA). In particular, it specifies when a removal order comes into force once a final determination is made by the IRB with regard to the claim for refugee protection. For example, new section 49(3)(c) states that a removal order comes into force 15 days after the IRB rejects a claim for which "there is no right to appeal." In the case of a claim for refugee protection that is withdrawn, new section 49(3)(f) states that the removal order comes into force on the day the claim is declared withdrawn, rather than 15 days after.

2.4.38.6 Detention

Clause 401 of the bill amends section 55(3.1)(b) of the IRPA, specifying that where the Minister of Public Safety designates the arrival of a group of persons in Canada as an "irregular arrival" and the members of that group become "designated foreign nationals" (within the meaning of section 20.1 of the IRPA), an officer may arrest and detain those designated foreign nationals without having to obtain an arrest warrant. Furthermore, under clause 403 of the bill, which introduces section 57.1(4), the IRB is no longer required to review the reasons "for the continued detention" in the case of a designated foreign national who "is subsequently detained again."

2.4.38.7 Conditions of Release

Clause 402 of the bill, which amends section 56 of the IRPA, also allows an officer, the IRB or the Minister to impose conditions of release on a foreign national (refugee protection claimant or designated foreign national) who is 16 years or older "before the first detention review." Conditions of release are prescribed in the IRPR, pursuant to new section 56(5). Under new section 56(6), the conditions of release remain in effect until the foreign national is detained, removed or is, for all intents and purposes, no longer inadmissible (e.g., if the foreign national's refugee protection claim or permanent residence application is allowed).

2.4.38.8 Designated Countries of Origin

Clauses 415 and 416 of the bill repeal sections 109.1 and 110(2)(d.1) of the IRPA, and remove the Minister's power to designate by order certain countries of origin from which refugee claimants cannot request an appeal, or whose administrative time limits for claims are "different" from others.

2.4.38.9 Administrative Procedures for Appeals

The bill also amends certain provisions relating to the IRB's administrative procedures for appeals. Under clause 416(2) of the bill, which repeals subsection 110(3.1) of the IRPA, the IRB can no longer depart from the prescribed time limits when an appeal hearing is held with regard to the credibility of evidence. Additionally, clause 417 of the bill introduces section 111(3), and establishes that at the procedural level, IRB confirmation of the rejection of an appeal is in "itself" an independent decision.

2.4.38.10 Powers of the Chairperson

Clause 421 of the bill replaces section 159(1)(g) of the IRPA and adds that the IRB Chairperson is responsible for taking any action that may be necessary to ensure that IRB members carry out their duties properly, "specifying the manner in which decisions must be rendered and reasons for decisions must be given."

2.4.38.11 Corrections to the Language Employed

Several clauses of the bill amend the English and French versions of the IRPA to standardize its application. Notably, in clause 385 of the bill, the legislator adds to the list of terms defined in section 2 of the English version of the IRPA the term "*prescribed*" as meaning, "*prescribed by regulation*." In the French version of the Act, this definition is not necessary, since the legislator already uses "réglementaire" or "par règlement."

2.4.38.12 Transitional Provisions

In clauses 426 to 430, the bill sets out transitional provisions for pending claims for refugee protection that will be affected by the coming into force of the amendments to the IRPA.

2.4.39 Division 39 – Amendments to the *Corrections and Conditional Release Act*

Bill C-69 amends the *Corrections and Conditional Release Act* (Corrections Act)[173] and the *Immigration and Refugee Protection Act* to establish a framework for the detention of persons for immigration-related reasons in immigrant stations[174] within

federal penitentiaries. Such detention may be assured through arrangements between the Canada Border Services Agency (CBSA) and the Correctional Service of Canada (CSC).

Currently, immigrant stations used to detain persons under the IRPA refer to either a provincial correctional facility or a minimum-security detention centre managed by the CBSA, commonly referred to as Immigration Holding Centres (IHCs).[175] These IHCs are located in Laval, Surrey and Toronto. In recent years, all the provinces have decided to end their agreements with the CBSA authorizing it to detain persons in provincial jails.[176]

2.4.39.1 Amendments to the *Immigration and Refugee Protection Act*

Section 142 of the IRPA is amended by clause 438 of Bill C-69 by adding a definition of "immigrant station." An immigrant station is a facility for detaining persons that is operated by the CBSA or used by a peace officer, the "government of a province, a department or agency of the Government of Canada or any person or organization"[177] under the terms of an agreement or arrangement between the CSC and the CBSA.

It is also noted that an area of a penitentiary can be an "immigrant station" only if it is so designated by the Commissioner of the CSC at the written request of the President of the CBSA.

2.4.39.2 Amendments to the *Corrections and Conditional Release Act*

2.4.39.2.1 Support Arrangement for Immigrant Stations

Clause 436 of Bill C-69 adds new provisions to the *Corrections and Conditional Release Act* that detail the various components of the arrangement that the Commissioner of the CSC may enter into with the CBSA under new sections 94.3(1) and 94.3(2).

2.4.39.2.1.1 "Immigration detainee"

Bill C-69's implementation impacts the "immigration detainee," which is defined by new section 94.1 of the *Corrections and Conditional Release Act* as a person who is detained under the IRPA. Under section 55 of the IRPA, persons may be detained for a variety of reasons, including inadmissibility, flight risk, danger to public safety or concealment of their true identity. Justified detention under the IRPA serves to prevent such persons from escaping the control of federal authorities.[178]

2.4.39.2.1.2 Support Through Provision of Services

New section 94.2(1) of the *Corrections and Conditional Release Act* states that the purpose of the arrangement concerns the support the CSC may provide to the CBSA and its detention enforcement officers,[179] including through the provision of services, to assist them in the performance of their respective duties and functions and, more specifically, those related to the detention of persons in immigrant stations located within a designated area of a federal penitentiary.

