Report on the subject-matter of those elements contained in Parts 2, 3 and 4 and Divisions 2, 3, 4, 8, 13, 14, 19, 22, 24 and 25 of Part 6 of Bill C-31, An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014 and other measures

Standing Senate Committee on
Banking, Trade and Commerce

FOURTH REPORT

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Deputy Chair
The Honourable Céline Hervieux-Payette, P.C.

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INTRODUCTION

Your Committee, which was authorized to examine the subject matter of those elements contained in Parts 2, 3 and 4 and Divisions 2, 3, 4, 8, 13, 14, 19, 22, 24 and 25 of Part 6 of Bill C-31, An Act to implement certain provisions of the budget tabled in Parliament on February 11, 2014, has, in obedience to the order of reference of Wednesday, April 9, 2014, examined the said subject matter and now reports as follows.

The Committee held five meetings, the first of which was with the Honourable Joe Oliver, P.C., M.P., Minister of Finance who was accompanied by officials from the Department of Finance, Health Canada, the Canada Revenue Agency, the Canada Border Services Agency, the Department of Foreign Affairs, Trade and Development, Industry Canada, the Bank of Canada, Canada Deposit Insurance Corporation and the Financial Transactions and Reports Analysis Centre of Canada. These officials provided briefings on the various elements of Bill C-31 that had been assigned to the Committee.

The Committee devoted two of its five meetings to the study of Division 19 of Part 6, which would amend the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and to the study of Division 25 of Part 6, which would amend the *Trade-marks Act*. In the other two meetings the Committee focused on Division 13 of Part 6, which would amend the *Bank Act*, Division 14 of Part 6, which would amend the *Insurance Companies Act*, Part 4, which would amend the *Custom Tariff*, and Part 3, which – among other provisions – would amend tobacco taxation under the *Excise Act, 2001*. The Committee received testimony from 14 associations and three specialists or individual companies impacted by the proposed measures.

A complete list of the witnesses is found in Appendix 1. Appendix 2 lists the submissions received by the Committee.

Part 2 – Amendments to the *Excise Tax Act*

Part 2 would amend the *Excise Tax Act* to make changes in relation to the administration of the Goods and Services Tax (GST), the application of the Goods and Services Tax/Harmonized Sales Tax (GST/HST) and the sharing of certain information.

a. Exemption for the Service of Designing a Training Plan

Part 2 would amend the *Excise Tax Act* to exempt, from the application of the GST/HST, the service of designing training plans to assist individuals in managing, alleviating or eliminating the effects of their disorder or disability.

According to the Department of Finance, training that is specially designed to help individuals cope with the effects of a disorder or a disability is currently exempt from the application of the GST/HST; however, this exemption does not include the service of designing a training plan.

b. Exemption for Acupuncture and Naturopathic Services

Part 2 would amend the *Excise Tax Act* to add acupuncture and naturopathic services to the list of health care services that are exempt from the application of the GST/HST.

The Department of Finance explained that certain criteria are used to determine whether a professional service should be GST/HST-exempt, including whether the service is covered by the health insurance plan(s) of one or more provinces and, in relation to acupuncturists and naturopaths, whether the service is regulated as a profession in the field of health in at least five provinces. The Department indicated that, once acupuncturists and naturopaths were found to have met the requirement of regulation as a profession, it recommended – to the Minister of National Revenue – that the services of these professions be added to the list of GST/HST-exempt health care services.

c. Zero-Rating for Electronic Eyewear

Part 2 would amend the *Excise Tax Act* to add eyewear specially designed to treat or correct a defect of vision by electronic means to the list of zero-rated medical and assistive devices; devices on this list have the GST/HST applied at a rate of 0%. In order for this eyewear to have the GST/HST applied at this rate, it would have to be supplied on the written order of a person who is entitled under the laws of a province to practise the profession of medicine or optometry.

While the number of Canadians who would benefit from the proposed change is not known, the Department of Finance explained that electronic eyewear is a fairly novel and expensive apparatus that could be used by people suffering from certain diseases, such as macular degeneration, and that the eyewear assists these individuals in regaining some level of vision. It noted that, as electronic eyewear is not considered to be eyeglasses or contact lenses, it is not included in the current list of zero-rated medical and assistive devices.

d. Closely related persons and the Application of the *Excise Tax Act*

Part 2 would amend the *Excise Tax Act* to allow certain members of a qualifying group of corporations and/or Canadian partnerships resident in Canada and engaged exclusively in commercial activities to elect to treat certain transactions between them as having been made for no consideration; consequently, the GST/HST would not be applied on those transactions.

According to the Department of Finance, the proposed change is a simplification measure that would extend an existing exemption that allows members of a closely related group of corporations engaged in commercial activities, such as a holding corporation with its subsidiaries, to not have to account for the GST/HST on certain transactions between the members. In its view, the proposed change would extend the exemption to newly created members of the group, such as entities resulting from a merger or a demerger. The Department also noted that the proposed change would impose joint and several liability with regard to any

tax that may be owing on members that elect to not pay the GST/HST on transactions taking place between them. Finally, the Department stated that any election would be filed with the Canada Revenue Agency.

e. The Authority of the Minister of National Revenue with Respect to Registration for the Goods and Services Tax/Harmonized Sales Tax

Part 2 would amend the *Excise Tax Act* to allow the Minister of National Revenue to register a person for purposes of the GST/HST if that person fails to apply for registration when required to do so.

The Department of Finance explained that the proposed change would give the Minister of National Revenue the discretionary authority to register a person for purposes of the GST/HST if that person has failed to comply with the requirement that vendors making $30,000 in taxable supplies annually be registered with the Canada Revenue Agency, and collect and remit tax. Currently, the Canada Revenue Agency cannot compel a person to register for purposes of the GST/HST.

Although unrelated to Bill C-31, the Department noted that the amount of $30,000 is not indexed to inflation. According to it, while a decision about whether the amount should be changed or linked to inflation is a political one, arguments exist for increasing the amount to account for inflation and for decreasing the amount to combat the practice of some businesses to not declare all of their sales in order to remain below the $30,000 threshold.

f. Canada Revenue Agency Feedback for the Financial Transactions and Reports Analysis Centre of Canada

Part 2 would amend the *Excise Tax Act* to allow the Canada Revenue Agency to provide confidential information to the Financial Transactions and Reports Analysis Centre of Canada.

According to the Department of Finance, the proposed change is consequential to income tax measures contained in Part 1 of Bill C-31. The Department clarified that the proposed change would allow the Canada Revenue Agency to share information with the Financial Transactions and Reports Analysis Centre of Canada for the purposes of providing feedback to the Centre regarding its disclosures to the Agency.

g. Exemption for Hospital Parking

Part 2 would amend the *Excise Tax Act* to exempt hospital parking provided by public-sector bodies from the application of the GST/HST; the exemption would apply to parking lots and spaces that are primarily for the use of patients and visitors to the hospital. As well, it would clarify that the current GST/HST exemption for parking provided by a charity does not apply to parking that is used by certain public-sector bodies.

The Department of Finance indicated that parking has always been subject to the GST/HST, with an exemption provided to charities that operate a parking lot. It explained that the proposed change would clarify that the current exemption for parking lots operated by a charity does not apply to parking provided by a charity that is set up by certain public-sector bodies, such as universities, to accommodate staff or students. Regarding the proposed exemption for hospital parking provided by public-sector bodies, the Department indicated that, when a parking lot is used by both employees and visitors, the parking lot would have to be used primarily by visitors in order for the GST/HST to not apply.

h. International Electronic Funds Transfer Reports and the Goods and Services Tax

Part 2 would amend the *Excise Tax Act* to ensure that the information collected by the Minister of National Revenue in an information return filed in relation to international electronic funds transfers under Part XV.1 of the *Income Tax Act* could be used by him/her for the purposes of administering the GST/HST.

The Department of Finance commented that this proposed change, which was introduced in the 2013 federal budget, is consequential to the reporting requirements in relation to international electronic funds transfers contained in Part 1 of Bill C-31.

i. Offshore Tax Informant Program

Part 2 would amend the *Excise Tax Act* to give the Canada Revenue Agency the authority to provide certain confidential information to a person who has entered into a contract with it to provide information under the Offshore Tax Informant Program.

