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## LEGISLATIVE SUMMARY



### **Bill C-5:**

## **An Act to amend the Canada–Newfoundland Atlantic Accord Implementation Act, the Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act and other Acts and to provide for certain other measures**

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

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

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*Legislative Summary of Bill C-5*  
(Legislative Summary)

Publication No. 41-2-C5-E

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# LEGISLATIVE SUMMARY OF BILL C-5: AN ACT TO AMEND THE CANADA–NEWFOUNDLAND ATLANTIC ACCORD IMPLEMENTATION ACT, THE CANADA–NOVA SCOTIA OFFSHORE PETROLEUM RESOURCES ACCORD IMPLEMENTATION ACT AND OTHER ACTS AND TO PROVIDE FOR CERTAIN OTHER MEASURES

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## 1 BACKGROUND

Bill C-5, An Act to amend the Canada–Newfoundland Atlantic Accord Implementation Act, the Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act and other Acts and to provide for certain other measures (short title: Offshore Health and Safety Act), was introduced in the House of Commons by the Honourable Lisa Raitt for the Minister of Natural Resources and received first reading on 24 October 2013. **After second reading, it was referred to the House of Commons Standing Committee on Natural Resources, which amended the bill and presented its report to the House on 12 February 2014.**<sup>1</sup>

Bill C-5 was previously introduced in the 1<sup>st</sup> Session of the 41<sup>st</sup> Parliament as Bill C-61, which died on the *Order Paper* when Parliament was prorogued on 13 September 2013. At the time, Bill C-61 was awaiting second reading in the House of Commons.

The bill establishes a new occupational health and safety regime applicable to workplaces in the offshore areas of Newfoundland and Labrador and of Nova Scotia.<sup>2</sup> The federal and provincial governments jointly manage oil and gas resources in these offshore areas under bilateral accords. The bill amends the federal Acts implementing these accords and makes other consequential changes. The legislatures of Newfoundland and Labrador and of Nova Scotia have recently amended corresponding provincial Acts implementing the accords.<sup>3</sup>

### 1.1 JURISDICTION OVER OIL AND GAS RESOURCES IN THE OFFSHORE AREAS

For many years, the governments of both Canada and Newfoundland and Labrador claimed jurisdiction over the natural resources on the continental shelf in the offshore area of Newfoundland and Labrador. The issue gained new relevance in 1979 when the first commercial oilfield, Hibernia, was discovered in the area.<sup>4</sup> The Supreme Court of Canada ultimately settled the matter in 1984 when it ruled that “Canada has legislative jurisdiction in relation to the right to explore and exploit in the continental shelf off Newfoundland by virtue of the peace, order, and good government power in its residual capacity.”<sup>5</sup>

In 1985, Canada and Newfoundland and Labrador concluded an agreement to jointly manage oil and gas resources off the coast of that province. Under what is commonly known as the *Canada–Newfoundland Atlantic Accord*,<sup>6</sup> petroleum

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resources in the offshore area of Newfoundland and Labrador are regulated by the Canada–Newfoundland and Labrador Offshore Petroleum Board, with an equal number of members appointed by each of the federal and provincial governments. However, for the purposes of establishing and collecting revenues, including royalties, the petroleum resources in the offshore area of Newfoundland and Labrador are treated as if they were located on land within the province.

In 1986, Canada and Nova Scotia reached a similar agreement, known as the *Canada–Nova Scotia Offshore Petroleum Resources Accord*.<sup>7</sup> This accord established the Canada–Nova Scotia Offshore Petroleum Board to regulate petroleum activities in the offshore area of that province.

The accords are implemented at the federal level by the *Canada–Newfoundland Atlantic Accord Implementation Act* (NL Accord Act) and the *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act* (NS Accord Act)<sup>8</sup> (collectively, the “Accord Acts”). Each of the two provinces has adopted a parallel statute to implement its respective accord.<sup>9</sup>

### 1.2 OCCUPATIONAL HEALTH AND SAFETY IN THE OFFSHORE AREAS

In 1982, the *Ocean Ranger*, a mobile, semi-submersible drilling unit in the Hibernia Field off Newfoundland, sank during a winter storm, resulting in the death of all 84 crew members. A Royal Commission subsequently determined that design deficiencies, inadequate emergency training and poorly enforced safety regulations contributed to the chain of events leading to the disaster.<sup>10</sup> In a report published in 1985, the commissioners made 70 recommendations for improving worker safety in offshore operations.<sup>11</sup> Although many recommendations were implemented swiftly, they were not formally adopted into law until 1992, when Parliament enacted *An Act to amend the Oil and Gas Production and Conservation Act and other Acts in consequence thereof*,<sup>12</sup> which amended both Accord Acts, as well as other legislation.

However, the 1992 amendments resulted in an unforeseen consequence: they limited the application of provincial occupational health and safety legislation in the offshore area if the subject matter addressed by the provincial legislation could be addressed by occupational health or safety regulations made under the applicable Accord Act. Because each Accord Act provides a power to make regulations for the purpose of safety (but not for the purpose of health), occupational safety could be regulated under the Accord Acts, while occupational health was regulated under provincial legislation of general application.<sup>13</sup> Since the concepts of occupational health and occupational safety are often difficult to demarcate, a legal “grey area” existed where it was unclear which authority applied.<sup>14</sup> The governments of Canada, Newfoundland and Labrador, and Nova Scotia therefore agreed that “the Accord Acts should be amended to clarify responsibilities and vest sole authority for occupational health and safety in the Accord Acts.”<sup>15</sup> Accordingly, in 1999, the three jurisdictions embarked on a process to develop the amendments that are now proposed in Bill C-5.<sup>16</sup>



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### 1.3 A PROPOSED NEW OCCUPATIONAL HEALTH AND SAFETY REGIME FOR THE OFFSHORE AREAS

Bill C-5 establishes in law a new occupational health and safety (OHS) regime applicable to the offshore areas of Newfoundland and Labrador and of Nova Scotia. More specifically, the bill repeals the existing provisions of the Accord Acts that address OHS, adds a new “Part III.1 – Occupational Health and Safety” to each Accord Act, and makes numerous related or consequential amendments to the Accord Acts as well as to other federal authorities.

In particular, Bill C-5 amends the Accord Acts to:

- provide a new OHS regime applicable to workplaces in the offshore area by adding a new Part III.1 to the Accord Acts;
- clarify the roles and responsibilities of the federal and provincial governments, offshore petroleum boards, operators, employers, employees and other key parties in the new OHS regime;
- clarify that the new OHS regime applies to workers at offshore workplaces, as well as to workers who are in transit to or from workplaces in the offshore area; and
- provide administrative and enforcement powers to health and safety officers, including powers of inspection and investigation, and the ability to order measures to prevent or to address any OHS dangers.<sup>17</sup>

## 2 DESCRIPTION AND ANALYSIS

Bill C-5 contains 122 clauses. The following description and analysis provides a summary overview of key clauses contained in the bill.

To interrupt reading as little as possible with often complex references to the provisions discussed in this legislative summary, citations have been placed in endnotes, keyed to the relevant headings in the text. References to specific clauses in the bill or sections in the Acts have been placed in the text where it was thought that they would be particularly useful for the reader.

### 2.1 PRELIMINARY MATTERS

#### 2.1.1 PURPOSE<sup>18</sup>

The purpose of the new OHS regime is “to prevent accidents and injury arising out of, linked to or occurring in the course of employment” by:

- allocating responsibility for OHS among all the key players; and
- establishing a framework for these individuals and associations to exercise their rights and carry out their obligations (new section 205.009 of the NL Accord Act and new section 210.009 of the NS Accord Act).

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According to the purpose section included in the proposed OHS provisions, preventative measures should aim first to eliminate hazards, then to reduce risks posed by hazards, and then to take protective measures, all to ensure employee health and safety.

Bill C-5 adds to each of the Accord Acts a new Part III.1, setting out the new OHS regime applicable to the offshore area of that province. It also repeals the existing OHS regime, which was meant to rely largely on provincial legislation applicable in the offshore areas governing such things as human rights, labour standards and workers' compensation and health.

### 2.1.2 DEFINITIONS<sup>19</sup>

Bill C-5 defines numerous terms for the purposes of proposed Part III.1 of each Accord Act, including the following.

A "marine installation or structure" includes a prescribed work and:

- any ship, including a ship used for construction, production or diving or for geotechnical or seismic work (unless it is within a class of prescribed ships or vessels), but not a vessel that provides any supply or service to a ship, installation, structure, work, etc.;
- any offshore drilling unit; and
- any production platform, subsea installation, pipeline, pumping station, living accommodation, storage structure, or loading or landing platform.

A "passenger craft" means "any aircraft or vessel used to transport employees to or from a workplace while – and immediately before – it is transporting them."

As defined in the bill, "workplace" means:

- any marine installation or structure where an employee is employed in connection with a work or activity for which an authorization has been issued;
- any workboat used by an employee, and operated from a marine installation or structure, to perform routine maintenance or repair work in connection with a work or activity for which an authorization has been issued; and
- any dive site from which, and any underwater area at which, a diving operation is conducted by an employee in connection with a work or activity for which an authorization has been issued.

Certain terms, such as "danger," "dive site," "diving operation," and "incident" are not defined in the bill, and remain to be defined by federal regulation made on the recommendation of the Minister of Natural Resources and the Minister of Labour and with the approval of the provincial ministers responsible for OHS.

Some of the other definitions that are set out in Bill C-5 are discussed in relevant portions of this legislative summary.

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Note that for ease of comprehension, the following terms apply to both provincial regimes, and for the purposes of this legislative summary:

- “the Board” means the Canada–Newfoundland and Labrador Offshore Petroleum Board or the Canada–Nova Scotia Offshore Petroleum Board;
- “Part III” refers to an existing part of the Accord Acts, which addresses petroleum operations in the offshore areas; and
- “Part III.1” refers to the new part of the Accord Acts which sets out the new OHS regime and which is added by Bill C-5.

### 2.1.3 APPLICATION<sup>20</sup>

The OHS regime prescribed by Part III.1 of the Accord Acts applies to a workplace situated in the offshore area for the purposes of exploration, production, conservation, or processing of petroleum. It also applies to employees and other passengers while – and immediately before – being transported on a passenger craft to, from, and between such offshore workplaces.

The following federal authorities do *not* apply to these workplaces: Parts II and III of the *Canada Labour Code*, the *Canadian Human Rights Act*, and the *Non-smokers’ Health Act*.

Provincial social legislation also applies to these workplaces, as long as it is not inconsistent with the new OHS regime. Provincial social legislation includes legislation addressing matters such as human rights, labour standards and workers’ compensation and health.