However, this support is limited by new section 94.2(2), which states that it does not allow a CSC officer to be placed in immediate charge or control of an immigrant station operated by the CBSA for the detention of persons, nor does it give a CSC officer the authority to search, escort, arrest or detain an immigration detainee except in exigent circumstances (new section 94.7(4)). A health care professional employed by CSC must also refrain from providing health care to an immigration detainee unless exigent circumstances exist (new section 94.7(5)).

2.4.39.2.1.3 Interaction Between Immigration Detainees and Inmate Population

To limit interaction between immigration detainees and the penitentiary's inmate population, new section 94.5 of the *Corrections and Conditional Release Act* prohibits a CSC officer or CBSA detention enforcement officer from giving immigration detainees of an immigrant station access to an area in the adjacent penitentiary. Exceptions to this rule are possible only if access to the area has been authorized by the institutional head so that the CSC can provide the CBSA with support, if the immigration detainee is escorted by a CBSA detention enforcement officer and if no inmate is present in the area of the penitentiary in question. However, the last condition will not apply to an immigration detainee at an immigrant station adjacent to the penitentiary if the institutional head declares under new section 94.7(1)(a) that exigent circumstances exist there.

Conversely, new section 94.6 of the *Corrections and Conditional Release Act* prohibits a CSC officer or a CBSA detention enforcement officer from permitting a penitentiary inmate access to an adjacent designated immigrant station. However, this prohibition is lifted in the specific case where the institutional head has declared that exigent circumstances exist in the penitentiary, under new section 94.7(1)(b). A penitentiary inmate may therefore have access to the designated immigrant station only if the institutional head authorizes it and if the inmate is escorted by a CSC officer.

2.4.39.2.1.4 Declaration of Exigent Circumstances

With regard to "exigent circumstances" that may arise in a penitentiary or in a designated immigrant station adjacent to one, new section 94.7 of the *Corrections and Conditional Release Act* provides that the institutional head of a penitentiary may declare that such circumstances exist if he or she is satisfied that there are reasonable grounds to believe[180] that there is a clear and substantial danger to the life or safety of persons in either of these two places or to the security of the premises. If exigent circumstances are declared, the institutional head is responsible for immediately notifying the detention enforcement officers of the immigrant station, the officers of the adjacent penitentiary and the portion of the CSC that administers health care. When the institutional head is satisfied that the exigent circumstances no longer exist, he or she must also notify them immediately.

The obligation to notify all such employees, in accordance with new sections 94.7(2) and 94.7(3) of the *Corrections and Conditional Release Act*, is important because the scope of the powers normally associated with their duties is expanded during this period. In fact, a declaration of exigent circumstances with respect to a designated immigrant station implies that the institutional head may, so long as he or she is satisfied that circumstances so require, authorize a CSC officer to search, escort, arrest or detain any immigration detainee at the immigrant station to assist CBSA detention enforcement officers in the performance of their duties. In such circumstances, any registered health care professional employed by the CSC may also provide care to immigration detainees at the immigrant station if he or she considers it necessary to preserve their lives or treat a serious injury.

2.4.39.2.1.5 Content of Support Arrangement

New section 94.3(3) of the *Corrections and Conditional Release Act* notes that the arrangement must specify, among other things, its duration, the nature of the support the CSC provides to the CBSA and the name of the penitentiary covered by the arrangement. It must also set out a "procedure … for fairly and expeditiously resolving … complaints" that allows any immigration detainee to make a complaint, "without negative consequences," with respect to activities carried out in immigrant stations during the exigent situations described in sections 94.7(4) and 94.7(5).

While new section 94.3(3) of the *Corrections and Conditional Release Act* states that the parties to the arrangement are required to include in it the terms mentioned above, new section 94.3(4) merely suggests the possibility ("may") of providing in the arrangement for the recovery of costs incurred by the CSC in supporting the CBSA.

2.4.39.2.1.6 Access to Immigrant Stations and Visiting Rights for Members of Parliament and Judges

New section 94.8 echoes section 72 of the *Corrections and Conditional Release Act*, which gives senators, members of the House of Commons and judges of courts in Canada access to all areas of a penitentiary and the right to visit any inmate who consents. In the case of designated immigrant stations within penitentiaries, these individuals will have the same access and visiting rights.

2.4.39.2.1.7 Deeming

New section 94.4(2) of the *Corrections and Conditional Release Act* is intended to facilitate the implementation of the arrangement for which CSC is responsible under new section 5(f) of the *Corrections and Conditional Release Act*. Specifically, the President of the CBSA may make a written request to the Commissioner of the CSC to designate any area of the penitentiary named in the arrangement as an immigrant station. This designation deems the area of the penitentiary in question not to be a penitentiary.

2.4.39.2.2 Sunset Clauses

Clause 441 of Bill C-69 provides for the repeal of all the legislative amendments in the bill five years after receiving Royal Assent. However, the effects of the Act may be maintained for a maximum of 10 years after Royal Assent, if the Governor in Council approves the extension by order-in-council, on the recommendation of the Minister of Public Safety.

Once the legislative provisions have been repealed by the passage of time, any arrangement still in effect between the CBSA and the CSC will terminate, and any designation of a penitentiary area as an immigrant station will be revoked in accordance with clause 437 of the bill.