According to the Department of Finance, the proposed change was mentioned in the 2013 federal budget and is consequential to amendments contained in Part 1 of Bill C-31. It noted that the Offshore Tax Informant Program allows the Canada Revenue Agency to pay rewards to individuals who provide information relating to non-compliance with tax statutes; the rewards are given where that information leads to the collection of tax owing. As well, limited GST/HST information could be shared by the Canada Revenue Agency with these individuals for the purposes of administrating the GST and the reward.

j. Disclosure of Taxpayer Information to a Police Organization

Part 2 would amend the *Excise Tax Act* to permit the disclosure of taxpayer information by the Canada Revenue Agency to an appropriate police organization when the Agency has reasonable grounds to believe that the information could be evidence of a listed offence. Listed offences would include: bribery and the corruption of government officials as described in the *Corruption of Foreign Public Officials Act* and in the *Criminal Code*; and crimes mentioned in section 742.1 of the *Criminal Code* with conditional sentences that were amended by the *Safe Streets and Communities Act*.

The Department of Finance indicated that this proposed change, which is consequential to amendments contained in Part 1 of Bill C-31, would permit the disclosure of confidential GST/HST information to a police organization if there are reasonable grounds to suspect that the information would be relevant to the investigation of serious offences, including money laundering, terrorist activities and organized crime. It noted that the information would likely be discovered in the course of an audit by the Canada Revenue Agency, rather than found in a tax return, and provided the example of an auditor discovering child pornography on a computer in the course of auditing a business; under the current rules, the auditor is not allowed to contact a police organization.

As well, the Department of Finance noted that any report to a police organization would likely be preceded by several steps of review, given that Canada Revenue Agency officials can be penalized for disclosing confidential information without proper authorization.

Lastly, the Department of Finance noted that this proposed change originated from a commitment between Canada and the Organisation for Economic Co-operation and Development that permits the Canada Revenue Agency to make a report to a police organization about the bribery of foreign officials.

k. Recovery Respecting Input Tax Credits

Part 2 would amend the *Excise Tax Act* to provide that, if a non-resident person is not registered for purposes of the GST/HST and that person delivers taxable goods to a person in Canada, no portion of that tax would be rebated, refunded or remitted to the non-resident person. Part 2 would also clarify that a person or a charity would not be able to claim input tax credits for certain amounts of GST/HST paid when: a credit note has been received; a debit note has been issued; or an amount has been rebated, refunded, remitted or recovered.

According to the Department of Finance, the proposed change is intended to close a loophole. In some cases, businesses have been claiming input tax credits in relation to the GST/HST after having recovered the tax from their suppliers through credit notes.

Part 3 – Amendments to the *Excise Tax Act*, the *Excise Act, 2001* and the *Air Travellers Security Charge Act*

a. The Excise Act, 2001 and the Domestic Rate of Excise Duty on Tobacco Products

Part 3 would amend the *Excise Act, 2001* in a variety of ways, including by: setting out the manner in which the rates of duty on tobacco products would – in future – be adjusted according to changes in the Consumer Price Index; imposing a tax on cigarette inventories; and eliminating the preferential duty treatment of tobacco products available through duty-free stores.

According to the Department of Finance, the Canadian Cancer Society, and the Heart and Stroke Foundation of Canada, although reducing tobacco consumption is an important public health objective, the general domestic rate of excise duty on cigarettes remained stable for 12 years; consequently, the inflation-adjusted rate of excise duty has been reduced by approximately 23.7% since 2002. The Department of Finance indicated that cigarettes are currently subject to an excise duty of $17 per carton of 200 cigarettes, or approximately $2.30 per pack of 25 cigarettes. According to it, Part 3 would increase the duty by approximately $4 per carton or $0.50 cents per pack, thereby accounting for the inflation that has occurred since 2002. It also explained that Part 3 would increase the rate of excise duty on other tobacco products, such as fine-cut tobacco for use in roll-your-own cigarettes.

Moreover, the Department of Finance observed that tobacco products delivered to duty-free shops are subject to a federal excise duty that – at $15 per carton – is $2 per carton lower than that applied on tobacco products not sold in duty-free shops. It explained that Part 3 would eliminate this preferential excise duty treatment.

The Department of Finance also indicated that all excise duty rate adjustments would become effective as of 12 February 2014, and that the adjustments would apply to the inventories of tobacco manufacturers and distributors in cases where the inventory exceeds 150 cartons and has been held since that date. It stated that the Canada Revenue Agency has monitoring mechanisms in place that would permit an assessment of these inventories in terms of both quantity and how long they have been held.

Furthermore, according to the Department of Finance, Part 3 would index the excise duty rates mentioned above to changes in the Consumer Price Index, with an adjustment occurring once every five years. The first adjustment would occur on 1 December 2019.

The Canadian Cancer Society, the Heart and Stroke Foundation of Canada, and the Canadian Medical Association expressed support for the changes proposed in Part 3 in relation to tobacco. The Canadian Cancer Society, as well as the Heart and Stroke Foundation of Canada, was also in favour of the proposed changes that would allow charities to use computers in their lottery ticket sales operations. The Canadian Cancer Society also stated its support for Bill C-10, An Act to amend the Criminal Code (trafficking in contraband tobacco).

Moreover, the Canadian Cancer Society, as well as the Heart and Stroke Foundation of Canada, indicated that higher tobacco taxes are an effective strategy to reduce smoking, especially among youth. The Canadian Medical Association estimated that youth are up to three times more sensitive to cigarette price increases than are adults. According to it, a 10% increase in the price of cigarettes would reduce smoking among youth by 5% in the short term and by 8% in the long term. According to the Heart and Stroke Foundation of Canada, youth should be a particular focus of public policies relating to tobacco, as the average teenager who begins smoking will continue to do so for at least 20 years; the result may be premature death caused by smoking-related disease. It said that, by age group, the highest rate of smoking in Canada occurs among 22–24 year olds; the smoking rate for this age group is about 22%.

The Canadian Cancer Society commented that Aboriginal individuals have particularly high rates of smoking; the rate exceeds 50% for on-reserve First Nations individuals. It clarified that, although reserves are exempt from provincial tobacco taxes, federal taxes are applied; therefore, enactment of the changes proposed in Part 3 could decrease the smoking rates on reserves.

The Canadian Medical Association noted that, in Canada, the costs associated with preventable disease and death caused by tobacco are approximately $17 billion per year in terms of medical treatment, social assistance, lost productivity and reduced quality of life.

Regarding the suggestion that higher excise duty rates would lead to an increase in contraband cigarettes, the Department of Finance indicated that approximately $91 million has been allocated to the Royal Canadian Mounted Police (RCMP) in order to combat contraband tobacco; it does not anticipate a large increase in tobacco smuggling if Bill C-31 is enacted. The Canadian Cancer Society proposed that: the RCMP block the supply of raw materials – such as leaf tobacco, cigarette paper and cigarette filters – used by factories that produce illegal tobacco products; the federal government replace its plan to move the Cornwall border crossing post to Massena, New York with one that involves a two-part border post, with check points in both locations; and the federal government persuade the U.S. government to shut down factories producing illegal tobacco products in Akwesasne.

The Canadian Cancer Society provided statistics demonstrating both a decrease in contraband tobacco products in recent years, and the lack of a relationship between contraband tobacco products and higher excise duties. For example, it shared information from British American Tobacco that suggested that contraband tobacco products in Canada decreased from 33% of the total demand for tobacco in Canada in 2008 to 19% in 2010. It also provided information suggesting that the percentage of tobacco products sold that is contraband is higher in Ontario and in Quebec than it is in other provinces; net tobacco taxes in Ontario and Quebec are lower than those in western provinces. The Heart and Stroke Foundation of Canada agreed that the smuggling of contraband tobacco products does not result from higher tobacco taxes; instead, the principal cause is criminality in a particular location and/or geographic hub.

The Canadian Medical Association suggested that, in order to reduce the amount of cross-border smuggling of contraband tobacco products, the federal government should work with foreign governments to ensure that tobacco prices are harmonized. It further proposed that all levels of government implement the most stringent measures possible to control the sale and distribution of contraband tobacco products, and that the estimated increase in federal tax revenues of $96 million in 2013–2014, $685 million in 2014–2015 and $660 million in 2015–2016 that would result from the proposed increase in tobacco excise duties be allocated to strengthening Canada's tobacco control strategy.