With regard to industrial relations, provincial legislation applies for:

- a marine installation or structure in the offshore area that is, or is becoming, attached or anchored to the seabed;
- a workboat used by an employee and operated from a marine installation or structure for maintenance or repair work; and
- an area where an employee is conducting diving operations.

For all other marine installations or structures, industrial relations are governed by Part I of the *Canada Labour Code*.

Provincial social legislation, including OHS legislation, applies to staff employed by the Board.

### 2.1.4 USE OF ELECTRONIC DOCUMENTS<sup>21</sup>

Bill C-5 provides for (but does not require) the use of electronic documents to satisfy various requirements in Part III.1 to provide a notice, document, consent or other information, if certain specified conditions are met.

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### 2.1.5 FEDERAL AND PROVINCIAL MINISTERS RESPONSIBLE FOR OCCUPATIONAL HEALTH AND SAFETY UNDER THE ACCORD ACTS<sup>22</sup>

The ministers responsible for overseeing the Accord Acts are:

- for the federal government, the Minister of Natural Resources; with respect to OHS matters, the Minister of Labour and/or the Minister of Transport also have responsibilities; and
- for each of the provincial governments, the minister responsible for offshore oil and gas. However, each province's minister responsible for OHS (rather than the minister responsible for offshore oil and gas) is responsible for overseeing Part III.1, which addresses OHS.

The Board is required to comply with a directive relating to OHS issued jointly by the provincial minister responsible for OHS and the federal Minister of Natural Resources, on the recommendation of the federal Minister of Labour.

### 2.1.6 DESIGNATION OF OFFICERS

#### 2.1.6.1 CHIEF SAFETY OFFICER<sup>23</sup>

The existing Accord Acts provide for a Chief Executive Officer of the Board, a Chief Conservation Officer and a Chief Safety Officer. Under Bill C-5, it is no longer permissible for either the Chief Executive Officer or the Chief Conservation Officer to be designated as the Chief Safety Officer.

#### 2.1.6.2 OPERATIONAL SAFETY OFFICERS AND CONSERVATION OFFICERS<sup>24</sup>

The existing Accord Acts provide for the designation of safety officers and conservation officers. Bill C-5 renames safety officers "operational safety officers" (while conservation officers continue under the same name). The change in title emphasizes the responsibility of these officers for *operational safety*<sup>25</sup> (as opposed to OHS) for the purposes of the administration and enforcement of Part III of the Accord Acts.

Under the existing Accord Acts, the Board designates safety officers and conservation officers. Bill C-5 changes this arrangement such that the federal Minister of Natural Resources and the provincial minister responsible for offshore oil and gas are authorized to jointly designate operational safety officers and conservation officers, on recommendation by the Board.

#### 2.1.6.3 HEALTH AND SAFETY OFFICERS<sup>26</sup>

Bill C-5 creates the role of "occupational health and safety officers," who are also known as "health and safety officers," and are responsible for *occupational* health and safety for the purposes of the administration and enforcement of Part III.1 of the Accord Acts. A health and safety officer is an individual recommended by the Board and designated first by the provincial minister responsible for OHS, and then by the federal Minister of Natural Resources.

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### 2.1.6.4 SPECIAL OFFICERS<sup>27</sup>

Under Part III.1, a “special officer” may be designated by the provincial minister responsible for OHS and, in turn, by the federal Minister of Natural Resources, if action is required to avoid a serious risk to the health and safety of employees within the near future, and the risk cannot be avoided through the exercise of other existing powers. The federal minister must be satisfied that such a serious risk exists and that the designated individual is qualified to exercise the powers and carry out the duties and functions of the position.

The Board cannot be held liable for any action or omission of the special officer while carrying out his or her duties or functions, or by any individual who is assisting the special officer.

### 2.1.7 WORKPLACE COMMITTEES AND COORDINATORS

#### 2.1.7.1 WORKPLACE COMMITTEES<sup>28</sup>

Bill C-5 requires every operator to establish a workplace committee for each of its workplaces, or to designate an OHS coordinator if the workplace is established on a temporary basis for six months or less (unless it already has a committee).

A workplace committee must:

- investigate, consider and promptly settle any OHS matters and complaints;
- participate in inspections, investigations and certain activities of health and safety officers under Part III.1;
- maintain minutes of committee meetings and OHS records, and provide copies of the documents to a health and safety officer or any prescribed parties, on request; and
- perform duties as assigned by the Chief Safety Officer or under an agreement between the operator and any employers and employees (or unions).

In addition, a workplace committee may:

- seek to identify any workplace hazards, and advise on procedures to eliminate the hazards, and seek to reduce any related risks or to protect against the hazards;
- advise the operator and employers on the OHS policy, the OHS management system, any OHS programs and procedures, and the provision of personal protective equipment;
- make recommendations for the improvement of OHS at the workplace; and
- accompany a health and safety officer who is inspecting, testing or monitoring anything at the workplace.

The operator selects up to half of the members of a workplace committee, and the employees or union selects the other members from among the non-management employees. The workplace committee is co-chaired by two members – one chosen

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by members selected by the operator and one chosen by members selected by employees or unions. A member of a workplace committee is not personally liable for any action or omission performed in good faith while carrying out the duties or functions of the position. All members of a workplace committee are entitled to paid time off from work to fulfill their duties and functions for the committee, including time off for training.

The workplace committee must meet at least once every month, or more frequently if required by the Chief Safety Officer. The workplace committee may establish its own rules of procedures in accordance with any prescribed requirements. Any disagreement with respect to the proper functioning of the workplace committee is resolved by a final and binding determination of the Chief Safety Officer.

2.1.7.2 OCCUPATIONAL HEALTH AND SAFETY COORDINATOR  
FOR TEMPORARY WORKSITES<sup>29</sup>

An operator must designate a workplace occupational health and safety coordinator (“OHS coordinator”), approved by the Chief Safety Officer, if the workplace is established for a temporary period of six months or less, and if there is not already a committee for that workplace.

The operator must ensure that the OHS coordinator receives the necessary information and training to properly perform the duties and functions of his or her position. The operator must also provide, in printed form, the OHS coordinator’s name and contact information to employees at the workplace. The operator and employers must cooperate with the OHS coordinator, and facilitate communications between the OHS coordinator and employees.

The OHS coordinator performs duties similar to those of a workplace committee, including:

- investigating, considering and promptly settling any OHS matters and complaints;
- assisting the employer in carrying out its duties under Part III.1 related to hazardous materials;
- maintaining records, and providing copies of the records to a health and safety officer or prescribed parties, on request; and
- performing duties as assigned by the Chief Safety Officer.

The OHS coordinator may also make recommendations for the improvement of OHS at the workplace. The OHS coordinator cannot be held personally liable for any actions or omissions carried out in good faith while performing his or her duties or functions.

The OHS coordinator is entitled to paid time off from work to fulfill the duties and functions of the position, including time off for training.

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### 2.1.7.3 SPECIAL COMMITTEES<sup>30</sup>

The Chief Safety Officer may order an operator or an employer to establish a special committee for any particular purpose related to OHS. The order must specify the mandate, duties and functions of the special committee, as well as the responsibilities of the operator or the employer. The functions and the membership of the special committee are specified in Part III.1, and are similar to those of an OHS workplace committee, but with respect to the particular purpose for which the special committee was established. The operator or employer must establish the special committee within 15 days of receiving the order from the Chief Safety Officer.

### 2.1.7.4 RESPONSE TO RECOMMENDATIONS<sup>31</sup>

An operator or employer must respond within 21 days to recommendations made by a committee established for any of its workplaces, if a response was requested by the committee. The response must address whether each recommendation is being accepted, as well as the action that will be taken and date by which it will be taken, or rejected, with reasons for rejecting it. Part III.1 provides for the operator or employer to extend the 21-day response timeline, if necessary, with the committee seeking recourse with the health and safety officer if any such extension is not reasonable.

## 2.2 DUTIES OF OPERATORS, EMPLOYERS, EMPLOYEES, ETC.<sup>32</sup>

Part III.1 of the Accord Acts stipulates that operators have overall responsibility for ensuring health and safety in the workplace. It also identifies other key parties that are responsible for cooperating with each other and coordinating their activities related to OHS: employers, supervisors, employees, suppliers and providers of services, owners and interest holders (each defined, in turn, below).

### 2.2.1 DUTIES OF OPERATORS<sup>33</sup>

An “operator” is defined under the definition sections of the bill as “a person who holds an authorization.” The Board issues authorizations for any work or activity related to the exploration or drilling for or the production, conservation, processing or transportation of petroleum in the offshore area.

#### 2.2.1.1 OPERATORS’ DUTY TO TAKE REASONABLE MEASURES<sup>34</sup>

Every operator must take all reasonable measures to ensure the health and safety of all employees, individuals at its workplaces and passengers being transported to or from a workplace.

#### 2.2.1.2 DUTIES TO ESTABLISH AN OCCUPATIONAL HEALTH AND SAFETY POLICY, MANAGEMENT SYSTEM AND CODE OF PRACTICE<sup>35</sup>

Every operator must develop a written OHS policy governing each of its workplaces that sets out the operator’s commitments with regard to OHS, as well as the responsibilities of each employer at each workplace. The operator, in conjunction

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with the workplace committee and each employer, has a duty to review the OHS policy every three years (new section 205.011 of the NL Accord Act and new section 210.011 of the NS Accord Act).

Every operator must develop a written OHS management system that fosters a culture of workplace safety. The operator must implement and maintain the system, and adapt it to any circumstances as required. The system must execute the operator's OHS policy, and comply with all OHS requirements imposed by authorizations and all provisions of Part III.1. The OHS management system must set out:

- risk management efforts and procedures;
- the roles of workplace committees and of all parties in relation to the implementation of the OHS policy and OHS management system;
- the allocation of sufficient resources to ensure proper quality control, competence and cooperation; and
- procedures for work activities, operations, investigations and audits.

The operator, in conjunction with each workplace committee, must review the system every three years (new section 205.015 of the NL Accord Act and new section 210.015 of the NS Accord Act).

In addition, the Chief Safety Officer may require, in writing, that an operator establish or adopt an OHS code of practice in respect of any of its workplaces, work activities, or transportation procedures. The Chief Safety Officer may revise the code of practice or require the operator to revise it (new section 205.016 of the NL Accord Act and new section 210.016 of the NS Accord Act).