2.4.40 Division 40 – Amendments to the *Financial Administration Act* and the *Borrowing Authority Act*

The *Financial Administration Act* (FAA) "provides the cornerstone of the legal framework for financial management within the Government of Canada."[181] Specifically, section 41(1) of the FAA allows the Governor in Council to make regulations respecting conditions under which government contracts can be awarded, while section 44(3) allows the Minister of Finance to enter into any contract or agreement related to public debt and the borrowing of money.

2.4.40.1 Subdivision A

Clause 442(2) of Bill C-69 adds section 44(3.1) to the FAA to specify that the regulations made through section 41(1) do not apply to contacts entered into under section 44(3).

Clause 442(1) makes minor language changes in the French text of the section 44(3).

2.4.40.2 Subdivision B

Parliament approves the maximum amount of money that the government is allowed to borrow through the *Borrowing Authority Act* (BAA).

Clause 443 of Bill C-69 amends section 4 of the BAA to increase the maximum borrowing limit from $1,831 billion to $2,126 billion.

Clause 444 is a coordinating amendment that is conditional on whether section 4(b) of the BAA is also amended by the provisions in Division 2 of Part 4 of the bill. In Division 2, clause 152 amends section 4(b) of the BAA to exclude Canada Mortgage Bonds purchased by the Minister of Finance from the borrowing limit. Clause 444 stipulates that if section 4(b) of the BAA is not amended by that clause on the day of Royal Assent, the maximum borrowing limit is to be raised to $2,228 billion. In this case, clause 443 is deemed never to have come into force and is repealed.

2.4.41 Division 41 – Amendments to the *Trust and Loan Companies Act*, the *Bank Act* and the *Insurance Companies Act* Regarding Diversity Disclosure

Clause 445 adds section 162.1 to the *Trust and Loan Companies Act*[182] to require the directors of a trust and loan company to make available to shareholders and the Superintendent of Financial Institutions information with respect to the diversity of directors and members of senior management at the same time that a notice of an annual meeting is sent. The Governor in Council is also given the authority to make regulations with respect to the disclosure of diversity information.

Clauses 446 and 447 add sections 214.1 and 801.1 to the *Bank Act*, and clauses 448 and 449 add sections 166.1 and 795.1 to the *Insurance Companies Act*[183] to require the directors of banks, bank holding companies, insurance companies and insurance holding companies to make similar diversity-related disclosures.

Clauses 445 to 449 come into force on a day to be fixed by order of the Governor in Council.

2.4.42 Division 42 – Amendments to the *Trust and Loan Companies Act*, the *Bank Act* and the *Insurance Companies Act* for Extending their Sunset Provisions

To ensure that financial sector legislation is reviewed regularly by Parliament, the sunset provisions of the *Trust and Loan Companies Act*, the *Bank Act* and the *Insurance Companies Act* indicate that companies incorporated under those statutes cannot carry on business in Canada after the date provided in those provisions. Clause 451 amends section 20(1) of the *Trust and Loan Companies Act*; clauses 452 and 453 amend sections 21(1) and 670(1) of the *Bank Act*; and clauses 454 and 455 amend sections 21(1) and 707(1) of the *Insurance Companies Act* to extend the sunset provisions of each statute to 30 June 2026.

2.4.43 Division 43 – Amendments to the *Federal Courts Act*, the *Tax Court of Canada Act* and the *Department of Employment and Social Development Act*

Division 43 of Part 4 of Bill C-69 amends a number of statutes to create an appeal process for decisions made under the *Canada Disability Benefit Act* (CDBA).[184] The bill mainly gives the Social Security Tribunal jurisdiction to hear appeals of these decisions, except for appeals concerning income, which will be referred to the Tax Court of Canada. Finally, applications for judicial review of certain Social Security Tribunal decisions respecting the CDBA will be heard by the Federal Court rather than the Federal Court of Appeal.

Current section 28(1)(g.1) of the *Federal Courts Act* provides that the Federal Court of Appeal has jurisdiction to hear applications for judicial review of decisions of the Appeal Division of the Social Security Tribunal, except in certain cases.[185] Clause 456 of the bill amends section 28(1)(g.1) to add to the list of exceptions appeals regarding the extension of the time allowed to make a request for review or reconsideration under the CDBA.

Clause 457 creates new section 12(1.1) of the *Tax Court of Canada Act*, which grants that court exclusive jurisdiction to hear appeals concerning income under the CDBA and referred by the Social Security Tribunal.

Clause 458 creates new section 18.29(1)(e) of the *Tax Court of Canada Act*. Current section 18.29(1) lists the regimes for which some aspects of the Tax Court of Canada's informal procedure apply. New section 18.29(1)e) adds to this list appeals involving decisions or determinations as to income under the CDBA.

Clause 459 creates new section 66 of the *Department of Employment and Social Development Act*.[186] Under this new provision, the Social Security Tribunal has jurisdiction to dispose of appeals brought under the CDBA, except for decisions or

determinations as to the appellant's income. In those cases, appeals are referred for decision to the Tax Court of Canada.

Clause 460 is a coordinating provision that ensures the amendments that Bill C-69 makes to section 28(1)(g.1) of the *Federal Courts Act* do not conflict with the amendments to the same section in the *Budget Implementation Act, 2023, No. 1*, once they are both in force.

2.4.44 Division 44 – Amendments to the *Controlled Drugs and Substances Act*

Division 44 of Part 4 of Bill C-69 repeals the current ministerial exemption provisions for supervised consumption sites (SCSs) under the *Controlled Drugs and Substances Act* (CDSA)[187] while adding new regulation-making powers that could be used to develop a regulatory authorization scheme for such sites.