With respect to e-cigarettes, the Canadian Cancer Society stated that e-cigarettes containing nicotine are illegal in Canada, although they can be sold legally in the United States. However, it observed that, as e-cigarettes are sold illegally in some parts of Canada, the federal government should intervene and regulate: the sale of e-cigarettes – including those without nicotine – to minors; the use of e-cigarettes in public places; the marketing of e-cigarettes; and the addition of flavours to e-cigarettes. While the Heart and Stroke Foundation of Canada and the Canadian Medical Association suggested that the federal government should regulate e-cigarettes, they recognized the potential use of nicotine-based e-cigarettes in efforts to cease smoking.

A number of witnesses considered the possibility that tobacco products should be banned entirely in Canada, with the Heart and Stroke Foundation of Canada stating that it would consider making such a proposal if smoking rates in Canada were to fall from the current rate of 17% to around 5%; in its view, a rate of 5% would be feasible in terms of enforcement. The Canadian Cancer Society indicated that, instead of banning all tobacco products, the provincial/territorial governments that have not already done so should ban flavours in tobacco products. The Canadian Cancer Society supported enhanced package warnings, a ban on all flavoured tobacco products, well-funded Health Canada programming and the implementation of plain packaging.

b. Administrative Monetary Penalty

Part 3 would amend the *Excise Tax Act* in two ways. Firstly, it would create an administrative monetary penalty to be imposed on those who make false statements or omissions in an excise tax return under the *Excise Tax Act*'s provisions that are unrelated to the Goods and Services Tax/Harmonized Sales Tax (GST/HST). Secondly, it would add the offences found in the GST/HST portion of the *Excise Tax Act* to the *Excise Tax Act*'s non-GST/HST portion.

The Department of Finance explained that the non-GST/HST portion of the *Excise Tax Act* imposes excise taxes on motor fuels, such as gasoline and diesel, among other things. It also stated that Part 3 would provide the Canada Revenue Agency with a new tool with which to discourage taxpayers from reporting false information. According to it, the tool would allow a wider range of sanctions and would simplify administration of the provisions that would be amended by Part 3.

As well, the Department of Finance indicated that the proposed excise tax administrative monetary penalty would be the greater of $250 or 25% of the tax avoided, and would be applied by the Canada Revenue Agency.

c. Canada Revenue Agency Feedback for the Financial Transactions and Reports Analysis Centre of Canada

Part 3 would amend the *Excise Act, 2001* to allow the Canada Revenue Agency to provide certain information to the Financial Transactions and Reports Analysis Centre of Canada.

The Department of Finance said that the changes proposed in Part 3 would allow the Canada Revenue Agency to provide taxpayer information to an official of the Financial Transactions and Reports Analysis Centre of Canada in order to evaluate the usefulness of information provided to the Agency.

d. Disclosure of Taxpayer Information to a Police Organization

Part 3 would amend the *Excise Act, 2001* to permit the disclosure of taxpayer information by a Canada Revenue Agency official to a law enforcement officer of an appropriate domestic or foreign police organization.

In speaking about the proposed change, the Department of Finance provided the example of a situation in which a Canada Revenue Agency official has reasonable grounds to believe that the information is evidence that would lead to the conviction of a serious crime.

e. The Offshore Tax Informant Program and Confidential Information

Part 3 would amend the *Excise Act, 2001* to allow the Canada Revenue Agency to provide specified information to certain individuals.

According to the Department of Finance, the proposed changes would give the Canada Revenue Agency the authority to provide certain confidential information to a person who has entered into a contract with it to provide information under the Offshore Tax Informant Program.

f. International Electronic Funds Transfer Reports and the Excise Act, 2001, the Excise Tax Act and the Air Travellers Security Charge Act

Part 3 would amend the *Excise Act, 2001*, the *Excise Tax Act* and the *Air Travellers Security Charge Act* to ensure that the Minister of National Revenue may use certain information for the purposes of those Acts.

The Department of Finance stated that the proposed changes would ensure that the information collected by the Minister of National Revenue in an information return filed in relation to international electronic funds transfers of $10,000 or more under Part XV.1 of the *Income Tax Act* could be used by the Minister for the purposes of administering those Acts.

Part 4 – Amendments to the *Customs Tariff*

a. Certain Mobile Offshore Units

Part 4 would amend the List of Tariff Provisions set out in the schedule to the *Customs Tariff* to reduce tariffs in relation to certain mobile offshore units.

The Department of Finance indicated that the most-favoured-nation tariff would be reduced from 20% to 0% on drilling platforms and drill-ships used in drilling activity for exploration, delineation or development of offshore projects; these vessels are otherwise known as mobile offshore drilling units. It stated that the proposed duty-free status of these units would lower business costs, improve the global competitiveness of Canadian energy products and increase the potential for resource discoveries in Canada's Atlantic and Arctic offshore areas; the previous duty-free status expired on 4 May 2014.

The Canadian Association of Petroleum Producers supported the proposed change, explaining that mobile offshore drilling units are not produced in Canada, and that – since 2004 – the tariff has been under a temporary duty remission order that has been renewed every five years. According to it, eliminating the tariff permanently would provide the energy sector with long-term certainty, reduce costs, and create a situation in Canada that is similar to other countries with offshore petroleum development, such as Norway, the United Kingdom, the United States and Australia, none of which has such a tariff. The Canadian Association of Petroleum Producers argued that the temporary duty remission order, with its periodic renewal, has contributed to an increase in offshore activity in Canada in recent years.

According to the Canadian Association of Petroleum Producers, there are fewer than 500 mobile offshore drilling units commercially available worldwide, and fewer than 30 that would be suitable for use in Canada's Atlantic and Arctic offshore areas due to the regions' challenging operating conditions; most of these latter units are manufactured in Asia.

With respect to other tariff reductions that would benefit Canadian offshore petroleum producers, the Canadian Association of Petroleum Producers mentioned that producers would benefit from an exemption for certain specialized vessels and some parts of facilities that are built as part of offshore petroleum projects.

b. Goods Intended for the Use of the Governor General of Canada

Part 4 would amend the List of Tariff Provisions set out in the schedule to the *Customs Tariff* to remove the tariff exemption applied on goods intended for the Governor General of Canada's use, and to apply the same tariff rules on the Governor General that are applied on other public office holders.

The Department of Finance stated that, although the proposed changes would eliminate the special tariff exemption for the Governor General, they would ensure that representational gifts

given to the Governor General would receive the same tariff treatment as other public office holders, including members of Parliament, provincial premiers and municipal mayors.

c. Certain Imported Products that Include Cheese

Part 4 would amend the *Customs Tariff* to add a supplementary note to Chapter 16 of the schedule to the statute to clarify the tariff classification of food preparations with components that include cheese.

According to the Department of Finance, the proposed changes would address a gap in the legislation. In particular, it noted that certain imported goods were being packaged in a manner that was intended to circumvent Canada's tariff on supply-managed goods, which – at 245% – is relatively high. The Department provided the example of pizza toppings, which are being imported as a packaged item with both cheese and pepperoni in order to be classified as a "food product," rather than as "cheese" and "pepperoni"; when packaged together, the tariff rate is lower.

Part 6, Division 2 – Amendments to the *Bank of Canada Act* and the *Canada Deposit Insurance Corporation Act*

Division 2 would amend the *Bank of Canada Act* and the *Canada Deposit Insurance Corporation Act* to authorize the Bank of Canada to provide banking and custodial services to the Canada Deposit Insurance Corporation. At present, these services are provided by a private-sector financial institution.

According to the Department of Finance and the Canada Deposit Insurance Corporation, having the Bank of Canada provide banking and custodial services for the Canada Deposit Insurance Corporation's fund that covers losses resulting from the financial insolvency of a member of the Corporation would reduce the risk that financial market participants would learn of activity in relation to the fund. Their concern was that information gained at a private-sector financial institution about a particular action in relation to the fund may give rise to speculation about the solvency of Corporation members, perhaps with negative consequences. As of 1 May 2014, the day on which the Department appeared before the Committee, the fund was valued at approximately $2.7 billion.