### 2.2.1.3 DUTIES RELATED TO PERSONS AND PASSENGER CRAFTS IN TRANSIT<sup>36</sup>

Every operator must ensure the safety of all employees or other passengers being transported to or from a workplace. Specifically, the operator must:

- provide all parties with information and instruction necessary for their health and safety;
- ensure that all employees are provided with the operator's contact information; an employee who refuses to be transported must immediately contact the operator (see section 2.3.4.1 of this legislative summary);
- ensure that the passenger craft meets all health and safety requirements and is properly equipped with all equipment, devices and materials necessary to ensure the health and safety of employees and passengers; and
- provide all employees and passengers with the necessary personal protective equipment, as well as the information and training needed to properly use the personal protective equipment and other safety devices and materials.



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### 2.2.1.4 DUTY TO NOTIFY OF ACCIDENTS, ETC.<sup>37</sup>

Every operator must notify the Chief Safety Officer of any occupational disease at its workplace, and of any accident, incident or hazardous occurrence at any of its workplaces or on a passenger craft going to or from a workplace that causes (or almost causes) a death or serious injury. The operator must perform an investigation in each case and keep adequate records of the investigation. Each year, the operator must submit a written report that sets out data on all occurrences, including the number of deaths, serious injuries and minor injuries, to each workplace committee and to the Chief Safety Officer, and on request to any special committee established for any of its workplaces.

### 2.2.1.5 OTHER SPECIFIC DUTIES OF OPERATORS<sup>38</sup>

In addition to the duties described above, every operator has specific duties with respect to each of its workplaces, including these:

- Complying with the OHS management system, with OHS requirements of any authorization, and with Part III.1, and ensuring compliance by all other parties at the workplaces. Failures to comply with OHS requirements must be recorded and managed.
- Ensuring that all employees and individuals at the workplace are provided with all necessary training and supervision. The operator must also ensure that necessary protective equipment is provided (with appropriate related training), and that all facilities and equipment are safe.
- Cooperating with, and supporting, workplace committees, the Board and any other parties with duties related to OHS. The operator facilitates communications between employees and committees.
- Ensuring that parts of a workplace are inspected at least once a month, so that the entire workplace is inspected at least once a year. The operator must ensure that the workplace committee participates in these inspections. A record must be kept of each inspection and any subsequent corrective action.

### 2.2.2 DUTIES OF EMPLOYERS<sup>39</sup>

An “employer” is a person, whether natural person, corporation or partnership, “who employs or contracts for the services of any individual in respect of a work or activity for which an authorization has been issued, if that person has the power to exercise direction and control over the individual’s work at the workplace.”

#### 2.2.2.1 EMPLOYERS’ GENERAL DUTY<sup>40</sup>

Every employer must take all reasonable measures to ensure the health and safety of its employees if the workplace is under its control, if the employees’ activities are under its control, or if the employees are being transported (or are about to be transported) on a passenger craft.

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### 2.2.2.2 DUTIES TO DEVELOP AN OCCUPATIONAL HEALTH AND SAFETY PROGRAM AND A CODE OF PRACTICE<sup>41</sup>

Certain employers must develop, implement and maintain an OHS program that fosters a culture of workplace safety for the purpose of implementing the operator's OHS policy. Employers that must meet this requirement include employers who have five or more employees at the workplace, or that are required by the Chief Safety Officer or by regulation to develop an OHS program. The program must be developed in consultation with a workplace committee and must be in writing. It must include provisions regarding:

- the management of risks to the health and safety of employees;
- employee training and supervision;
- the establishment, operations and roles of workplace and special committees;
- the roles and accountability of employers, employees, providers of services and suppliers; and
- procedures related to OHS, including the recording of any failures to comply with the OHS program, the auditing of the program and the implementation of improvements identified by the audits.

In addition, an employer may be required by the Chief Safety Officer to establish an OHS code of practice.

### 2.2.2.3 DUTIES RELATED TO HAZARDOUS MATERIALS<sup>42</sup>

Under Part III.1 of the Accord Acts, a hazardous substance “includes a controlled product and any chemical, biological or physical agent that, by reason of a property that the agent possesses, is hazardous to the health or safety of an individual exposed to it.”

Every employer must ensure proper health and safety practices and procedures are in place with respect to hazardous substances. Specifically:

- hazardous substances must be properly identified, labelled, stored and handled;
- concentrations of hazardous substances must be controlled in accordance with any prescribed standards;
- material safety data sheets must be made available to employees and must disclose specific information with respect to each controlled substance;
- employers must conduct investigations if employees may be exposed to hazardous substances, and all records of exposure must be kept and maintained as prescribed; and
- employers must provide any requested information with respect to any controlled product to which an employee may be exposed to any physician or other prescribed medical professional for the purpose of making a medical diagnosis or rendering medical treatment to an employee in an emergency.

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### 2.2.2.4 OTHER SPECIFIC DUTIES<sup>43</sup>

In addition to the duties described above, each employer has additional specific duties, including:

- coordinating undertakings with the work and activities carried out by the operator and any other employer at the workplace;
- ensuring compliance with the provisions of Part III.1 of the Accord Act and any regulations made under it, with the operator's OHS management system and with the safety requirements of any authorization; the employer must also ensure that all equipment is properly installed, stored and maintained and is safe for its intended use;
- providing all necessary health and safety information, equipment and training to its employees;
- determining risks and impacts of any undertaking, and ensuring that the undertaking is conducted in a manner that minimizes employees' exposure to hazards;
- recording and reporting to the operator all instances of failures to comply with Part III.1;
- cooperating with committees, with the Board and with any other persons with duties or functions under Part III.1, and facilitating communication between parties; and
- ensuring inspections are conducted as required.

### 2.2.3 DUTIES OF SUPERVISORS<sup>44</sup>

A "supervisor" is "an employee who is in charge of a workplace or part of a workplace or who has authority over other employees."

All supervisors must take reasonable measures to ensure the health and safety of employees and other individuals they supervise at the workplace. Specifically, every supervisor must:

- ensure compliance by employees with all provisions of Part III.1 and any regulations made under it;
- if required, provide written instructions to employees with respect to any safety measures and procedures to be followed;
- inform employers and employees of any known or foreseeable health or safety hazards; and
- report to the employer any failure to comply with Part III.1 or with any authorization related to the workplace issued to the operator.

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### 2.2.4 DUTIES OF EMPLOYEES<sup>45</sup>

An “employee” is “an individual who, in return for monetary compensation, performs work or services for an employer in respect of a work or activity for which an authorization has been issued.”

Every employee at a workplace or on a passenger craft must take all reasonable measures to protect his or her own health and safety, as well as that of other individuals at the workplace or on the passenger craft. Specifically, every employee must:

- cooperate with the operator, all employers and employees, the Board and all persons carrying out duties or functions under Part III.1 to ensure the health and safety of individuals at the workplace;
- comply with instructions from his or her employer for the purposes of ensuring OHS at the workplace;
- use and wear personal protective equipment and take all reasonable measures to ensure that other employees do the same;
- comply and cooperate with safety procedures while being transported to and from a workplace on a passenger craft;
- consult and cooperate with workplace committees; and
- report to the employer any thing or circumstance that is likely to be hazardous (new section 205.026 to 205.028 of the NL Accord Act and new section 210.026 to 210.028 of the NS Accord Act).

An employee who comes to the assistance of another individual, or carries out an emergency measure, is not personally liable for any injury or damage that may result from it, unless the injury or damage is a result of the employee’s gross negligence or wilful misconduct (new section 205.029 of the NL Accord Act and new section 210.029 of the NS Accord Act).

### 2.2.5 DUTIES OF SUPPLIERS AND PROVIDERS OF SERVICES<sup>46</sup>

A “supplier” manufactures, supplies, sells, leases, distributes or installs, for commercial gain, “any tool, equipment, machine or device, any biological, chemical, or physical agent or any other prescribed thing, to be used at a workplace or on a passenger craft.”

A “provider of services,” for commercial gain, helps place people at the workplace or provides services (such as engineering or architectural services, or information or advice) that could affect the health and safety of employees or others in the workplace or on a passenger craft.

Every supplier must take all reasonable measures to ensure that anything it supplies for use at the workplace or on a passenger craft is in a safe condition. Anything supplied must meet regulation standards under Part III.1. In addition, the supplier must meet any obligation in an agreement to maintain something in safe condition.

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Similarly, every provider of services must take all reasonable measures to ensure that the services it provides do not endanger any individual at a workplace or on a passenger craft. The provider of services must ensure that individuals it places at the workplace or on the passenger craft have the required qualifications and certifications, that all information provided with respect to its services is accurate, and that any certificate, seal or stamp provided can be relied upon and will not place any person in contravention of the provisions of Part III.1.

### 2.2.6 DUTIES OF OWNERS, INTEREST HOLDERS AND CORPORATE OFFICIALS<sup>47</sup>

An “owner” has “a right, title or interest, including a leasehold interest, recognized by law, in a marine installation or structure that is used or is to be used as a workplace, or any entity in which the person has vested all or any part of their right, title or interest.”

An “interest holder” is the holder of an interest or of a share indicated in the register maintained as described in Part II of the Accord Acts.

Every owner must take measures to ensure that any workplace to which he or she has a right, title or interest (including a leasehold interest) is delivered and maintained in a manner that ensures the health and safety of individuals at that workplace. The owner must assess whether the provisions of Part III.1 are being complied with, and inform the operator of any known or foreseeable health or safety hazards that could assist the operator to reduce any risks.

Every interest holder must take all reasonable measures to ensure that the operator complies with Part III.1, and with any OHS requirements of any authorization related to the workplace.

Every director and officer of a corporation that carries out work under an authorization must take all reasonable measures to ensure that the corporation complies with the provisions of Part III.1 and with any OHS requirements of any authorization related to the workplace.

## 2.3 RIGHT TO KNOW, RIGHT TO PARTICIPATE AND RIGHT TO REFUSE WORK

### 2.3.1 COMMUNICATION OF OCCUPATIONAL HEALTH AND SAFETY–RELATED INFORMATION TO EMPLOYEES AND COMMITTEES<sup>48</sup>

Bill C-5 requires operators and employers to communicate certain information to employees and committees. This information is presented in Table 1.