2.4.44.1 Repeal of the Ministerial Exemption Provisions

Clauses 461(4), 462 and 463 of Bill C-69 repeal the provisions through which SCSs are currently granted ministerial exemptions from various CDSA prohibitions regarding controlled substances.

In 2003, Canada's first SCS, known as Insite, was granted an exemption under section 56 of the CDSA, which allows the Minister of Health to grant exemptions to the Act or regulations where it is "necessary for a medical or scientific purpose or is otherwise in the public interest." In *Canada (Attorney General) v. PHS Community Services Society* (*PHS*)[188] the Supreme Court of Canada ordered the Minister of Health, on constitutional grounds, to grant a second exemption under section 56 to allow for Insite's continued operation. In the 2011 decision, the Court noted certain factors that must be considered by the Minister in making decisions about section 56 exemptions for SCSs going forward.[189]

In June 2015, following the *PHS* decision, Parliament passed legislation creating new section 56.1 of the CDSA, which established a separate exemption mechanism for activities involving substances obtained in an unauthorized manner (referred to as "illicit substances").[190] Because SCSs allow people to consume illegally obtained drugs in a supervised environment, they fell under this new section. The new section set out various criteria for SCS applications, including a list of required supporting documentation.

In May 2017, the new exemption provision was amended to refer specifically to SCSs, and the application criteria were simplified to primarily reflect the factors listed in the *PHS* decision.[191] The 2017 amendments also added new section 56.2 to the CDSA, which allows a person supervising drug use at an SCS to offer the user alternative pharmaceutical therapy beforehand.

Clause 463 of Bill C-69 repeals sections 56.1 and 56.2 of the CDSA. It thereby removes the separate ministerial exemption provision for SCSs and the accompanying application criteria that were added in 2015, as well as the provision regarding alternative pharmaceutical therapy that was added in 2017.

Clause 462 of Bill C-69 repeals section 56(2) of the CDSA. Effectively, this section requires exemptions for activities involving illicit substances to be granted under section 56.1 rather than under section 56. Clause 461(4) also repeals section 55(1.2), which authorizes the Governor in Council to make regulations for carrying out the purposes of section 56.1. The repeal of these sections thus accords with the repeal of section 56.1.

2.4.44.2 Addition of New Regulation-Making Authorities

Clause 461 of Bill C-69 amends section 55 of the CDSA, which sets out the regulating-making authorities of the Governor in Council for the purposes of the Act. It adds new authorities with respect to "authorizations."

Under current section 55(1)(c) of the CDSA, the Governor in Council has the power to make regulations regarding licenses for the importation, exportation, production, packaging, sale, provision or administration of controlled substances. Clause 461(1) adds to this section the power to make regulations regarding "authorizations," in addition to licences. It also broadens the range of activities to which a license or authorization may apply to include possession, transportation, sending, delivery, or "any dealing in" a substance.

Clauses 461(2) and 461(3) amend sections 55(1)(d.1) and 55(1)(h) of the CDSA respectively to extend certain existing regulatory powers regarding licences and permits so that they apply to authorizations as well.

2.4.44.3 Transitional Clauses and Coming into Force

Clause 464 establishes certain definitions pertaining to the transitional clauses. Of particular note, "regulatory scheme" is defined as regulations made under the CDSA regarding authorizations for activities that would have formerly been allowed via a ministerial exemption under section 56.1(1). This definition seems to signal an intention to replace the section 56.1 ministerial exemption provisions with a regulatory authorization scheme for SCSs.

Under clauses 465(1) and 465(2), a valid ministerial exemption granted under section 56.1(1) becomes a regulatory authorization with the same validity period on the day the exemption scheme is repealed. Clause 465(3) clarifies that the terms and conditions of the authorization are the same as the exemption, unless they conflict with the regulatory scheme, in which case the regulations prevail. Similarly, under

clause 466, an unprocessed application for a section 56.1(1) exemption becomes an application for a regulatory authorization once the exemption provisions are repealed.

Clause 467 is a catch-all clause that allows the Governor in Council to make any other regulations deemed necessary for transitional purposes.

Finally, clause 468 specifies that clauses 461(4), 462 and 463 – the clauses that repeal the current ministerial exemption provisions for SCSs – come into force on a day to be determined by the Governor in Council. This allows the Governor in Council to wait until the new regulatory scheme is in place before repealing the current ministerial exemption provisions.

NOTES

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- Hudon, Marie-Ève, section 2.4.24;
- Kachulis, Eleni, sections 2.4.4 and 2.4.5;
- Keenan-Pelletier, Michaela, section 2.4.34.5;
- Lafrenière, Alexandre, section 2.4.27;
- Lambert-Racine, Michaël, sections 2.4.3, 2.4.12 and 2.4.19;
- Léonard, André, sections 2.3.6, 2.4.1 and 2.4.33;
- Malo, Joëlle, section 2.2 and sections 2.3.1–2.3.2;
- Perez-Leclerc, Mayra, sections 2.4.21 and 2.4.22;
- Phillips, Dana, section 2.4.43;
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- Tiedemann, Marlisa, section 2.4.28;
- Trinh, Tu-Quynh, section 2.4.31;
- van den Berg, Ryan, section 2.4.10; and
- Yong, Adriane, section 2.1, sections 2.4.17–2.4.18 and section 2.4.43.

1. Bill C-69, An Act to implement certain provisions of the budget tabled in Parliament on April 16, 2024, 44th Parliament, 1st Session.