The Bank of Canada clarified that it would not provide investment advice with respect to the assets in the fund, while the Canada Deposit Insurance Corporation commented that a group of advisors within the Corporation has responsibility for investment decisions.

Part 6, Division 3 – Amendments to the *Hazardous Products Act*

Division 3 would amend the *Hazardous Products Act* and make consequential amendments to the *Canada Labour Code* and the *Hazardous Materials Information Review Act* in order to implement the Globally Harmonized System of Classification and Labelling of Chemicals (GHS), and to harmonize Canada's regulatory regime for workplace chemicals with the regimes in other jurisdictions, such as the United States.

The Minister of Finance indicated that the proposed changes are intended to align Canadian labelling requirements for hazardous chemicals with international standards; such an alignment would facilitate the sale and importation of hazardous products used in the workplace. He highlighted the importance of harmonization in relation to the United States, including with respect to labelling, as different standards impose costs on manufacturers. The Minister noted, however, that the federal government must also ensure that the standards adopted protect the workplace appropriately.

Health Canada explained that the proposed changes would facilitate the adoption of the GHS in relation to the product labels and safety data sheets provisions of the Workplace Hazardous Materials Information System (WHMIS). It noted that WHMIS, which is a national system that came into force in 1988, is based on a series of federal, provincial and territorial statutes, while the GHS is a classification and labelling system developed under the auspices of the United Nations; the GHS has been adopted by a number of jurisdictions, including the United States, the European Union, China, South Korea and Australia.

Regarding the *Hazardous Products Act*, Health Canada stated that Division 3 proposes changes that would: implement the GHS and change definitions, terminology, regulatory authorities, and compliance and enforcement provisions; move eight sectors that are currently excluded from the application of the Act into a schedule to the Act so that these sectors could potentially be brought under the scope of the Act after a full regulatory process is conducted; and provide a transitional period during which companies would switch to the GHS. It highlighted that having the GHS adopted in Canada would provide benefits to Canadian businesses valued at more than $400 million and provide savings of $200 million over a 20-year period.

With regard to the potential inclusion of new sectors under the *Hazardous Products Act*, some Committee members were concerned that the benefits for Canadian workers of this potential inclusion were not evident. Moreover, in their view, further study may be required, and certain sectors – particularly the food sector – could become over-regulated. In response, Health Canada said that worker health and safety concerns were raised by the provinces and territories, as well as by workers themselves, in relation to these eight sectors; as well, these sectors are regulated in other jurisdictions – including the United States – under hazardous products legislation. Health Canada also stated that moving the eight sectors to a schedule to the Act would allow full consultation with businesses in order to determine whether a particular sector should be brought

under the Act. It also clarified that WHMIS requirements do not restrict products from entering the marketplace; instead, they regulate the communication of safety information in relation to the products. Lastly, Health Canada agreed to provide the Committee with a full cost-benefit analysis of the GHS and detailed information about its overall benefit to businesses and Canadian workers.

In its written submission, the Canadian Consumer Specialty Products Association expressed support for harmonizing the systems for classifying and labelling hazardous products, arguing that the proposed changes would facilitate trade and increase competitiveness, particularly within North America. The Association recommended one change: amend section 14(b) of the *Hazardous Products Act* to enable the development of a regulation that would exempt certain imported products from labelling requirements. According to the Association, suppliers would have to ensure – prior to importation – that product labels comply with the Act. In its view, this requirement creates an unnecessary burden on suppliers.

Part 6, Division 4 – Amendment to the *Importation of Intoxicating Liquors Act*

Division 4 would amend the *Importation of Intoxicating Liquors Act* to exempt beer and spirits from the general prohibition against importing intoxicating liquors into a province or territory in circumstances where two requirements are met: the beer or spirits are for personal consumption; and the beer or spirits are imported in quantities that are permitted by the laws of the province or territory. In 2012, wine was exempted from the same general prohibition.

According to the Canada Revenue Agency, the *Importation of Intoxicating Liquors Act* was passed in 1928, following the prohibition era, to establish the legal framework for the movement of alcoholic beverages into Canada and between provinces. Moreover, it indicated that the proposed change is analogous to that which removed the federal restrictions on the interprovincial importation of wine in 2012. The Agency noted that the provinces and territories would have to make changes to their legislation in order to permit the importation of alcoholic beverages into their jurisdictions for personal consumption, and that Canadians could ask for greater choice in the marketplace for alcoholic beverages and for changes to legislation through their respective provincial or territorial government. Lastly, the Agency mentioned that – if Bill C-31 is passed – the federal government would inform provincial and territorial authorities, as well as liquor licence boards, about the removal of federal restrictions on the interprovincial movement of alcohol.

Part 6, Division 8 – Amendments to the *Customs Act*

Division 8 would amend the *Customs Act* to make two changes to the provisions that pertain to the appeal and correction process. First, it would extend – from 30 to 90 days – the deadline by which the Minister of Public Safety and Emergency Preparedness or a designated officer may

take corrective measures following a seizure, penalty assessment or ascertained forfeiture. Second, it would streamline the procedure for an appeal by allowing requests to be made directly to the Minister rather than to either the officer who seized the goods or conveyance in question or an officer at the customs office closest to the place where the seizure was executed. Requests to the Minister could be made electronically, if desired. Similar amendments would be made in the case of third-party claims.

The Canada Border Services Agency stated that the proposed change in the deadline would increase efficiency by allowing individuals and businesses to avoid the appeal process in situations where an error has occurred in relation to an enforcement action. The Agency also explained that the proposed change in relation to requests to the Minister would allow it to receive appeals electronically, thereby making appeals more accessible and timely.

Regarding third-party claims, the Canada Border Services Agency provided the example of a rental car company whose vehicle may have been seized as part of an enforcement action against the driver of the vehicle. In such a case, the rental car company would be the third party.

Part 6, Division 13 – Amendments to the *Bank Act*

Division 13 would amend the *Bank Act* to provide the Governor in Council with regulation-making powers regarding a bank's activities in relation to derivatives and benchmarks.

With regard to derivatives, the Department of Finance indicated that the proposed changes are part of the federal government's efforts to reform the over-the-counter derivatives market, with banks being the largest participants in the Canadian market. It noted that, in 2012, the government implemented the central clearing of derivatives and that the Bank of Canada designated LCH.Clearnet Limited, a clearinghouse based in the United Kingdom, as systemically important for derivative transactions. As well, the Department commented that the provinces have introduced requirements to make the reporting of derivatives trades more transparent, and that the Office of the Superintendent of Financial Institutions has guidelines for both banks' derivatives activities and the clearing of derivatives transactions through central counterparties.

The Canadian Bankers Association expressed strong support for the proposed changes, arguing that they would clarify the federal government's authority to regulate derivatives, particularly over-the-counter derivatives. In its view, the proposed definition for the term "derivative" is broad enough to provide the government with the scope to regulate a bank's current and future derivatives activities. The Association noted that there is no retail market for over-the-counter derivatives, and that Canada's five largest banks are involved in more than 95% of the over-the-counter derivatives transactions that take place in Canada. As well, it highlighted that Canadian banks participate in about 2% of the global derivatives market, which is valued at between $600 trillion and $700 trillion. With regard to the Office of the Superintendent of Financial

Institutions, the Association explained that the Office has always had responsibility for supervising banks' derivatives activities, as well as for overseeing Canadian banks and their foreign subsidiaries; furthermore, it has the ability to access data in relation to banks' derivatives transactions, including those with foreign counterparties.

According to the Canadian Bankers Association, the proposed changes would be part of Canada's Group of Twenty commitment to implement a coordinated regulatory reform of the over-the-counter derivatives market, and would indicate – to international regulatory authorities – the framework that Canada intends to use in its regulation of derivatives. As well, it emphasized that it did not believe that the proposed regulations are intended to be used to intervene in the event of a financial crisis. The Association agreed to provide detailed statistics about derivatives transactions in Canada.

Regarding the proposed changes in relation to benchmarks, the Department of Finance mentioned that the allegations concerning the potential manipulation of the London Interbank Offered Rate, known as the LIBOR, in the United Kingdom resulted in an endorsement – by international regulators – of the need for strengthened oversight of financial benchmarks. It indicated that the proposed changes would regulate the data that would be submitted by Canadian banks and the manner in which data are submitted in the setting of financial benchmarks.