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Table 1 – Summary of Operators’ and Employers’ Requirements to Communicate Information

Means of Communication	Information to be Communicated by Operator	Information to be Communicated by Employer
Post information in printed form in a prominent place at each workplace  OR Distribute information to each employee at the workplace	<ul style="list-style-type: none"> <li>• OHS policy</li> <li>• Contact information for reporting any OHS concerns to the Board</li> <li>• Names and contact information of the members of any committees established by the operator for that workplace, along with the most recent minutes of the committees’ meetings</li> </ul>	<ul style="list-style-type: none"> <li>• Names and contact information of the members of any special committee, along with the most recent minutes of the committee’s meetings</li> </ul>
Make information readily available at each workplace, in printed or electronic form	<ul style="list-style-type: none"> <li>• Copy of Part III.1 of the Accord Act and any regulations made under it</li> <li>• Document describing the OHS management system</li> <li>• Any code of practice for the workplace required by the Chief Safety Officer</li> <li>• Any information related to equipment, processes and standards used at the workplace or on a passenger craft, along with any related permissions, instructions and conditions.</li> </ul>	<ul style="list-style-type: none"> <li>• Copy of the OHS program for the workplace</li> <li>• Any code of practice for the workplace required by the Chief Safety Officer</li> </ul> <p>This information must also be made available to the operator.</p>
Make information available upon request	<ul style="list-style-type: none"> <li>• Any material enabling employees to understand their rights and responsibilities under Part III.1</li> <li>• Any material incorporated by reference under the regulations made under Part III.1</li> </ul> <p>This information must also be made available to employers and committees, upon request.</p>	<ul style="list-style-type: none"> <li>• Any material enabling employees to understand their rights and responsibilities under Part III.1</li> <li>• Any material incorporated by reference under the regulations made under Part III.1</li> </ul> <p>This information must also be made available to the Board, if required by a health and safety officer.</p>

Every operator and employer must communicate to employees, and the workplace committee, if applicable, any information that the Chief Safety Officer requires, within the time and in the manner specified by the Chief Safety Officer.

Every operator and every employer must immediately notify all committees of any report prepared or received under Part III.1, and must provide any committee and any employee with a copy of the report upon request. The operator or employer may edit the report to protect trade secrets or the medical history of an individual.

Every operator and employer who receives a written request for OHS information from a workplace committee or employee must provide a written response to the request within 21 days (extendible, if necessary). In the case of a request for information by a special committee, the operator and employer are required to respond only if the information requested is necessary for the purpose for which the committee was established.

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### 2.3.2 OBSERVATION OF WORKPLACE MONITORING<sup>49</sup>

A workplace committee may select an employee to observe the monitoring of conditions at the workplace that affect the health or safety of employees, including the set-up or modification of monitoring systems. An operator or employer must give the observer reasonable notice of the commencement of monitoring and access to the workplace, and must explain the monitoring process to the observer, if requested by the observer. An operator or employer need not permit such observation in emergency situations or in respect of continuous or regular monitoring.

### 2.3.3 DUTY TO REPORT OCCUPATIONAL HEALTH AND SAFETY CONCERNS<sup>50</sup>

An employee who reasonably believes that there is a contravention of Part III.1 or any regulation made under it, or that an accident or injury is likely to occur in the course of employment, has a duty to report the concern to his or her supervisor. If the employee and the supervisor cannot resolve the concern between themselves, they may notify the employer, who must, in turn, notify the workplace committee (or OHS coordinator) and the operator. If the concern is still unresolved after the employer is notified, the employee may notify a health and safety officer.

### 2.3.4 RIGHT TO REFUSE WORK

#### 2.3.4.1 REFUSAL TO PERFORM AN ACTIVITY AND REFUSAL TO BE TRANSPORTED<sup>51</sup>

An employee may refuse to perform an activity at a workplace if the employee has reasonable cause to believe that the activity constitutes a danger to the employee or to another individual. However, the employee may not refuse work if the refusal places another individual directly in danger. Similarly, an employee may refuse to be transported on a passenger craft if the employee has reasonable cause to believe that being transported on it constitutes a danger to the employee (new sections 205.05(1), 205.05(2) and 205.054(1) of the NL Accord Act and new sections 210.05(1), 210.05(2) and 210.054(1) of the NS Accord Act).

If an employee refuses to perform an activity, he or she must report the circumstances of the matter to his or her supervisor, who must try to resolve the matter and inform the workplace committee (or the OHS coordinator), the operator and the employer. If the supervisor does not believe that a danger exists, the supervisor must notify the employee (new sections 205.05(3) and 205.05(4) of the NL Accord Act and new sections 210.05(3) and 210.05(4) of the NS Accord Act).

In the case of an employee who refuses to be transported, the employee must notify the operator, who notifies the Chief Safety Officer and all other passengers before they are transported, of the refusal, the reasons for the refusal, and the right to refuse to be transported. The operator must try to resolve the matter by taking any necessary remedial action and informing the workplace committee and the health and safety officer. If the operator does not believe that the transportation is dangerous, it must notify the employee (new sections 205.054(2) to 205.054(5) of the NL Accord Act and new sections 210.054(2) to 210.05(5) of the NS Accord Act).

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If the employee continues to refuse either to work or to be transported, the following parties are notified: the employer, the workplace committee (or OHS coordinator), the operator, any provider of service who placed the employee, and the health and safety officer (new sections 205.05(5), 205.05(6) and 205.054(6) of the NL Accord Act and new sections 210.05(5), 210.05(6) and 210.054(6) of the NS Accord Act).

The workplace committee (or OHS coordinator) may make recommendations, and the health and safety officer must inquire into the matter (taking into account any such recommendations) and render a decision in writing. If the health and safety officer decides that the activity or transportation is dangerous, he or she may make an appropriate order to address the danger. If the health and safety officer decides that the activity or transportation is not dangerous, the employee is not entitled to continue to refuse to perform the activity or to be transported (new sections 205.05(7) to 205.05(10) and 205.054(7) to 205.054(10) of the NL Accord Act and new sections 210.05(7) to 210.05(10) and 210.054(7) to 210.054(10) of the NS Accord Act).

The employer may assign equivalent work to the employee, and must continue to pay the employee at the same wage and benefits, while the matter is being resolved. The employee is not entitled to compensation if he or she refuses to perform the equivalent work, or if after all avenues of redress have been exhausted by the employee, it is determined that the employee refused to work or to be transported knowing that no circumstances existed that would warrant the refusal (new sections 205.052(1) to 205.052(4), 205.052(6) and 205.054(1) to 205.054(5) of the NL Accord Act and new sections 210.052(1) to 210.052(4), 210.052(6) and 210.054(1) to 210.054(5) of the NS Accord Act).

During the resolution period, if the employer requests another employee to perform the same activity that is being refused, the employer must advise the other employee of the first employee's refusal, the reasons for the refusal and the right to refuse work (new section 205.052(5) of the NL Accord Act and new section 210.052(5) of the NS Accord Act).

Subject to any collective agreement, the compensation of any employees who are affected by a work stoppage because of an employee's refusal to perform an activity will not be affected. However, the affected employees may be assigned reasonably equivalent work (new section 205.053 of the NL Accord Act and section 210.053 of the NS Accord Act).

### 2.3.4.2 PREGNANT OR NURSING EMPLOYEES<sup>52</sup>

An employee who is pregnant or nursing may refuse to work if she believes that the work may pose a risk to her health, or that of her foetus or child. The employee may also request a modification of functions of her employment position, or a reassignment to another job, during the period from the beginning of the pregnancy to the end of the 24<sup>th</sup> week following the birth of her child. Bill C-5 sets out a procedure for notification, providing a medical certificate and reassigning the employee or modifying her functions, while maintaining her status, wages and benefits. If the employer concludes that reassignment or modification of the employee's functions is not feasible, the employee is entitled to a leave of absence for the duration of the risk indicated in the medical certificate.



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### 2.3.5 PROHIBITION AGAINST REPRISAL ACTIONS<sup>53</sup>

A “reprisal action” is an action taken against an employee for having acted in accordance with Part III.1 (or of regulations, an order or a decision made under Part III.1) that adversely affects the employee’s terms or conditions of employment or opportunity for employment or promotion.

Bill C-5 prohibits any operator, employer, provider of service or union from taking, or threatening to take, reprisal action against an employee. For example, no reprisal action can be taken against an employee who:

- seeks to establish or participate in a committee;
- acts as an observer for workplace monitoring;
- reports an OHS concern;
- exercises his or her right to refuse to perform a work activity or to be transported if he or she believes there is a danger to his or her health or the health of others; however, disciplinary action can be taken against an employee if it can be demonstrated that the employee has wilfully abused these rights;
- requests modified work activities or a reassignment because of pregnancy or nursing;
- seeks to access information to which he or she is entitled under Part III.1;
- testifies in a proceeding or inquiry under Part III.1; or
- provides information in accordance with Part III.1 or under Part III as it relates to safety.

### 2.3.6 APPLICATIONS OR COMPLAINTS

#### 2.3.6.1 APPLICATIONS OR COMPLAINTS BY THE EMPLOYEE<sup>54</sup>

Bill C-5 provides recourse for an employee who claims that:

- an employer or provider of services has failed to pay wages or grant benefits to the employee that are required under various provisions in Part III.1 (such as while the employee is refusing to work or be transported due to danger, or while performing workplace committee activities or training, etc.); or
- reprisal action has been taken or threatened against the employee. (In a proceeding or on an enquiry into such a complaint, the burden of proving that no reprisal action has been taken or threatened is on the person or organization against whom the allegation is made.)

An employee should present such a grievance under any applicable and relevant collective agreement that provides for final and binding arbitration in such matters. An employee who exercises this right within the time permitted under the collective agreement may not take the further steps set out in Table 2 in respect of the same subject matter unless it is determined that the arbitrator does not have jurisdiction to hear the grievance.

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Table 2 presents a summary of the process for employees to seek further recourse, depending on the relevant offshore area.