2. *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).
3. Bill C-59, An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023, 44th Parliament, 1st Session.
4. *Legislative Summary of Bill C-59: An Act to implement certain provisions of the fall economic statement tabled in Parliament on November 21, 2023 and certain provisions of the budget tabled in Parliament on March 28, 2023*, Preliminary (unedited) version, Library of Parliament, 21 December 2023, Part 2.1.9.
5. *Income Tax Regulations*, C.R.C., c. 945.
6. Government of Canada, "1.2 Making it Easier to Own or Rent a Home," *Fairness for Every Generation*, Budget 2024.
7. *Winding-up and Restructuring Act*, R.S.C. 1985, c. W-11.
8. *Employment Insurance Act*, S.C. 1996, c. 23.
9. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
10. *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36.
11. Government of Canada, "Tax Measures: Supplementary Information – International Tax Measures," *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023.
12. Government of Canada, "9.1 A Fair Tax System," *A plan to grow our economy and make life more affordable*, Budget 2022.
13. Government of Canada, "Tax Measures: Supplementary Information – International Tax Measures," *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023.
14. The government has stated that it "intends to release … draft legislative proposals for the [Undertaxed Profits Rule, UTPR]" at a later date. This rule would apply for [multinational enterprises] fiscal years beginning on or after 31 December 2024. Government of Canada, "Tax Measures: Supplementary Information – International Tax Measures," *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023.
15. See sections 2(1) and 56 to 59 of Division 1 of Part 5 of the Global Minimum Tax Act (GMTA).
16. Government of Canada, "Tax Measures: Supplementary Information – International Tax Measures," *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023.
17. Pursuant to section 13(1) of the GMTA, the term "excluded entity" includes a "government entity," a "non-profit organization" and a "pension fund," as these terms are defined in section 2(1) 13(1) of the GMTA.
18. The relevant assumptions are set out in section 14(2) of the GMTA.
19. Government of Canada, "Tax Measures: Supplementary Information – International Tax Measures," *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023.
20. Ibid.
21. Organisation for Economic Co-operation and Development, *Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two)*.
22. The relevant assumptions are set out in section 51(2) of the GMTA.
23. *Financial Administration Act*, R.S.C. 1985, c. F-11.
24. As this term is defined in section 55(1) of the GMTA.
25. *Access to Information Act*, R.S.C. 1985, c. A-1.
26. *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.
27. *Criminal Code*, R.S.C. 1985, c. C-46.
28. *Excise Tax Act*, R.S.C. 1985, c. E-15.
29. *Export Development Act*, R.S.C. 1985, c. E-20.

30. *Tax Court of Canada Act*, R.S.C. 1985, c. T-2.

31. *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.).

32. *Canada Revenue Agency Act*, S.C. 1999, c. 17.

33. *Air Travellers Security Charge Act*, S.C. 2002, c. 9, s. 5.

34. *Excise Act, 2001*, S.C. 2002, c. 22.

35. *Underused Housing Tax Act*, S.C. 2022, c. 5, s. 10.

36. *Select Luxury Items Tax Act*, S.C. 2022, c. 10, s. 135.

37. *Budget Implementation Act, 2021, No. 1*, S.C. 2021, c. 23.

38. Pursuant to subsection 165(3) of the ETA, the rate of Goods and Services Tax in respect of a "taxable supply that is zero-rated" is 0%. Subsection 123(1) of the ETA defines a "zero-rated supply" as a supply included in Schedule VI of the ETA.

39. Government of Canada, "Annex 4: Tax Measures: Supplementary Information," *Fall Economic Statement 2020: Supporting Canadians and Fighting COVID-19*.

40. Ibid.

41. Government of Canada, "8.2 Modernizing Canada's Tax System and Better Services for Canadians," *Fairness for every generation*, Budget 2024.

42. The term "cigarette" is generally defined in section 2 of the *Excise Act, 2001* as including any roll or tubular construction intended for smoking, other than a "cigar" or "tobacco stick."

43. The term "taxed cigarettes" is defined in section 58.1 of the *Excise Act, 2001*.

44. Government of Canada, "8.2 Modernizing Canada's Tax System and Better Services for Canadians," *Fairness for every generation*, Budget 2024.

45. The term "tobacco product" is defined in section 2 of the *Excise Act, 2001* as "manufactured tobacco," "packaged" "raw leaf tobacco" and "cigars," as defined in that section.

46. The term "container" is defined in section 2 of the *Excise Act, 2001* as a wrapper, package, carton, box, crate, bottle, vial or other container that contains a "tobacco product," as defined in that section.

47. The term "manufactured a tobacco" is defined in section 2 of the *Excise Act, 2001* as an article, other than a cigar or packaged raw leaf tobacco, that is manufactured in whole or in part from raw leaf tobacco by any process.

48. Government of Canada, "Process for Prescribing Tobacco Products," *Fairness for every generation*, Budget 2024, Tax Measures: Supplementary Information.

49. *Regulations Relieving Special Duty on Certain Tobacco Products*, SOR/2003-202.

50. *Regulations Respecting Prescribed Brands of Manufactured Tobacco and Prescribed Cigarettes*, SOR/2011-7.

51. *Tobacco and Vaping Products Act*, S.C. 1997, c. 13.

52. Government of Canada, "Sharing of Confidential Information," *Fairness for every generation*, Budget 2024, Tax Measures: Supplementary Information.

53. *Stamping and Marking of Tobacco, Cannabis and Vaping Products Regulations*, SOR/2003-288.

54. Government of Canada, "Requiring Information Returns from Tobacco Prescribed Persons," *Fairness for every generation*, Budget 2024, Tax Measures: Supplementary Information.