According to the Canadian Bankers Association, although it did not request the proposed change in relation to financial benchmarks, it does not have any concerns with it. In its view, the proposed change would demonstrate, to international regulatory authorities, that Canada's federal government and the Office of the Superintendent of Financial Institutions would be participating in establishing or enhancing any practices in relation to the setting of financial benchmarks, particularly the Canadian Dealer Offered Rate.

Part 6, Division 14 – Amendments to the *Insurance Companies Act*

Division 14 would amend the *Insurance Companies Act* to give the Governor in Council the authority to make regulations respecting:

- the process for developing a proposal to convert a mutual insurance company into a company with common shares;
- the circumstances for court intervention in that development process;
- the Superintendent of Financial Institution's authorization of notices to be sent in the context of that development process; and
- additional limitations on ownership of the common shares of a converted mutual insurance company.

The Minister of Finance indicated that the federal government is in the process of drafting a framework for the demutualization of mutual property and casualty insurance companies, and will be holding consultations with stakeholders.

The Department of Finance explained that the proposed regulations would set out the details of the property and casualty demutualization framework. According to it, public consultations were held in 2011 in relation to a proposed framework for demutualization of property and casualty insurers, and future consultations on this proposed framework will be extensive and involve discussions about the rights of policyholders who are not mutual policyholders, including whether they would have the right to vote on a demutualization proposal. As well, the Department indicated that the proposed regulations and framework would address certain unique aspects of mutual property and casualty insurance companies, including the rights of non-mutual policyholders and the potential use of the court to facilitate negotiations among the various types of policyholders.

The Insurance Brokers of Canada noted that mutual insurance policies represent one of every four policies sold in Canada. It expressed support for the proposed changes, arguing that they would give the Governor in Council a clear mandate to establish a framework for demutualization of property and casualty insurers. In its view, a mutual property and casualty insurance company that is proposing demutualization should: provide a clear rationale for wanting to become a publicly held corporation; demonstrate why amalgamations with other mutual insurers, loans and other means of raising capital are not sufficient to meet its needs; and indicate how the same level of quality, cost and continuity of services would be provided to the same range of constituents.

Regarding the relationship between policyholders and the equity of a mutual property and casualty insurer, the Insurance Brokers of Canada explained that there is no direct relationship between the current policyholders and the equity of the company, as the equity consists of assets and surplus that have been built up over generations of policyholders. It argued that all present and past policyholders should be permitted to vote on demutualization, and that voting should occur in accordance with a one policy-one vote model.

The Canadian Association of Mutual Insurance Companies highlighted that Canadian mutual property and casualty insurance companies were formed primarily by farmers between 100 and 175 years ago, and that – as it is the result of accumulated profits over many generations – the surplus of mutual insurance companies belongs to all past generations of policyholders and to the community. As well, it expressed concern that some policyholders only want to pursue demutualization in order to access a portion of the surplus.

According to the Canadian Association of Mutual Insurance Companies, the proposed changes have some shortcomings, and Division 14 should either be amended to address them or removed from Bill C-31 to enable consideration as a separate bill. In relation to the shortcomings, it

believed that the proposed changes should: require all policyholders of a mutual property and casualty insurer to have the right to vote on a demutualization proposal; ensure that any demutualization proposal is subject to supermajority quorum and approval thresholds; recognize that the surplus of a mutual property and casualty insurance company is a common good built up over many generations, with current policyholders unable to receive any part of a surplus to which they have not contributed; and ensure that any issues in relation to a demutualization proposal are resolved by elected officials through legislation, rather than through the courts. It noted that the proposed changes could apply to four federally regulated mutual property and casualty insurance companies.

The Co-operators Group supported the views of the Canadian Association of Mutual Insurance Companies in relation to the rights of all policyholders to vote, and to receive a portion of the mutual property and casualty insurance company's surplus. As well, it argued that no policyholder's portion of the surplus should exceed the value of his/her actuarially determined contribution to the surplus; any surplus remaining after each policyholder has received his/her share should be used to support the mutual insurance industry or mutualist goals. It also emphasized that, while life insurance policies are for longer terms and may have savings options, mutual property and casualty insurers' policies are only for one year; consequently, on an actuarial basis, these policies make an insignificant contribution to the equity of an insurer. It was also concerned that, in the event that all property and casualty insurance companies were to decide to demutualize and become corporations with shares, these profit-oriented insurers would start to focus on urban centres in order to access capital and new policyholders, resulting in fewer insurers and insurance products for rural communities.

According to the Co-operators Group, mutual property and casualty insurance companies that wish to demutualize should be required to demonstrate that all reasonable alternatives to demutualization have been considered, and that demutualization would serve the best interests of all policyholders. It noted that third parties, such as law firms and other groups, may contact policyholders and encourage them to support demutualization in order to have access to the surplus. Lastly, it advocated legislation that would allow mutual and like-minded organizations, such as cooperatives and fraternal benefit associations, to be organized in a manner that would preserve the character of the existing mutual property and casualty insurance company and be an alternative to demutualization.

Economical Insurance – which has 940 mutual policies, about 800,000 non-mutual policies and a surplus of $1.6 billion, as of 14 May 2014 – stated that it began to pursue demutualization in 2010 due to difficulties in raising capital as a mutual property and casualty insurance company, and in competing against large publicly owned Canadian insurance companies and multinational insurers. It explained that an Ontario insurance law requirement, which was repealed in the early 2000s, attached a premium note to mutual policies and made it difficult to sell these types of policies; this premium note allowed the insurer to ask the policyholder to provide additional capital, as required.

Economical Insurance argued that demutualization would allow it to: improve its financial stability and flexibility in raising capital; make improvements to its technological systems; and position the company for consolidation with other insurers. In its view, the interests of the mutual property and casualty insurance industry would be best served by regulations that permit demutualization to be executed effectively and without delay, cost or undue risk of litigation. It also noted that, in its consultation with the Department of Finance, the Department provided a strong indication that the proposed regulations would provide for broad sharing of the surplus and would be in the interest of all policyholders, not just the mutual policyholders.

Part 6, Division 19 – Amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*

Division 19 would amend the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the Act) in various ways.

The Department of Finance stated that, in proposing the changes in Division 19, it was guided by a number of principles: Canada's anti-money laundering and anti-terrorist financing regime (the Regime) should be at the forefront of the global fight against money laundering and terrorist financing; the integrity of Canada's financial system should be safeguarded; and the balance between the need to deter and detect money laundering and terrorist financing on one hand, and the need to protect the privacy and Charter rights of Canadians on the other hand, should be maintained. According to the Department, most of the amendments proposed in Division 19 are related to five themes, which are identified below; other amendments, which were considered to be technical in nature, were not addressed specifically by the Committee’s witnesses.

As well, the Department of Finance noted that, in the coming months, it will be developing regulations to support the 40 legislative amendments proposed in Division 19; consultations about these regulations will be held.

Theme 1 - Closing the Gaps in Canada’s Anti-Money Laundering and Anti-Terrorist Financing Regime

The first theme identified by the Department of Finance was closing the gaps in Canada’s Regime, in respect of which it explained that the proposed changes would ensure that entities considered to be at risk of money laundering activities are covered by the Act. These entities would include businesses dealing in virtual currencies, online casinos, and foreign money services businesses that specifically target the Canadian market for online financial services.

The Canadian Life and Health Insurance Association supported the proposed changes in relation to foreign money services businesses. According to it, an obligation that such businesses adopt

requirements “similar to” those in Canada would avoid potential conflicts resulting from legislative differences among jurisdictions.

The Department of Finance commented on the benefits, for businesses dealing in virtual currencies, of being covered by the Act. It stated that including such businesses in the “regulatory framework” would improve the likelihood that domestic financial institutions would accept them as clients, given that some currently face challenges in accessing financial services due to their “unregulated” status. The Department clarified that these businesses would be treated as money services businesses for purposes of the Act and, as such, would be required to report to and register with the Financial Transactions and Reports Analysis Centre of Canada (the Centre). It also indicated that the forthcoming regulations will specify that the changes proposed in Division 19 would apply to businesses that deal in virtual currencies, such as virtual currency exchanges, and not to retail businesses that accept virtual currencies as a method of payment.