Table 2 – Summary of Process for Employee Applications (Newfoundland and Labrador) or Complaints (Nova Scotia)

Steps in the Application or Complaint Process	Process Related to the Newfoundland and Labrador Offshore Area	Process Related to the Nova Scotia Offshore Area
Initiation of process	An employee may apply, personally or through a representative, to the provincial labour relations board for a determination of the matter in accordance with the rules of practice and procedure under that province's <i>Labour Relations Act</i> . The application must be made within 90 days of the grounds for the application becoming known, or within 90 days of an arbitrator's final determination that the arbitrator does not have jurisdiction, if applicable. Costs incurred by the provincial labour relations board are borne by the Canada–Newfoundland and Labrador Offshore Petroleum Board.	An employee may, either personally or through a representative, make a complaint in writing to a health and safety officer. The health and safety officer must make an inquiry into the complaint to determine if it is justified, in accordance with the provisions of the NS Accord Act. The complaint must be made within 90 days of the grounds for the complaint becoming known, or within 90 days of an arbitrator's final determination that the arbitrator does not have jurisdiction, if applicable.  A health and safety officer may also carry out an enquiry on his or her own initiative, if the officer is of the opinion that grounds for a complaint exist.
Dismissal of the application or complaint	If the provincial labour relations board dismisses the application, it must immediately notify the applicant, the Chief Safety Officer and the operator, as well as the employer, the provider of services, the person or the organization that is the subject of the application.	If the health and safety officer determines that the complaint is not justified, he or she must immediately notify the operator and the complainant, as well as the employer, the provider of services or the union that is the subject of the complaint.
Decisions made in favour of the employee	If the provincial labour relations board agrees that the employer or provider of services failed to pay wages or grant benefits as required, or that a person or organization has taken (or has threatened to take) reprisal action against the employee as prohibited under Part III.1, it may order the employer or provider of services to take any measures necessary to remedy the situation.  Orders may include the payment of wages, the granting of benefits, the reinstatement of the employee's existing terms and conditions of employment, the removal of any reprimand, or an explicit prohibition of a threatened reprisal action.  The order must specify the provisions of Part III.1 (or any regulations made under it) that were breached.  The provincial labour relations board must also provide a copy of the order to the Chief Safety Officer.	If the health and safety officer decides that the employer or provider of services has failed to pay wages or grant benefits as required, or that an operator, employer, provider of services or union has taken (or has threatened to take) reprisal action against the employee as prohibited under Part III.1, the health and safety officer may order the employer or provider of services to take measures necessary to remedy the situation.  Orders may include the payment of wages, the granting of benefits, the reinstatement of the employee's existing terms and conditions of employment, the removal of any reprimand, or an explicit prohibition of a threatened reprisal action.  The order must specify the provisions of Part III.1 (or any regulations made under it) that were breached.

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### 2.3.6.2 APPLICATIONS BY THE EMPLOYER<sup>55</sup>

An employer or a provider of services may apply in writing for a determination as to whether an employee received wages and benefits while refusing to work or to be transported, knowing that no circumstances existed that would warrant the refusal. The burden of proof is on the employer or the provider of services.

The application must be made to the provincial labour relations board in Newfoundland and Labrador, or to a health and safety officer in Nova Scotia, within 30 days after the employee has exhausted all avenues of redress.

The provincial labour relations board or the health and safety officer may dismiss the application or determine that the employee has wrongfully received wages and benefits. In either case, the provincial labour relations board or the health and safety officer must immediately give notice of the decision to the applicant, the Chief Safety Officer, the operator and the employee. If it is determined that the employee has wrongfully received wages and benefits, the employer or provider of services may require repayment of any wages and benefits from the employee.

## 2.4 ACTIVITIES OF THE BOARD AND THE CHIEF SAFETY OFFICER

### 2.4.1 RESEARCH STUDIES AND PROGRAMS<sup>56</sup>

In conjunction with federal, provincial and foreign governments and agencies, or alone, the Board may undertake research and commission studies related to OHS, occupational injury and illness causes and preventative measures. The Board may also implement programs to prevent or reduce occupational illness and injury, including medical monitoring and examination programs, and it may issue guidelines with respect to the application of Part III.1.

### 2.4.2 AUTHORIZATIONS<sup>57</sup>

Under the existing Accord Acts, an applicant seeking authorization from the Board for a work or activity must provide the Board with a declaration relating to the fitness of the equipment, the appropriateness of operating procedures and the qualifications and competency of personnel. Bill C-5 repeals a provision allowing the declaration to come from the owner of the equipment rather than from the applicant for the authorization.

Bill C-5 also adds a new requirement that the Board send a copy of an application for an authorization for a work or activity, or an application to amend such an authorization, to the Chief Safety Officer. Upon receipt of an application for an authorization, the Chief Safety Officer must consider the potential impact of the activity on the health and safety of employees and make a written recommendation to the Board. The Board must take into account this recommendation in deciding whether to issue or amend an authorization. The Board may add requirements related to OHS to any authorization.

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### 2.4.3 ADDITIONAL ACTIVITIES BY THE BOARD<sup>58</sup>

Activities of the Board relating to OHS must be included in the Board's annual report to the federal Minister of Natural Resources and the relevant provincial minister.

If the Board has reason to believe that an interest owner<sup>59</sup> or holder is failing, or has failed, to meet a requirement under Part III.1, it may give notice requiring compliance within 90 days. If the interest owner or holder fails to comply within the given time, the Board may cancel the relevant interest or share in the interest.

The Board may suspend or revoke an operating licence or an authorization for failure to comply with a relevant requirement, approval, fee or deposit, including a relevant requirement relating to OHS.

### 2.4.4 SUBSTITUTIONS<sup>60</sup>

An application to substitute equipment, methods, measures, standards or other things at the workplace or on a passenger craft, in lieu of those required by regulations made under Part III.1, may be made to the Chief Safety Officer. The application must include information with respect to any health and safety consequences that may reasonably be foreseen if the substitution takes effect. Bill C-5 specifies procedures with respect to the application.

The Chief Safety Officer may grant the application for a specified time and subject to specified conditions, if he or she is satisfied that the health and safety of employees at the workplace would not be negatively affected by the substitution and if the granting of the permission is not prohibited by regulation. The Chief Safety Officer must inform the applicant, the operator and the public as soon as the decision is made. A substitution made under this section does not constitute a contravention of the regulations made under Part III.1.

The Chief Safety Officer may reconsider his or her decision at any time if new information is made available that, had it been known at the time of making the decision, would reasonably be expected to have resulted in a different decision.

## 2.5 ADMINISTRATION AND ENFORCEMENT

As described below, Bill C-5 sets out powers of health and safety officers under Part III.1 of the Accord Acts, and of operational safety officers and conservation officers under Part III of the Accord Acts. Unless otherwise specified, the term "Officer" means any of the following: a health and safety officer, an operational safety officer, a conservation officer, the Chief Safety Officer or the Chief Conservation Officer.

### 2.5.1 VERIFYING COMPLIANCE<sup>61</sup>

For the purpose of verifying compliance under Part III or Part III.1, an Officer may enter and inspect a place used for a work or activity. The Officer has powers to do various things, including pose questions, conduct tests, take samples, remove anything for examination, take photographs or measurements, use any computer

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system, prepare a document, use copying equipment, be accompanied by any individual, and meet in private with any individual (with his or her agreement). The Officer may also order a specified person in charge of the workplace to take similar steps. The Officer must provide a written report to the operator about anything inspected, tested or monitored at the workplace. A health and safety officer must also provide such a written report (edited, to protect trade secrets and the medical history of any person) to each employer at a workplace.

### 2.5.1.1 ENTERING LIVING QUARTERS<sup>62</sup>

“Living quarters” are defined in Bill C-5 as “sleeping quarters provided for the accommodation of employees on a marine installation or structure or a passenger craft, and any room for the exclusive use of the occupants of those quarters that contains a toilet or a urinal.”

In general, health and safety officers and operational safety officers, including the Chief Safety Officer, are not authorized to enter living quarters without the occupant’s consent and without reasonable notice. Exceptions exist in certain circumstances, such as under the authority of a warrant or to ensure the safety of employees (for health and safety officers) or of the quarters (for operational safety officers). Conservation officers, including the Chief Conservation Officer, are not authorized to enter living quarters.

A justice of the peace may issue a warrant to authorize entry into living quarters or to authorize authority to open a locker. Warrants may be issued by any means of telecommunication on information submitted by any such means.

### 2.5.1.2 ASSISTANCE TO OFFICERS<sup>63</sup>

Every person at a place entered by an Officer must provide the Officer with all assistance that is reasonably required to enable the Officer to verify compliance with Part III.1. The operator must provide an Officer who is verifying compliance in the workplace with suitable transportation, accommodation and food. A health and safety officer who is inspecting, testing or monitoring anything in a workplace must give an employer representative and an employee representative an opportunity to accompany the officer in carrying out those activities.

### 2.5.2 SEARCHING AND SEIZING<sup>64</sup>

A justice of the peace may issue a warrant (including by any means of telecommunication) on *ex parte* application<sup>65</sup> that authorizes an Officer or other named person to enter a place, and search for and seize anything, if there are reasonable grounds to believe that the place contains evidence of the commission of an offence under Part III.1 or Part III of the Accord Act. In urgent circumstances, it is not necessary for the Officer to first obtain a warrant. The individual executing the warrant at a workplace is to be provided with suitable transportation, accommodation and food. Anything seized may be stored on site or elsewhere, at the expense of the owner. If the thing is perishable, it may be destroyed or disposed of.

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### 2.5.3 NON-DISTURBANCE OF SCENE<sup>66</sup>

No person may disturb anything related to an incident that resulted in serious injury or death at a workplace or involving a passenger craft, unless authorized by a health and safety officer, or unless the disturbance is required to attend to individuals who are injured or killed, or to prevent further injury or damage to property.

### 2.5.4 DISCLOSURE OF INFORMATION<sup>67</sup>

No person may make a false or misleading statement, or provide false or misleading information, to a health and safety officer in connection with a matter under Part III.1, nor may he or she obstruct or hinder the officer. No person may prevent an employee from providing relevant information to a health and safety officer, the Board, or to any person or committee with duties or functions under Part III.1 (new sections 205.077 and 205.078 of the NL Accord Act and new sections 210.078 and 210.079 of the NS Accord Act).

Subject to various exceptions, no person may disclose:

- results of activities carried out by or on the order of a health and safety officer to verify compliance with Part III.1 or search for and seize evidence of non-compliance with that part;
- the identify of an individual who communicated information in confidence; or
- trade secrets that become known to a health and safety officer.

Exceptions provide that such information, insofar as it relates to safety, may be communicated for the purposes of Part III.1 or Part III. The Chief Safety Officer may disclose certain information to officials of Canadian or foreign governments or governmental agencies if he or she is satisfied that the disclosure is in the interest of health and safety. Conversely, officials of the federal government or of an agency of the federal government may disclose certain information to the Chief Security Officer in the interest of health and safety. Conditions may be placed on the disclosure of information.

The federal Minister of Natural Resources and the provincial minister responsible for OHS may access a record under the control of the Board without requiring the written consent of the person to whom the information relates. However, the ministers may not further disclose the information without the individual's consent.

The Board may disclose certain information under its control if the disclosure is in the public interest, after consulting with the Chief Safety Officer and considering any potential harm that may result from the disclosure.

The Chief Safety Officer, governments, ministers and the Board must not disclose the medical history, or other information provided by regulation, of an identifiable individual (new sections 205.083 to 205.089 of the NL Accord Act and new sections 210.084 to 210.09 of the NS Accord Act).

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### 2.5.5 LEGAL PROCEEDINGS INVOLVING HEALTH AND SAFETY OFFICERS<sup>68</sup>

Only with written permission of the Board may a health and safety officer, and any individual who has accompanied or assisted the officer, be obligated to give testimony in civil or administrative proceedings that are not proceedings under Part III.1.