55. Ibid.

56. The term "vaping product" is defined in section 2 of the *Excise Act, 2001* as a "vaping substance," or a vaping device that contains such a substance, but excludes a "cannabis product" or a "tobacco product," as defined in that section.

57. Government of Canada, "8.2 Modernizing Canada's Tax System and Better Services for Canadians," *Fairness for every generation*, Budget 2024.

58. *Excise Act*, R.S.C. 1985, c. E-14.

59. *Underused Housing Tax Regulations*, 2002, c. 19, s. 116.

60. *Greenhouse Gas Pollution Pricing Act*, S.C. 2018, c. 12, s. 186.

61. *Budget Implementation Act, 2022, No. 1*, S.C. 2022, c. 10.

62. *Prohibition on the Purchase of Residential Property by Non-Canadians Act*, S.C. 2022, c. 10, s. 235.

63. *National Housing Act*, R.S.C. 1985, c. N-11.

64. *COVID-19 Emergency Response Act*, S.C. 2020, c. 5.

65. *Borrowing Authority Act*, S.C. 2017, c. 20, s. 103.

66. Government of Canada, *Canada Student Loan forgiveness for family doctors and nurses – Eligibility*; and Government of Canada, *Canada Student Loan forgiveness for family doctors and nurses – How much you could receive.* See also *Canada Student Financial Assistance Regulations*, SOR/95-329, Part V.1; and *Canada Student Loans Regulations*, SOR/93-392, ss. 17–19.

67. *Canada Student Loans Act*, R.S.C. 1985, c. S-23.

68. *Canada Student Financial Assistance Act*, S.C. 1994, c. 28.

69. Department of Finance Canada, "2.2 The Best Start for Every Child," *Fairness for Every Generation*, Budget 2024, p. 113.

70. Ibid., "2.3 A Fair Chance for Millennials and Gen Z," pp. 122–123.

71. See *Canada Student Financial Assistance Regulations*, SOR/95-329.

72. Government of Canada, "How the Registered Education Savings Plan and related benefits work together," *Registered Education Savings Plans and related benefits*.

73. Government of Canada, "How much money benefits could add to the Registered Education Savings Plan," *Registered Education Savings Plans and related benefits*.

74. Department of Finance Canada, "2.2 The Best Start for Every Child," *Fairness for Every Generation*, Budget 2024, p. 117.

75. Ibid.

76. *Canada Education Savings Act*, S.C. 2004, c. 26.

77. *Bretton Woods and Related Agreements Act*, R.S.C. 1985, c. B-7.

78. *International Development (Financial Institutions) Assistance Act*, R.S.C. 1985, c. I-18.

79. *European Bank for Reconstruction and Development Agreement Act*, S.C. 1991, c. 12.

80. In December 2023, Canada's quota was reassessed from 11,023,900,000 Special Drawing Rights (SDRs) to 16,535,900,000 SDRs.

81. *International Financial Assistance Act*, S.C. 2018, c. 27, s. 659.

82. Foreign exchange losses refer to losses incurred during an international financial transaction as a result of currency fluctuation.

83. "Canada Account is used to support export transactions which we are unable to support, but which are determined by the Minister for International Trade to be in Canada's national interest." Export Development Canada, *Canada Account*.

84. Government of Canada, *Financial Management*.

85. Prime Minister of Canada, Justin Trudeau, *Working together to improve health care for Canadians*, 7 February 2023.

86. *Federal-Provincial Fiscal Arrangements Act*, R.S.C. 1985, c. F-8.

87. Department of Finance Canada, *Fall Economic Statement 2023*, 21 November 2023, p. 61.

88. *Pension Benefits Standards Act, 1985*, R.S.C. 1985, c. 32 (2nd Supp.).

89. *Pooled Registered Pension Plans Act*, S.C. 2012, c. 16.

90. *Pooled Registered Pension Plans Regulations*, SOR/2012-294.

91. *Canada Pension Plan*, R.S.C. 1985, c. C-8.

92. Department of Finance Canada, *Departmental Plan 2024–2025*.

93. *Canada Pension Plan Regulations*, C.R.C., c. 385.

94. *Public Sector Pension Investment Board Act*, S.C. 1999, c. 34.

95. *Canadian Forces Superannuation Act*, R.S.C. 1985, c. C-17.

96. *Public Service Superannuation Act*, R.S.C. 1985, c. P-36.

97. *Royal Canadian Mounted Police Superannuation Act*, R.S.C. 1985, c. R-11.

98. Department of Finance Canada, *Budget 2024: Canada's Consumer-Driven Banking Framework*, 17 April 2024.

99. Department of Finance Canada, *Final Report – Advisory Committee on Open Banking*, 4 August 2021.

100. Bill C-365, An Act respecting the implementation of a consumer-led banking system for Canadians, 44th Parliament, 1st Session.

101. Department of Finance Canada, "2.1 Making Life More Affordable," *Fall Economic Statement 2023*, 21 November 2023, p. 40.

102. Department of Finance Canada, *Budget 2024: Canada's Consumer-Driven Banking Framework*, 17 April 2024.

103. *Financial Consumer Agency of Canada Act*, S.C. 2001, c. 9.

104. *Bank Act*, S.C. 1991, c. 46.

105. *Office of the Superintendent of Financial Institutions Act*, R.S.C. 1985, c. 18 (3rd Supp.), Part 1.

106. *Canada Business Corporations Act*, R.S.C. 1985, c. C-44.

107. See Julia Nicol, *Sentencing in Canada*, Publication no. 2020-06-E, Library of Parliament, 22 May 2020.

108. *Canada Labour Code*, R.S.C. 1985, c. L-2.