Theme 2 - Strengthening Customer Identification and Due Diligence

The second theme mentioned by the Department of Finance was strengthening customer identification and due diligence. It noted that Division 19 would require reporting entities to identify politically exposed domestic persons on a national and sub-national basis, and to take certain measures when such persons are deemed to be “high risk” with respect to money laundering.

Regarding Canada’s global responsibilities to help combat money laundering and terrorist financing, the Department of Finance noted that – in 2015 – Canada’s Regime will be the subject of a mutual evaluation conducted by the Financial Action Task Force, and that it is working towards addressing any potential deficiencies to ensure that Canada is meeting its international obligations. The Department also explained that the proposed changes relating to politically exposed domestic persons reflect Financial Action Task Force recommendations.

The Canadian Life and Health Insurance Association stated that politically exposed domestic persons should not automatically be considered “high risk,” and proposed that the list of domestic persons considered to be politically exposed be narrowed. For example, in its view, the list could be narrowed by applying a requirement that the reporting entity identify close associates of a person only after it has identified that person as “high risk.”

The Chartered Professional Accountants of Canada cautioned that the amendments proposed in Division 19 would not completely align the Act with the Financial Action Task Force’s recommendation 22, which deals with customer due diligence by designated non-financial businesses and professions. In particular, it noted that recommendation 22 states that accountants should be required to submit a report when they carry out the following two activities: organizing funds for the creation, operation or management of companies; and/or the creation, operation or management of legal persons or arrangements. The Chartered Professional

Accountants of Canada proposed that changes be made to the Act in order that accountants in Canada would be required to report to the Centre when performing such activities.

Theme 3 - Improving Compliance, Monitoring and Enforcement

The proposed measures in relation to the third theme discussed by the Department of Finance – improving compliance, monitoring and enforcement – would include the Centre's ability to receive information provided voluntarily by certain persons or entities with respect to a reporting entity's compliance with Parts 1 and 1.1 of the Act. According to the Department, Division 19 would also include an amendment to the appeal process for cross-border currency reporting programs.

The Chartered Professional Accountants of Canada expressed concern that the proposed change that would enable the Centre to file suspicious transaction reports with the court could discourage reporting entities from filing such reports. It suggested that the name and identifying details of the reporting entity should be redacted or sealed when such reports are filed with the court.

Theme 4 - Strengthening Information Sharing within Canada's Anti-Money Laundering and Anti-Terrorist Financing Regime

The fourth theme identified by the Department of Finance was strengthening information sharing among the Regime's partners. According to the Department, the proposed changes would allow the Centre to disclose information regarding threats to the security of Canada to Canadian law enforcement agencies and the Canada Border Services Agency; at present, the information can be disclosed only to the Canadian Security Intelligence Service. The Department of Finance indicated that the proposed changes are part of the federal government's response to the Air India Inquiry.

The Chartered Professional Accountants of Canada supported the proposed change that would allow the Centre to disclose publicly its involvement in a case that was successfully prosecuted, and advocated additional amendments that would also allow the Centre to make public the details of the suspicious transactions reports relating to that case.

Theme 5 - Bringing Part 1.1 of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* into Force

The fifth and final theme mentioned by the Department of Finance was bringing Part 1.1 of the Act into force; Part 1.1 was introduced by the *Jobs and Economic Growth Act* in 2010. The Department noted that Part 1.1 would allow the federal government to take countermeasures against foreign states and foreign entities that are considered to be "high risk" with respect to money laundering or terrorist financing.

The Chartered Professional Accountants of Canada requested that regulations in relation to Part 1.1 provide sufficient time to enable compliance.

The Costs and Benefits of Division 19 for Reporting Entities

In speaking about the costs and benefits of the changes proposed in Division 19, the Department of Finance argued that the incremental cost of adding the concept of politically exposed domestic persons to the Act would be small, as most federally regulated financial institutions already have client identification procedures in place through their regular risk assessment processes; these procedures would enable them to identify politically exposed domestic persons.

The Department of Finance also discussed the one-for-one rule, whereby an additional compliance burden for reporting entities would be offset by removing a different burden.

The Financial Transactions and Reports Analysis Centre of Canada identified two fraud cases in which it had made contributions that led to convictions. In one case, the fraud exceeded $200 million, while in the other case it exceeded $400 million.

Additional Changes Proposed by Witnesses

In addition to their comments in relation to specific provisions in Division 19, witnesses proposed additional changes to the Regime. For example, in speaking about the links between insurance fraud and organized crime, the Insurance Bureau of Canada requested that the federal government establish protocols that would enable improved communication between public and private organizations.

The Department of Finance stated that, while certain parts of the Act apply to life and health insurance companies, the Act does not apply to property and casualty insurance companies. The Insurance Brokers Association of Canada supported the continued exclusion of these companies from the scope of the Act.

The Canadian Life and Health Insurance Association indicated that, in a risk-based approach for the Regime, reporting entities would be required to take enhanced customer identification and due diligence measures in situations where there are higher risks of money laundering or terrorist financing, with simplified measures employed in situations of lower risk. It argued that, although some of the changes proposed in Division 19 are risk-based, such an approach should be more central to Canada’s Regime.

The Chartered Professional Accountants of Canada stated that most reporting entities are frustrated with the burdensome nature of the Act’s identification standards, particularly in non-face-to-face situations; Canada’s identification standards are higher than those in other countries. According to it, this frustration is not addressed through the proposed changes in Division 19. The Department of Finance indicated that, with a view to minimizing the burden for reporting

entities, it is considering regulatory measures that would address non-face-to-face identification requirements.

Some witnesses suggested that the list of reporting entities under the Act should be expanded. For example, the Chartered Professional Accountants of Canada proposed that all individuals and firms that perform accounting functions in Canada be reporting entities for purposes of the Act. In particular, it suggested that individuals performing the roles of trustee in bankruptcy, receiver, receiver-manager, interim receiver and monitor should be reporting entities. Appearing as an individual, Matthew McGuire proposed that leasing and finance companies also be reporting entities.

Mr. McGuire further suggested that money services businesses should have prudential regulation, and that the civil forfeiture regime should be used more often to prosecute money laundering and terrorist financing crimes.

Division 19 and the Committee's March 2013 Recommendations

A number of witnesses discussed the recommendations made by the Committee in its March 2013 report on Canada's Regime and their link to some of the changes proposed in Division 19.

According to the Department of Finance, the provisions in Division 19 relating to information sharing and enhanced accountability are partly due to some of the Committee's recommendations. It stated that other recommendations made by the Committee will be addressed through the forthcoming regulations and the departmental performance review, the latter of which provides statistics and performance measurements.

With respect to the Committee's recommendation regarding "real time" reporting, the Department of Finance indicated that such a requirement would create a substantial burden for reporting entities, particularly those that are small. The Financial Transactions and Reports Analysis Centre of Canada observed that the Regime partners do not complain about delays in receiving case disclosures when the prescribed timelines are observed. Mr. McGuire asserted that receiving electronic funds transactions reports in "real time" could enable authorities to stop a transaction or impede the flow of further transactions, and that most large reporting entities would be able to report in "real time" quite easily. He indicated that it would be more difficult, and perhaps unwise, to require the submission of suspicious transactions reports in real time; as filing such a report has consequences, reporting entities should give adequate thought before doing so. He suggested that, if a financial institution has filed a suspicious transaction report in relation to a client, it may be less likely to lend to that client in the future.

Regarding the Committee's recommendations with respect to improved cooperation among the various Regime partners, the Department of Finance said that it is developing a risk assessment framework involving all Regime partners; according to it, the framework will improve collaboration among them. The Canadian Life and Health Insurance Association urged the

Department of Finance, the Centre and the Office of the Superintendent of Financial Institutions to continue to work together to provide a clear, consistent and workable framework for the Regime.

Some Committee members were frustrated with the changes proposed in Division 19, feeling that they did not go far enough in addressing the Committee's recommendations in its March 2013 report.

Part 6, Division 22 – Amendments to the *Softwood Lumber Products Export Charge Act, 2006*

Division 22 would amend the *Softwood Lumber Products Export Charge Act, 2006* to clarify how payments to the provinces are to be determined. Under the Act, an export charge is levied on certain softwood lumber products shipped to the United States; some of the revenue is distributed among the provinces from which the softwood lumber products originate.