No action can be taken against a health and safety officer, or any individual accompanying or assisting the officer, for anything done or omitted to be done by the officer or individual while carrying out their duties and functions in good faith.

### 2.5.6 ORDERS OF HEALTH AND SAFETY OFFICERS<sup>69</sup>

If a health and safety officer is of the opinion that a requirement under Part III.1 is being, or has been, contravened, the health and safety officer may order a person to stop the contravention and ensure that the contravention does not reoccur. Similarly, a health and safety officer who is of the opinion that an activity is dangerous must order any person to correct the hazard or dangerous condition or to take measures to protect anyone from the danger. If the health and safety officer is of the opinion that measures cannot be taken immediately, the health and safety officer may order any person not to use a place, operate a thing or perform an activity until the danger is addressed. The health and safety officer must post a notice of danger in the area of the danger.

The health and safety officer must give a copy of any such order to the person to whom it relates as well as to the operator. The person must submit to the health and safety officer a notice describing his or her compliance with the order, unless the health and safety officer decides such notice is unnecessary. Bill C-5 provides further details with respect to providing copies of the order and posting it, including editing it to protect any trade secrets and personal medical information. Such an order is not a statutory instrument.

In the event of inconsistent orders, an order made by a health and safety officer prevails over an order made by an operational safety officer, a conservation officer and the Chief Conservation Officer. However, an order made by a special officer prevails over an order made by a health and safety officer and the Chief Safety Officer.

### 2.5.7 REVIEW AND APPEALS<sup>70</sup>

A health and safety officer's order (described in section 2.5.6 of this legislative summary) or decision (that an employee is not entitled to refuse to perform an activity or to refuse to be transported) may be reviewed by the Chief Safety Officer upon application. An application for review of an order or decision does not stay the order or decision. The Chief Safety Officer's written decision on the matter is final and binding, unless it is overturned on review or appeal.

In addition, such orders of a special officer, and certain orders and decisions of the Chief Safety Officer, may be appealed to the Labour Relations Board in Newfoundland and Labrador or to the Labour Board in Nova Scotia.

## LEGISLATIVE SUMMARY OF BILL C-5

Bill C-5 provides details regarding the conduct of reviews and appeals in each province.

### 2.5.8 ENFORCEMENT OF ORDERS<sup>71</sup>

In Newfoundland and Labrador, an order to pay wages or grant benefits or to reinstate an employee after reprisal action, and an order made in connection with an appeal to the provincial Labour Relations Board, may be enforced by making such order an order of the Supreme Court of Newfoundland and Labrador following the rules of practice and procedure established under the provincial *Labour Relations Act*.

Similarly, in Nova Scotia, an order of a health and safety officer requiring payment of wages or benefits that has not been appealed may be enforced by making it an order of the Supreme Court of Nova Scotia following the rules of practice and procedure established under the provincial *Occupational Health and Safety Act*. The Chief Safety Officer may request the Director of Labour Standards designated under the *Labour Standards Code* to enforce such an order.

### 2.5.9 OFFENCES AND PENALTIES<sup>72</sup>

Bill C-5 creates new offences under Part III.1 of the Accord Acts for:

- a contravention of any provision under Part III.1 or any regulation made under it;
- a false entry or statement;
- the destruction, damage or falsification of any report, record or document; and
- failure to comply with an order of a health and safety officer, with certain decisions and requirements of the Chief Safety Officer, or with an order of the provincial Labour Relations Board in Newfoundland and Labrador or with the provincial Labour Board in Nova Scotia (new section 205.104(1) of the NL Accord Act and new section 210.106(1) of the NS Accord Act).

In addition, Bill C-5 provides offence and penalty provisions for Part III.1 of the Accord Acts, and adds to the existing offence and penalty provisions in Part III of the Accord Acts. Some of the principal provisions are described below.

A person who is involved in the contravention of an OHS requirement of an authorization is not guilty of an offence unless compliance is necessary to protect OHS. Further, a person is not guilty of an offence under Part III or Part III.1 if he or she establishes that he or she exercised due diligence to prevent the commission of the offence (new sections 194(3), 205.104(3) and 205.104(5) of the NL Accord Act and new sections 199(3), 210.106(3) and 210.106(5) of the NS Accord Act).

Under Part III.1, information recorded by an individual with respect to non-compliance and corrective action taken may not be used to incriminate that individual in any criminal proceeding initiated against him or her, other than a prosecution under the *Criminal Code* for perjury, giving contradictory evidence, or fabricating evidence of the *Criminal Code* (new section 205.104(4) of the NL Accord Act and new section 210.106(4) of the NS Accord Act).



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If a corporation commits an offence under Part III or Part III.1, any officer, director, agent or other individual in a managerial or supervisory function in the corporation may be held liable on conviction, if that person directed, participated in, or otherwise acquiesced in the commission of the offence, whether or not the corporation has been prosecuted or convicted. Establishing that an employee or agent of the corporation committed the offence is sufficient proof that the corporation committed the offence, whether or not the individual is identified or has been prosecuted for the offence (new sections 195 and 205.105 of the NL Accord Act and new sections 200 and 210.107 of the NS Accord Act).

These are the penalties for the offences under Part III.1:

- On summary conviction: A fine of up to \$100,000, imprisonment for a maximum term of one year, or both. No imprisonment may be imposed in default of payment of the fine on conviction under Part III.1 or under Part III (new sections 195.1, 205.104(2)(a) and 205.106 of the NL Accord Act and new sections 200.1, 210.106(2)(a) and 210.108 of the NS Accord Act).
- On conviction on indictment: A fine of up to \$1 million, or imprisonment for a maximum term of five years, or both (new section 205.104(2)(b) of the NL Accord Act and new section 210.106(2)(b) of the NS Accord Act).

If one of the offences in Part III.1 is committed or continued over the course of many days, it constitutes a separate offence for each day on which it is committed or continued (new section 205.112 of the NL Accord Act and new section 210.114 of the NS Accord Act).

The limitation period for instituting proceedings by way of summary conviction for an offence under Part III or Part III.1 is three years, unless the prosecutor and defendant agree otherwise. Previously, the limitation period under Part III was two years (amended section 199 and new section 205.113 of the NL Accord Act and amended section 204 and new section 210.115 of the NS Accord Act).

In addition to these penalties, under Part III or Part III.1 a court may order an offender to do, or not do, for up to three years, any number of other listed things, including comply with any conditions that the court considers appropriate in the circumstances for securing the offender's good conduct and for preventing the offender from committing another offence (new sections 195.2 and 205.107 of the NL Accord Act and new sections 200.2 and 210.109 of the NS Accord Act).

If the same person commits more than one offence under either Part III or Part III.1, all the offences may be tried concurrently and one conviction for all the offences may be made (new sections 202.1 and 205.117 of the NL Accord Act and new sections 207.1 and 210.119 of the NS Accord Act).

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### 2.6 ADVISORY COUNCIL AND MINISTERIAL OVERSIGHT

#### 2.6.1 ADVISORY COUNCIL<sup>73</sup>

Bill C-5 creates an advisory council in each of the provinces to advise the Board, the federal Minister of Natural Resources and the federal Minister of Labour and their provincial counterparts, on the administration and enforcement of Part III.1, as well as on any other OHS matter referred to the council.

The advisory council is composed of:

- representatives of employees (4);
- representatives of industry (4);
- representatives of the Government of Canada (2);
- representatives of the government of the province (2); and
- the Chief Safety Officer *ex officio*, or his or her representative.

Half of the members of the advisory council are appointed by the federal ministers, and half by the provincial ministers. The advisory council must select two chairpersons from among its members – one is to be selected by employee representatives, and the other by industry representatives. Members are appointed for a term of up to five years, and may be reappointed. At the discretion of the ministers, members of the advisory council may be remunerated and paid for any reasonable travel and living expenses by the Board.

#### 2.6.2 AUDITS<sup>74</sup>

The federal Minister of Natural Resources and the provincial minister responsible for OHS may, jointly or independently, appoint an auditor to measure and report on the effectiveness of the Board in carrying out its duties and functions under Part III.1. The cost of the audit may be borne by the minister who requested the audit or by the Board, if the audit has been jointly requested.

For the purposes of any audit, the auditor is entitled to:

- access, require and receive information, reports and explanations necessary to the fulfillment of his or her responsibilities; and
- examine an individual on oath on any matter regarding the effectiveness of the Board. For the purposes of such an examination, the auditor may exercise all of the powers of a commissioner under Part I of the federal *Inquiries Act*.

The auditor must provide a report of any audit to the ministers and the Board as soon as practicable. Within 60 days of receiving the report, the Board must provide a written response to the report to the auditor and to the ministers.

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### 2.6.3 INQUIRIES<sup>75</sup>

The federal Minister of Natural Resources and the provincial minister responsible for OHS, jointly or independently, or the Board, may appoint one or more individuals to inquire into and report on OHS matters under Part III.1. The cost of the inquiry may be borne by the minister who requested the inquiry or by the Board, if the inquiry has been jointly requested. Witnesses may be paid fees, travel and living expenses according to the tariff of fees used in the relevant provincial court.

Unless an individual was appointed solely by the provincial minister, the individual has all of the powers that are, and that may be, conferred on an appointed commissioner under Part I and section 11 of the federal *Inquiries Act*. Within 60 days of receiving a report from the appointee(s), the Board must provide a written response to the ministers.

Under the existing Accord Acts, the Board may direct an inquiry into a petroleum spill, debris, accident or incident in an offshore area resulting in death, injury or danger to public safety or to the environment. Bill C-5 provides that, if the minister(s) who initiated an OHS inquiry determines that an inquiry is already being conducted in respect of the same matter, the minister(s) may direct the Board to terminate the inquiry in progress and to provide any records or evidence collected to the minister(s)'s appointee(s) for the OHS inquiry.

### 2.6.4 REGULATIONS<sup>76</sup>

The Governor in Council may make regulations to carry out the purposes and provisions of Part III.1, on the recommendation of the federal Minister of Natural Resources and the federal Minister of Labour, who have consulted with, and received approval from, the provincial minister responsible for OHS. Any regulation made in respect of a passenger craft, or of employees and other passengers on a passenger craft, also requires the recommendation of the federal Minister of Transport.