109. Federally regulated private sector industries include interprovincial and international services (such as railways, air and road transport, canals, ferries, tunnels, bridges and shipping services), radio and television broadcasting, banks, most grain elevators, flour and seed mills, as well as most federal Crown corporations. See Government of Canada, *List of federally regulated industries and workplaces*.

110. *Budget Implementation Act, 2018, No. 2*, S.C. 2018, c. 27.

111. Government of Canada, *Additional weeks of Employment Insurance regular benefits for seasonal workers in targeted regions*.

112. Under the Employment Insurance (EI) program, EI regular benefits are available to eligible persons who lose their jobs through no fault of their own and are able and available to work. Government of Canada, *EI regular benefits*.

113. *Budget Implementation Act, 2023, No. 1* (S.C. 2023, c. 26).

114. *Act for the Substantive Equality of Canada's Official Languages*, S.C. 2023, c. 15.

115. *Use of French in Federally Regulated Private Businesses Act*, S.C. 2023, c. 15, s. 54.

116. Bill C-13, Act to amend the Official Languages Act, to enact the Use of French in Federally Regulated Private Businesses Act and to make related amendments to other Acts, 44th Parliament, 1st Session (S.C. 2023, c. 15).

117. The government must define by regulation what constitutes a "region with a strong francophone presence."

118. Department of Finance Canada, *Fairness for Every Generation*, Budget 2024, pp. 16 and 286.

119. Ibid., p. 285.

120. Ibid., p. 286.

121. Section 83(1) of the *Financial Administration Act*, defines the term 'appropriate Minister' to mean:

> (a) in relation to a parent Crown corporation,
>
> (i) the Minister specified by or pursuant to any other Act of Parliament as the Minister in respect of that corporation, or
>
> (ii) if no Minister is specified as described in subparagraph (i), such member of the Queen's Privy Council for Canada as is designated by order of the Governor in Council as the appropriate Minister for the corporation, and
>
> (b) in relation to a wholly-owned subsidiary, the appropriate Minister, as defined in paragraph (a), for the parent Crown corporation that wholly owns the subsidiary.

122. Section 89.1(3) of the *Financial Administration Act* defines a directive as one given pursuant to section 89(1), 94(2) or 114(3) of the *Financial Administration Act*, or section 22(1) of the *Canada Post Corporation Act*; or a direction under section 5(2) of the *Canada Mortgage and Housing Corporation Act*, section 9(2) of the *Canadian Commercial Corporation Act* or section 11(1) of the *Canadian Dairy Commission Act*.

123. Statistics Canada, "Court outcomes in homicides of Indigenous women and girls, 2009 to 2021," *The Daily*, 4 October 2023. Note: The data are based on police-reported incidents; Statistics Canada refers to "Indigenous identity" to include people identified as First Nations persons (either status or non-status), Métis, Inuit or persons with an Indigenous identity where the Indigenous group is not known to police.

124. National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Volume 1a*, 2019.

125. House of Commons, *Debates*, 2 May 2023 (Leah Gazan, Winnipeg Centre, NDP).

126. Ibid.

127. Department of Finance Canada, *A Made-In-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023, p. 131.

128. House of Commons, Standing Committee on the Status of Women, *Evidence*, 18 April 2024 (Hon. Gary Anandasangaree, Minister of Crown-Indigenous Relations).

129. Ibid.

130. Ibid.

131. Alessia Passafiume, "Manitoba partners with federal government on Red Dress Alert for missing Indigenous women and girls," *CBC News*, 3 May 2024.

132. Transport Canada, *Minister of Transport announces the establishment of the VIA Rail subsidiary to support High Frequency Rail and appoints three founding members to its Board of Directors*, News release, 15 December 2022.

133. Government of Canada, *Agent status and Crown corporations*.

134. *Impact Assessment Act*, S.C. 2019, c. 28, s. 1.

135. Bill C-69, An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts, 42nd Parliament, 1st Session.

136. For more information, see Sam N. K. Banks, Alexandre Lavoie and Nicole Sweeney, *Legislative Summary of Bill C-69: An Act to Enact the Impact Assessment Act and the Canadian Energy Regulator Act, to Amend the Navigation Protection Act and to Make Consequential Amendments to Other Acts*, Publication no. 42-1-C69-E, Library of Parliament, 21 June 2019.

137. *Physical Activities Regulations*, SOR/2019-285.

138. *Reference re Impact Assessment Act*, 2022 ABCA 165.

139. *Reference re Impact Assessment Act*, 2023 SCC 23.

140. Ibid., para. 6.

141. Department of Finance Canada, *Fairness for Every Generation*, Budget 2024.

142. *Judges Act*, R.S.C. 1985, c. J-1.

143. Government of Canada, "Chapter 5: Safer, Healthier Communities," *Fairness for every generation*, Budget 2024.

144. *Food and Drugs Act*, R.S.C. 1985, c. F-27.

145. Government of Canada, *List of Acts and Regulations*.

146. Government of Canada, "Annex 3: Legislative Measures," *Fairness For Every Generation*, Budget 2024.

147. *Food and Drug Regulations*, C.R.C., c. 870, s. B.24.001.

148. *Food and Drugs Act*, R.S.C. 1985, c. F-27, s. 2.

149. Government of Canada, "Annex 3: Legislative Measures," *Fairness For Every Generation*, Budget 2024.

150. *Statutory Instruments Act*, R.S.C. 1985, c. S-22.