The Department of Finance explained that the federal government collects export charges on the shipment of softwood lumber to the United States; after retaining an amount to cover federal administration and legal costs, it transfers the remaining amount to the provinces. According to the Department, the proposed change would clarify the cost recovery structure with the provinces under the Canada–U.S. Softwood Lumber Agreement by: allowing federal costs to be carried forward and recovered in future periods; allowing costs to be recovered pursuant to section 40.1 of the *Federal–Provincial Fiscal Arrangements Act* or through voluntary payments to a province; and not requiring the Minister of National Revenue to transfer revenue to a province if that province has an accrued balance with the federal government.

Part 6, Division 24 – Amendments to the *Protection of Residential Mortgage or Hypothecary Insurance Act* and the *National Housing Act*

Division 24 would amend the *Protection of Residential Mortgage or Hypothecary Insurance Act* and the *National Housing Act.* With the proposed changes, the regulatory criteria relating to a guarantee of payment under the *National Housing Act* could apply to an existing insured mortgage or hypothecary loan that has not yet been securitized. The proposed changes would allow regulations to be made that would prohibit the use of government-insured mortgages as collateral in securitization vehicles that are not sponsored by the Canada Mortgage and Housing Corporation, regardless of when the loan was insured.

The Department of Finance explained that the proposed changes would broaden the federal government's ability to create regulations under the *Protection of Residential Mortgage or Hypothecary Insurance Act* and the *National Housing Act*, in part by allowing the creation of regulations that apply to mortgage or hypothecary loans that have already been insured.

According to it, the proposed regulation-making authority would allow the government to introduce regulations that would reduce the extent to which taxpayer funds would be used to cover potential Canada Mortgage and Housing Corporation losses.

Part 6, Division 25 – Amendments to the *Trade-marks Act*

Division 25 would amend the *Trade-marks Act* to add several provisions relating to three international treaties that the federal government seeks to ratify: the Madrid Protocol; the Singapore Treaty; and the Nice Agreement.

The Minister of Finance stated that the proposed changes would reduce red tape for Canadian businesses and simplify Canada's trade-mark registration system.

According to Industry Canada, the changes proposed in Division 25 would implement the Madrid Protocol, which provides a single trade-mark application for many jurisdictions, the Singapore Treaty, which harmonizes trade-marks registration processes across jurisdictions, and the Nice Agreement, which introduces a standardized trade-marks classification system. It indicated that implementation of these treaties would reduce costs and the administrative burden on Canadian businesses, facilitate the expansion of such businesses in foreign markets and encourage foreign investment in Canada. In its view, Division 25 would not change Canada's substantive requirements in relation to trade-marks; rather, administrative practices would be changed.

Industry Canada noted that, in the past 10 years, three consultations have been held with stakeholders in the "intellectual property community" regarding the Madrid Protocol and the Singapore Treaty; however, views differed about how to implement the treaties. Regarding Division 25's proposed change that would eliminate the requirement for businesses to file a paper form declaring how a trade-mark is used, it asserted that the objective is to reduce the administrative burden on businesses. Industry Canada also stressed that, with the elimination of the declaration-of-use requirement, domestic and foreign applicants would be subject to the same registration requirements; under the current system, some foreign applicants are allowed to file for registration without a declaration of use. As well, it emphasized that use of a trade-mark would remain a fundamental principle of Canada's trade-marks regime, in that an application to register a trade-mark requires the applicant to use – or to have the intention to use – the trade-mark in Canada, and that a registered trade-mark can be challenged and cancelled through an administrative process if it has not been used in the first three years following registration. According to Industry Canada, the rate of opposition for trade-mark registration ranges from 2% to 5% each year; it does not expect the rate to exceed 7% or 8% following implementation of the treaties.

Industry Canada noted that "trade-mark trolls" are companies that register trade-marks in order to obtain payment from businesses for the right to use the trade-mark. Regarding a possible

increase in the number of “trolls” following the implementation of the treaties, Industry Canada indicated that it does not expect an increase in the number of trolls in Canada. As well, it said that there is a robust examination system in place to deal with those types of registrations.

Industry Canada also stated that implementing these three treaties was not a precondition for concluding the negotiations for the comprehensive economic and trade agreement between Canada and the European Union; that said, aligning Canada’s administrative practices with those of Europe would reduce the time and costs for Canadian businesses that wish to enter the European marketplace. Regarding the United States’ implementation of the three treaties, Industry Canada explained that – for constitutional reasons – the United States had to create a dual trade-mark registration system: domestic applicants are required to file forms indicating how the trade-mark will be used, while foreign applicants are not required to do so. It suggested that, when compared to foreign applicants, the implementation of a dual system in Canada would impose a greater administrative burden and higher costs on Canadian businesses.

In addition to federal officials, the Committee heard from several witnesses, all of whom had strong reservations with respect to the changes proposed in Division 25.

Canadian Manufacturers & Exporters were concerned that the proposed change to the declaration-of-use requirement would allow applicants that have little or no legitimate interest in a trade-mark to register a trade-mark, and that this registration would be at the detriment of a business that has a genuine intention to use the same trade-mark for commercial purposes. In its view, the proposed changes would shift responsibility for ensuring that trade-marks are used from the Registrar of Trade-marks to trade-mark owners; this shift would increase the costs for businesses, as they would have to augment their monitoring of the trademark registry, as well as initiate opposition and cancellation proceedings.

Regarding the implementation of the three treaties, Canadian Manufacturers & Exporters noted that large companies would most likely benefit from the Madrid Protocol, while smaller companies would mostly likely register using less expensive alternatives. Moreover, while it expressed support for the implementation of the Madrid Protocol, it noted that adoption of the Nice Agreement’s classification scheme could increase filing fees, cause delays and lead to the possible cancellation of a trade-mark due to trade-mark examiners and applicants not being familiar with the classification scheme. It argued that Bill C-31 should be amended to include: a grace period to give businesses and intellectual property professionals sufficient time to familiarize themselves with the Nice Agreement’s classification system; and an appeal process for disputes in relation to the classification of a trade-mark.

The Canadian Chamber of Commerce asserted that the proposed amendment to the declaration-of-use requirement would radically change Canada’s trade-mark law, in that it would replace a use-based system, which protects the goodwill that a trade-mark represents, with a registration-based system. In its view, this proposed change is not required to implement the three treaties,

and would result in: an increase in the number of trade-mark trolls; the trade-mark registry becoming overcrowded with unused trade-marks; and a greater number of disputes between unregistered users of a trade-mark and registered owners of the same trade-mark that do not use it for commercial purposes.

As well, the Canadian Chamber of Commerce emphasized that, while removing the declaration-of-use requirement would allow applications to be processed in a more timely manner, it would put a greater burden on Canadian businesses at the opposition stage when challenging a trade-mark registration. Lastly, the Chamber noted that the *Trade-marks Act* is based on the federal power over trade and commerce; however, without the declaration-of-use requirement for a trade-mark, trade-mark registration would not be based on trade or commerce and, consequently, there could be a risk of a constitutional challenge.

Bereskin & Parr, an intellectual property law firm, also argued that not having the declaration-of-use requirement would make the trade-mark registry overcrowded with unused trade-marks and cause the approval of trade-marks to be more expensive for Canadian businesses. In its view, Canadian intellectual property lawyers oppose the proposed conversion from a use-based system to a registration-based system, and feel that the proposed changes would result in added costs for Canadian businesses that want to oppose a trade-mark registration, and therefore more work for lawyers.

Regarding the United States' implementation of the three treaties, Bereskin & Parr highlighted that the implementation occurred without substantial changes to that country's domestic law; as well, the United States' system ensures that there is bona fide intention to use the trade-mark in the United States. It stated that, although the Madrid Protocol has been in effect in the United States for 10 years, some businesses find it less expensive to register a trade-mark using alternative methods. In its view, Canadian businesses can pursue registration options that are relatively less expensive than that provided in the Madrid Protocol. It acknowledged that the legal profession – in general – does not oppose the implementation of the Madrid Protocol; however, it feels that the *Trade-marks Act* should not be substantially changed in order to implement it. Lastly, it mentioned that improving the efficiency of the Trade-mark Office should be a priority before implementing the Madrid Protocol, as the Protocol imposes strict timelines for applications.