Regulations may be made applicable to all persons or to one or more classes of persons, and they may incorporate materials by reference.<sup>77</sup> Regulations may be made to address the following:

- establishing requirements for an OHS management system or OHS program;
- respecting the manner in which an operator must investigate occupational diseases, accidents, incidents or other hazardous occurrences;
- respecting the establishment of OHS procedures, measures, codes of practice and standards, and specifying who is responsible for ensuring compliance with measures, codes of practice and standards;
- respecting the qualifications of various persons;
- respecting the provision of facilities, potable water, sustenance and first-aid and health services;
- respecting the prevention of, and protection against, violence at the workplace;

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- specifying the manners, forms and procedures for record maintenance, communication of information, medical monitoring and examinations;
- specifying procedures, equipment, methods, measures, standards or other things governing a Chief Safety Officer's power of substitution;
- respecting the operation of an advisory council established under Part III.1; and
- any other matter that may be prescribed through regulation under Part III.1.

A copy of each regulation must be published in the *Canada Gazette* to give opportunity to interested persons to make any representations to the federal Minister of Natural Resources.

### 2.7 OTHER, TRANSITIONAL, CONSEQUENTIAL, OR COORDINATING PROVISIONS

#### 2.7.1 OTHER PROVISIONS<sup>78</sup>

In amendments that appear to be unrelated to OHS, Bill C-5 requires the Board to:

- appoint an audit and evaluation committee that is responsible for causing internal audits to be conducted; and
- conclude with the appropriate federal and provincial departments and agencies memoranda of understanding in relation to aviation regulation.

#### 2.7.2 TRANSITIONAL PROVISIONS<sup>79</sup>

In order to provide for a smooth transition to the new OHS regime, Bill C-5 provides for transitional regulations, which must first be approved by the relevant provincial minister or ministers, to come into force on the same day that most of the amendments to the Accord Acts come into force. The subject matters of these transitional regulations are offshore marine installations and structures and the safety of diving operations conducted in the offshore area.

The existing regulations addressing diving operations conducted in the offshore area are simultaneously repealed. The three transitional regulations are automatically repealed five years after they come into force.

The Chief Safety Officer is empowered, on application, to grant exemptions from the transitional regulations for a specified time and subject to specified conditions, if he or she is satisfied that health and safety will be maintained without compliance with the transitional regulations. Notice to the public, the operator and the workplace (including relevant workplace committee or union) with a comment period, is required. If new information comes to light, the Chief Safety Officer may subsequently reconsider, confirm, vary, revoke or suspend a decision.

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### 2.7.3 CONSEQUENTIAL OR TECHNICAL AMENDMENTS TO OTHER PARTS OF THE ACCORD ACTS<sup>80</sup>

Bill C-5 modifies references to the province of “Newfoundland” throughout the NL Accord Act to include both “Newfoundland and Labrador.” Bill C-5 makes technical and consequential amendments, and modernizes the language of the Accord Acts, without altering the substance of either Accord Act.

Both Accord Acts have revenue-raising provisions that give authority to apply provincial taxes as though offshore areas were under provincial jurisdiction. Bill C-5 amends the Accord Acts so that references to revenue-raising provincial statutes are updated to reflect changes in these statutes. The bill also modernizes the language of the Accord Acts to reflect current drafting guidelines and makes a number of updates without altering the intent of either Accord Act.

### 2.7.4 CONSEQUENTIAL AMENDMENTS TO OTHER FEDERAL AUTHORITIES

#### 2.7.4.1 CANADA LABOUR CODE<sup>81</sup>

The *Canada Labour Code* currently gives health and safety officers broad powers to enter and inspect any federal workplace (section 141). Such officers (and any person accompanying or assisting an officer) are not required to give testimony in a civil suit with regard to information so obtained, except with the permission of the Minister of Labour (section 144). Bill C-5 broadens this immunity to also cover administrative proceedings, other than proceedings under the part of the *Canada Labour Code* addressing OHS. Bill C-5 eases the ban on publishing or disclosing information obtained by a health and safety officer in carrying out the officer’s duties under the *Canada Labour Code*, if the minister is satisfied that the publication or disclosure is in the interest of OHS or in the public interest. Bill C-5 also extends the limitation period for commencing proceedings for an offence under the OHS part of the *Canada Labour Code* from one year to two years.

#### 2.7.4.2 ACCESS TO INFORMATION ACT<sup>82</sup>

Bill C-5 amends the *Access to Information Act* to prevent disclosure of trade secrets that become known to a health and safety officer or to a person accompanying or assisting the officer.

#### 2.7.4.3 HAZARDOUS MATERIALS INFORMATION REVIEW ACT<sup>83</sup>

Various provisions in Bill C-5 require an employer to disclose information about a controlled product. For example, new provisions added to each of the Accord Acts require an employer to label controlled products at the workplace and provide employees with material safety data sheets disclosing information about controlled products to which the employees may be exposed.

Consequential amendments that Bill C-5 makes to the *Hazardous Materials Information Review Act* provide a mechanism by which an employer may claim an exemption from these disclosure requirements on the grounds that the information is

## LEGISLATIVE SUMMARY OF BILL C-5

confidential business information. A screening officer reviews the claim for exemption and the material safety data sheet or label to which it relates in accordance with prescribed procedures and decides whether the claim is valid and whether the material safety data sheet or label is compliant. The *Hazardous Materials Information Review Act* includes appeal and enforcement provisions. Such a mechanism to claim an exemption from the disclosure requirements already exists for similar disclosure requirements included in the *Canada Labour Code*.

Bill C-5 also provides for a health and safety officer under an Accord Act to obtain privileged information for the purposes of the administration and enforcement of Part III.1 of the Accord Act.

### 2.7.4.4 VARIOUS OTHER FEDERAL AUTHORITIES<sup>84</sup>

Bill C-5 amends references to the “Canada–Newfoundland Offshore Petroleum Board” and the “*Canada–Newfoundland Atlantic Accord Implementation Act*” in various Acts, regulations and orders to include Labrador, and/or, in some instances, updates references to section numbers of the Accord Acts, and modernizes or clarifies the language without making substantive changes.

### 2.7.5 COORDINATING AMENDMENTS<sup>85</sup>

**Bill C-5 contains amendments to coordinate the coming into force of clause 94 of Bill C-5 with section 194 of the *Economic Action Plan 2013 Act, No. 2*,<sup>86</sup> the second act implementing provisions of the 2013 budget. Clause 94 of Bill C-5 and section 194 of that Act both amend section 144 of the *Canada Labour Code*, but in different ways. The coordinating amendments in Bill C-5 ensure that all amendments to section 144 of the *Canada Labour Code* are reflected in that section once both sets of amendments to it have come into force.**

### 2.8 COMING INTO FORCE<sup>87</sup>

The short title of Bill C-5, the “Offshore Health and Safety Act” (clause 1), the amendments to the *Canada Labour Code* (clauses 94 and 95), and the coordinating provisions (clauses 120 and 121) come into force on Royal Assent. All the other provisions of Bill C-5 come into force on a day or days to be fixed by order of the Governor in Council.

## 3 COMMENTARY

Media reaction to the bill and its parallel provincial legislation has been muted. In St. John’s, it was reported that “[o]fficials briefing reporters said that while the [parallel provincial] bill is massive, mostly it’s just laying down in law things that have already been happening in practice.”<sup>88</sup>

One issue that has been raised in Newfoundland and Labrador is that Bill C-5 does not address Recommendation 29 from the Offshore Helicopter Safety Inquiry (the “Wells Inquiry”).<sup>89</sup> This inquiry, led by Commissioner Robert Wells, was established

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by the Canada–Newfoundland Offshore Petroleum Board following a helicopter crash on 12 March 2009 about 30 nautical miles offshore from St. John’s. The helicopter was carrying 16 people to work in the offshore oil fields when it crashed into the Atlantic Ocean, killing 15 of the workers and both pilots.<sup>90</sup> In his Recommendation 29, Commissioner Wells stated:

It is recommended that a new, independent, and stand-alone Safety Regulator be established to regulate safety in the [Canada–Newfoundland and Labrador] offshore. Such a Safety Regulator would have to be established, mandated, and funded by both Governments by way of legislative amendment, regulation, or memorandum of understanding, or other means.<sup>91</sup>

The Commissioner went on to recommend that, if the above recommendation was not feasible, a separate and autonomous Safety Division of the Canada–Newfoundland and Labrador Offshore Petroleum Board be created to deal only with safety matters. Bill C-5 does not implement this recommendation. Other recommendations from the Offshore Helicopter Safety Inquiry are less relevant in relation to Bill C-5 as they do not anticipate possible legislative amendments.

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**NOTES**

1. **House of Commons, Standing Committee on Natural Resources, [Report 5](#), 2<sup>nd</sup> Session, 41<sup>st</sup> Parliament, 12 February 2014.**
2. The term “offshore area” is defined in the [Canada–Newfoundland Atlantic Accord Implementation Act](#), S.C. 1987, c. 3, and in the [Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act](#), S.C. 1988, c. 28. In general, the offshore area is the area lying seaward of the low-water mark off the coast of the province out to a defined limit.
3. *Canada–Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador (Amendment) Act*, R.S.N.L. 2013, c. 3; and *Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act (amended)*, R.S.N.S. 2013, c. 16.
4. Newfoundland and Labrador Heritage, [The 1985 Canada–Newfoundland Atlantic Accord](#).
5. [Reference re Newfoundland Continental Shelf](#), [1984] 1 S.C.R. 86, p. 129.
6. [The Atlantic Accord: Memorandum of Agreement between the Government of Canada and the Government of Newfoundland and Labrador on Offshore Oil and Gas Resource Management and Revenue Sharing](#), 11 February 1985.
7. [Canada–Nova Scotia Offshore Petroleum Resources Accord](#), 26 August 1986.
8. [Canada–Newfoundland Atlantic Accord Implementation Act](#), S.C. 1987, c. 3 [NL Accord Act]; and [Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation Act](#), S.C. 1988, c. 28 [NS Accord Act]. Collectively, these are referred to as the “Accord Acts.”
9. [Canada–Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act](#), R.S.N.L. 1990, c. C-2; and [Canada–Nova Scotia Offshore Petroleum Resources Accord Implementation \(Nova Scotia\) Act](#), S.N.S. 1987, c. 3.
10. Newfoundland and Labrador Heritage, [Response to the Ocean Ranger Disaster](#).