151. Ibid.

152. Ibid.

153. Ibid.

154. Prime Minister of Canada, Justin Trudeau, *Minister of Mental Health and Addictions and Associate Minister of Health Mandate Letter*, 16 December 2021; Department of Finance Canada, *A Made-in-Canada Plan: Strong Middle Class, Affordable Economy, Healthy Future*, Budget 2023; and Department of Finance Canada, *Fall Economic Statement 2023: Building a strong economy that works for everyone*.

155. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.

156. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* , being Schedule B to the *Canada Act 1982*, 1982, c. 11 (U.K.).

157. *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5.

158. Bill C-27, An Act to enact the Consumer Privacy Protection Act, the Personal Information and Data Protection Tribunal Act and the Artificial Intelligence and Data Act and to make consequential and related amendments to other Acts, 44th Parliament, 1st Session.

159. *Citizenship Act*, R.S.C. 1985, c. C-29.

160. Bill C-13, An Act to amend the Criminal Code, the Canada Evidence Act, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act, 41st Parliament, 2nd Session; and Julia Nicol and Dominique Valiquet, *Legislative Summary of Bill C-13: An Act to amend the Criminal Code, the Canada Evidence Act, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act*, Publication no. 41-2-C13-E, Library of Parliament, 28 August 2014.

161. The test of reasonable grounds to suspect that an offence has been or will be committed is less stringent than the usual requirement, reasonable grounds to believe that an offence has been or will be committed.

162. *R. v. Holmes*, [1988] 1 S.C.R. 914, paras. 31–33.

163. *Crimes Against Humanity and War Crimes Act*, S.C. 2000, c. 24.

164. *Radiocommunication Act*, R.S.C. 1985, c. R-2.

165. Department of Finance Canada, *Fairness For Every Generation*, Budget 2024, p. 246.

166. *Telecommunications Act*, S.C. 1993, c. 38.

167. Department of Finance Canada, *Fairness For Every Generation*, Budget 2024, p. 148.

168. *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

169. Office of the Auditor General of Canada, *Processing of Asylum Claims*, Report 2 in *2019 Spring Reports of the Auditor General of Canada to the Parliament of Canada*.

170. Government of Canada, *CIMM – Strategic Immigration Review – October 24, 2023*.

171. *Immigration and Refugee Protection Regulations*, SOR/2002-227.

172. Canada Border Services Agency, *List of Services*.

173. *Corrections and Conditional Release Act*, S.C. 1992, c. 20.

174. The Canada Border Services Agency (CBSA) publishes quarterly statistics on detention in the immigrant stations it operates. Currently, the term "immigrant station" is only used in section 142 of the *Immigration and Refugee Protection Act* (IRPA). On this point, see *Syndicat des agents de sécurité Garda, Section CPI-CSN v. Garda Canada Security Corporation*, 2011 FCA 302 (CanLII), paras. 41–45.

175. Provincial correctional facilities generally house "high-risk immigration detainees whose behaviour cannot be managed within an I[mmigration] H[olding] C[entre]" (for example, those with a propensity towards aggressive behaviour) or those detained in a region not served by an IHC. See: Canada Border Services Agency, "Facilities used for immigration detention," *Detentions and alternatives to detention*.

176. The detention agreements entered into with British Columbia, Ontario and Quebec are available from public sources. See: *An Arrangement respecting the detention of persons detained under the Immigration and Refugee Protection Act (IRPA) Between Her Majesty the Queen in the Right of Canada as represented by the Canada Border Services Agency and Her Majesty the Queen in the Right of the Province of British Columbia*, 2017; *Agreement between Canada and Ontario respecting detention of persons detained under the* Immigration and Refugee Protection Act *(IRPA)*, 2017; and *Entente Canada-Québec pour la détention de personnes en vertu de la Loi sur l'immigration et la protection des réfugiés entre Sa Majesté la Reine du Chef du Canada et le Gouvernement du Québec*, 2017. For examples of official notices of termination of detention agreements, see: Marco Mendicino, Minister of Public Safety of Canada, *Letter to Minister of Public Safety Canada from Alberta Minister of Public Safety and Emergency Services about CBSA agreement*, 2023; and Government of Saskatchewan, Corrections, Policing and Public Safety, *Province Ends Detainee Agreement with CBSA*, News release, 14 April 2023.

177. *Canada Border Services Agency Act*, S.C. 2005, c. 38, s. 13(2)(b).

178. *Syndicat des agents de sécurité Garda, Section CPI-CSN v. Garda Canada Security Corporation*, 2011 FCA 302 (CanLII), paras. 44 and 45.

179. New section 94.1 of the Corrections Act defines "detention enforcement officer" as a person who is designated as such by the Minister of Immigration, Refugees and Citizenship pursuant to section 6(1) of the IRPA or a person to whom the Minister has delegated powers and duties under section 6(2) of that Act.

180. "Reasonable grounds to believe" refers to belief in the *probability* that certain facts or a certain situation exists. This is a more rigorous standard than reasonable grounds to *suspect*, which evokes mere *possibility* rather than a probability. See: *R. v. Chehil*, 2013 SCC 49, paras. 27 and 28.

181. Government of Canada, *Financial Management*.

182. *Trust and Loan Companies Act*, S.C. 1991, c. 45.

183. *Insurance Companies Act*, S.C. 1991, c. 47.

184. *Canada Disability Benefit Act*, S.C. 2023, c. 17.

185. *Federal Courts Act*, R.S.C. 1985, c. F-7.

186. *Department of Employment and Social Development Act*, S.C. 2005, c. 34.

187. *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

188. *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44.

189. Ibid., para. 153.

190. *Respect for Communities Act*, S.C. 2015, c. 22.

191. *An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts*, S.C. 2017, c. 7.