The International Federation of Intellectual Property Attorneys argued that certain changes proposed in Division 25 would represent a foundational restructuring of Canada's trade-mark registration system, and that this restructuring would be detrimental to Canadian trade-mark owners. According to the Federation, the proposed change to the declaration-of-use requirement would lead to: increased costs for businesses due to a greater number of legal challenges with the Trade-mark Office and at the Federal Court; crowding of the trade-marks registry with unused foreign trade-marks; an indeterminate status for registered trade-marks' rights due to the trade-marks being associated with potentially an unlimited number of goods and services; and

constitutional doubt about the validity of the trade-marks regime if registration would be allowed for trade-marks not used in trade or commerce. In its view, the changes proposed in relation to declaration of use are not supported by trade-mark owners and other groups that work with trade-marks; nor do they appear to provide any advantage for Canadian businesses.

Like Bereskin & Parr, the International Federation of Intellectual Property Attorneys noted that the Madrid Protocol is a European tool, and argued that its requirements align more closely with a civil law – rather than a common law – system. As well, in its view, using the Madrid Protocol would only be cost-neutral for a Canadian business if it wished to file in the United States, the European Union and five or six other jurisdictions. It considered the approach taken by the United States regarding the implementation of the three treaties as relevant for Canada, in that the adoption of the Madrid Protocol in the United States occurred with minimal alterations to that country's domestic trade-marks system. With regard to the United States' dual system for registration of trade-marks, the Federation stated that – despite the different registration requirements – both domestic and foreign applicants have to prove bona fide use of the trade-mark by the fifth and sixth years after registration. Lastly, it noted that there are additional enforceable rights in relation to trade-marks under Canada's common law and the *Civil Code* of Quebec, and argued that the proposed changes to the *Trade-marks Act* are not consistent with those rights. The Federation suggested that the clauses that would amend sections 16, 30 and 40 of the *Trade-marks Act* should be removed from Bill C-31.

A group of more than 228 Canadian intellectual property professionals, in a written submission to the Committee, expressed concern about the proposed change to the declaration-of-use requirement. They indicated that, while they do not object to the implementation of the three treaties, they believe that removal of declaration of use as a registration requirement is not required for their implementation. They urged the federal government to hold consultations with stakeholders on this proposed change. Like the International Federation of Intellectual Property Attorneys, they suggested that the clauses that would amend sections 16, 30 and 40 of the *Trade-marks Act*, and related transitional rules, should be removed from Bill C-31 pending further study.

In its written submission to the Committee, the Canadian Bar Association was also concerned about the proposed change to the declaration-of-use requirement, which it believes is not required in order to implement the three treaties. It suggested that the proposed change could be motivated by "internal efficiency" at the Trade-marks Office, rather than by the protection of Canadian business interests. The Association acknowledged that the federal government has held consultations regarding certain aspects of trade-mark law, but noted that consultations have not occurred with respect to the proposed changes that would affect the declaration-of-use requirement; these changes are in clauses 330, 339 and 345 of Bill C-31. It suggested that Division 25 should be removed from Bill C-31 so that the proposed changes could be subject to further consultations.

The Intellectual Property Institute of Canada highlighted, in its written submission to the Committee, that Division 25 proposes a number of positive changes to Canada's trade-marks system, including a proposed expansion in the definition of the term "trade-mark" and an amendment that would permit the correction of errors in the trade-marks register. However, in identifying concerns about the proposed elimination of the declaration-of-use requirement, it proposed that this requirement be maintained in the *Trade-marks Act* or, in the alternative, that further amendments be made that would ensure that an application is based on use or proposed use in Canada; such amendments could include: providing a definition for "propose to use"; requiring foreign applicants to include a declaration of a bona fide intention to use the trade-mark in Canada; and requiring a registrant to file evidence of actual use of the trade-mark after registration or upon renewal. The Institute also identified more than a dozen instances of what it characterized as technical errors and inconsistences in the English and French versions of Division 25, and suggested ways in which they could be addressed.

APPENDIX A: WITNESSES

Thursday, May 1, 2014

Department of Finance:

The Honourable Joe Oliver, P.C., M.P., Minister of Finance;

Brian Ernewein, General Director, Tax Policy Branch;

Toni Gravelle, General Director, Financial Sector Policy Branch;

Pierre Mercille, Senior Legislative Chief, GST Legislation;

Gervais Coulombe, Chief, Excise Policy, Sales Tax Division;

Dean Beyea, Director, International Trade Policy;

Patrick Halley, Chief, Trade and Tariff Policy;

Kevin Wright, Chief, Financial Markets Division;

David Smith, Senior Chief, Capital Markets Policy;

James Wu, Chief, Financial Institutions Analysis;

Michèle Legault, Senior Project Leader, Financial Institutions Division;

Michèle Govier, Chief, Trade Remedies and General Trade Relations.

Health Canada:

Suzy McDonald, Director General, Workplace Hazardous Materials Directorate;

Jason Wood, Director, Policy and Program Development, Workplace Hazardous Materials Directorate;

John Morales, Legal Counsel, Legal Services Unit.

Canada Revenue Agency:

Brian McCauley, Assistant Commissioner, Legislative Policy and Regulatory Affairs Branch.

Canada Border Services Agency:

Tammy Branch, General Director.

Foreign Affairs, Trade and Development Canada:

Colin Bird, Director, Softwood Lumber Division.

Bank of Canada:

Rob Turnbull, Special Counsel, Financial System.

Canada Deposit Insurance Corporation:

Mark Maltais, Director, Treasury and Investment Management.

Wednesday, May 7, 2014

Department of Finance:

David Murchison, Director, Financial Sector;

Rachel Grasham, Chief, Financial Sector Division.

Financial Transactions and Reports Analysis Centre of Canada:

Darlene Boileau, Deputy Director, Strategic Policy and Public Affairs.

Canada Border Services Agency:

Colette Cibula, Director, Recourse Program Management, Recourse Directorate.

Insurance Bureau of Canada:

Garry Robertson, CFE, National Director, Investigative Services.

Insurance Brokers Association of Canada:

Steve Masnyk, Manager, Public Affairs.

Chartered Professional Accountants of Canada:

Matthew McGuire, Chair, Anti-Money Laundering Committee.

Canadian Life and Health Insurance Association:

Frank Zinatelli, Vice President and General Counsel.

Thursday, May 8, 2014

Industry Canada:

Darlene Carreau, Chairperson, Trade-marks Opposition Board;

Anne-Marie Monteith, Director, Copyright and Trade-mark Policy Directorate;

Paul Halucha, Director General, Marketplace Framework Policy Branch.

Canadian Manufacturers & Exporters:

Philip Turi, General Counsel and Director, Global Business Services.

Canadian Chamber of Commerce:

Scott Smith, Director, Intellectual Property and Innovation Policy.

Bereskin & Parr, Intellectual Property Law:

Dan Bereskin, Partner.

International Federation of Intellectual Property Attorneys:

Coleen Morrison, Vice President;

Robert Storey, President, Membership Commission.

Wednesday, May 14, 2014

Canadian Bankers Association:

Marina Mandal, Senior Legal Counsel;

Kenneth Thorlakson, Vice-President and Associate General Counsel, Scotia Bank.

Insurance Brokers Association of Canada:

Steve Masnyk, Manager, Public Affairs.

Canadian Association of Mutual Insurance Companies:

Normand Lafrenière, President.

The Co-operators Group:

Frank Lowery, Senior Vice President, General Counsel and Secretary.

Economical Insurance:

Karen Gavan, President and CEO.

Thursday, May 15, 2014

Canadian Association of Petroleum Producers:

Bob Bleaney, Vice President, Ottawa and Eastern/Atlantic Canada;

Paul Barnes, Manager, Atlantic Canada and Arctic.

Canadian Cancer Society:

Rob Cunningham, Senior Policy Analyst.

Heart and Stroke Foundation of Canada:

Manuel Arango, Director, Health Policy.

Canadian Medical Association:

Dr. Chris Milburn, Member of the Committee on Health Care and Promotion;

Jill Skinner, Associate Director, Public Health.

APPENDIX B: BRIEFS

- The Canadian Bar Association
- Canadian Consumer Specialty Products Association
- Intellectual Property Institute of Canada
- Intellectual Property Professionals in Firms and Businesses Across Canada