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11. Royal Commission on the Ocean Ranger Marine Disaster, Report Two, *Safety Offshore Eastern Canada*, Ottawa, Supply and Services Canada, 1985; and Newfoundland and Labrador Heritage, *Response to the Ocean Ranger Disaster*.
12. An Act to amend the Oil and Gas Production and Conservation Act and other Acts in consequence thereof, S.C. 1992, c. 35.
13. See NL Accord Act, ss. 149 and 152 and NS Accord Act, ss. 153 and 157.
14. For a more detailed explanation of the unintended consequences of the 1992 amendments, see Robert Wells (Commissioner, Canada–Newfoundland and Labrador Public Inquiry into Offshore Helicopter Safety), [Canada–Newfoundland and Labrador Offshore Helicopter Safety Inquiry, Phase 1: Volume 1 – Report and Recommendations](#), October 2010, pp. 36–39.
15. Government of Canada, Government of Newfoundland and Labrador, and Government of Nova Scotia, [Proposed Amendments to the Accord Acts to incorporate an Offshore Occupational Health and Safety Regime](#), April 2010, p. 1.
16. Wells (2010), p. 38.
17. Natural Resources Canada, [“Federal–Provincial Cooperation Strengthens Occupational Health and Safety Practices,”](#) News release, Ottawa, 2 May 2013.
18. As explained at the beginning of section 2 of this Legislative Summary, to interrupt the text as little as possible, full references to provisions of Bill C-5 that are summarized in this document have been placed in endnotes following the relevant headings in the text.  
  
Section 2.1.1 summarizes new section 205.009 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.009 of the NS Accord Act (found in clause 84), and it describes repealed section 152 (clause 28) of the NL Accord Act and repealed section 157 (clause 69) of the NS Accord Act.
19. This section provides some of the definitions found in new section 205.001 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.001 of the NS Accord Act (found in clause 84).
20. This section summarizes new sections 205.003 to 205.008 and definitions in new section 205.001(1) of the NL Accord Act (found in clause 45 of Bill C-5); new sections 25(4.1) and 25(4.2) of the NL Accord Act (found in clause 8); new sections 210.003 to 210.008 and definitions in new section 210.001(1) of the NS Accord Act (found in clause 84); and new sections 26(4.1) and 26(4.2) of the NS Accord Act (found in clause 58).
21. This section summarizes new sections 205.121 to 205.123 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.123 to 210.125 of the NS Accord Act (found in clause 84).
22. This section summarizes amended section 2 (clause 4(2) of Bill C-5), new section 7(2) (clause 5) and amended section 42 (clauses 12(2) to 12(4)) of the NL Accord Act; and amended section 2 (clause 55), new section 6(2) (clause 56) and amended section 41(2) (clause 61) of the NS Accord Act.
23. This section summarizes amended section 140 of the NL Accord Act (clause 24 of Bill C-5) and amended section 144 of the NS Accord Act (clause 66).
24. This section summarizes amended section 188 of the NL Accord Act (clause 33 of Bill C-5) and amended section 193 of the NS Accord Act (clause 72).
25. Operational safety refers to the safety of works and activities related to the exploration or drilling for petroleum, or the production, processing or transportation of petroleum. Operational safety includes the safety of relevant structures, facilities, equipment and operating procedures.



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26. This section summarizes new section 205.071 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.072 of the NS Accord Act (found in clause 84).
27. This section summarizes new section 205.072 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.073 of the NS Accord Act (found in clause 84).
28. This section summarizes new sections 205.043 to 205.045 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.043 to 210.045 of the NS Accord Act (found in clause 84).
29. This section summarizes new section 205.045 of the NL Accord Act (found in clause 45 of Bill C-5); and new section 210.045 of the NS Accord Act (found in clause 84).
30. This section summarizes new section 205.046 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.046 of the NS Accord Act (found in clause 84).
31. This section summarizes new section 205.047 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.047 of the NS Accord Act (found in clause 84).
32. This section summarizes new section 205.01 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.01 of the NS Accord Act (found in clause 84).
33. The definition of “operator” is provided in new section 205.001(1) of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.001(1) of the NS Accord Act (found in clause 84).
34. This section summarizes new section 205.012 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.012 of the NS Accord Act (found in clause 84).
35. This section summarizes new sections 205.011, 205.015 and 205.016 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.011, 210.015 and 210.016 of the NS Accord Act (found in clause 84).
36. This section summarizes new section 205.014 of the NL Accord Act (found in clause 45 of Bill C-5); and new section 210.014 of the NS Accord Act (found in clause 84).
37. This section summarizes new section 205.017 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.017 of the NS Accord Act (found in clause 84).
38. This section summarizes new section 205.013 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.013 of the NS Accord Act (found in clause 84).
39. The definition of “employer” is provided in new section 205.001(1) of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.001(1) of the NS Accord Act (found in clause 84).
40. This section summarizes new section 205.018 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.018 of the NS Accord Act (found in clause 84).
41. This section summarizes new sections 205.02 and 205.021 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.02 and 210.021 of the NS Accord Act (found in clause 84).
42. This section gives the definition of “hazardous substance” provided in new section 205.001(1) of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.001(1) of the NS Accord Act (found in clause 84). It also summarizes new sections 205.022 and 205.023 of the NL Accord Act (clause 45) and new sections 210.022 and 210.023 of the NS Accord Act (clause 84).
43. This section summarizes new section 205.019 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.019 of the NS Accord Act (found in clause 84).

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44. This section gives the definition of “supervisor” provided in new section 205.001(1) of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.001(1) of the NS Accord Act (found in clause 84). It also summarizes new sections 205.024 and 205.025 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.024 and 210.025 of the NS Accord Act (found in clause 84).
45. This section gives the definition of “employee” provided in new section 205.001(1) of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.001(1) of the NS Accord Act (found in clause 84). It also summarizes new sections 205.026 to 205.029 of the NL Accord Act (clause 45) and new sections 210.026 to 210.029 of the NS Accord Act (clause 84).
46. The definitions in this section are found in new section 205.001(1) of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.001(1) of the NS Accord Act (found in clause 84). This section also summarizes new sections 205.03 to 205.033 of the NL Accord Act (clause 45) and new sections 210.03 to 210.033 of the NS Accord Act (clause 84).
47. This section gives the definition of “owner” provided in new section 205.001(1) of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.001(1) of the NS Accord Act (found in clause 84). It also summarizes new sections 205.034 to 205.036 of the NL Accord Act (clause 45) and new sections 210.034 to 210.036 of the NS Accord Act (clause 84).
48. This section summarizes new sections 205.037 to 205.042 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.037 to 210.042 of the NS Accord Act (found in clause 84).
49. This section summarizes new section 205.48 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.48 of the NS Accord Act (found in clause 84).
50. This section summarizes new section 205.49 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.49 of the NS Accord Act (found in clause 84).
51. This section summarizes new sections 205.05 to 205.55 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.05 to 210.55 of the NS Accord Act (found in clause 84).
52. This section summarizes new sections 205.056 to 205.058 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.056 to 210.058 of the NS Accord Act (found in clause 84).
53. This section summarizes new section 205.059 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.059 of the NS Accord Act (found in clause 84).
54. This section summarizes new sections 205.06 to 205.062 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.06 to 210.063 of the NS Accord Act (found in clause 84).
55. This section summarizes new sections 205.063 to 205.065 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.063 to 210.0635 of the NS Accord Act (found in clause 84). See also related sections 205.052(6) and 205.055(5) of the NL Accord Act (found in clause 45) and related sections 210.052(6) and 210.055(5) of the NS Accord Act (found in clause 84).
56. This section summarizes new section 205.066 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.067 of the NS Accord Act (found in clause 84).
57. This section summarizes amended section 138 (clause 22 of Bill C-5) and new section 205.068 (clause 45) and notes the repealing of section 139.1(2) (clause 23) of the NL Accord Act, and it summarizes amended section 142 (clause 64) and new section 210.069 (clause 84) and notes the repealing of section 143.1(2) (clause 65) of the NS Accord Act.

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58. This section summarizes amended sections 29(2) (clause 10 of Bill C-5), 123(1) (clause 20), 138(5)(a) (clause 22(3)) and new section 138(5) (c. 1) (clause 22(4)) of the NL Accord Act; and amended sections 30(2) (clause 60), 126(1) (clause 63) and 142(5)(a) (clause 64(3)) and new section 142(5)(c. 1) (clause 64(4)) of the NS Accord Act.
59. The Accord Acts define “interest owner” as “the interest holder who holds an interest or the group of interest holders who hold all of the shares in an interest”; and “interest” as “any former exploration agreement, former lease, former permit, former special renewal permit, exploration licence, production licence or significant discovery licence”: NL Accord Act, s. 47; and NS Accord Act, s. 49.
60. This section summarizes new sections 205.069 and 205.07 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.07 and 210.071 of the NS Accord Act (found in clause 84).
61. This section summarizes amended section 189 and new section 189.1 (clause 33 of Bill C-5) and new sections 205.073 to 205.074 (found in clause 45) of the NL Accord Act; and amended section 194 and new section 194.1 (clause 72) and new sections 210.074 to 210.075 (found in clause 84) of the NS Accord Act.
62. This section summarizes new sections 189.2 (clause 33 of Bill C-5) and 205.075 (found in clause 45) of the NL Accord Act and new sections 194.2 (clause 72) and 210.076 (found in clause 84) of the NS Accord Act.
63. This section summarizes amended section 191 (clause 35 of Bill C-5) and new sections 205.076 and 205.079 (found in clause 45) of the NL Accord Act and amended section 196 (clause 74) and new sections 210.077 and 210.08 (found in clause 84) of the NS Accord Act.
64. This section summarizes new sections 192.1 and 192.2 (found in clause 35 of Bill C-5) and 205.08 and 205.081 (found in clause 45) of the NL Accord Act and new sections 197.1 and 197.2 (found in clause 74) and 210.081 and 210.082 (found in clause 84) of the NS Accord Act.
65. *Ex parte* application is an application made without the presence of one of the parties and their counsel. The party absent from the proceedings is the one whose place is to be searched, or who is subject to have anything seized.
66. This section summarizes new section 205.082 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.083 of the NS Accord Act (found in clause 84).
67. This section summarizes new sections 205.077 and 205.078 and 205.083 to 205.089 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.078 and 210.079 and 210.084 to 210.09 of the NS Accord Act (found in clause 84).
68. This section summarizes new sections 205.09 and 205.091 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.091 and 210.092 of the NS Accord Act (found in clause 84).
69. This section summarizes amended section 140.1 (clause 25 of Bill C-5) and new sections 205.092 to 205.097 (found in clause 45) of the NL Accord Act and amended section 67 (clause 67) and new sections 210.093 to 210.098 (found in clause 84) of the NS Accord Act.
70. This section summarizes new sections 205.098 to 205.102 of the NL Accord Act (found in clause 45 of Bill C-5); and new sections 210.099 to 210.103 of the NS Accord Act (found in clause 84).
71. This section summarizes new section 205.103 of the NL Accord Act (found in clause 45 of Bill C-5) and new sections 210.104 and 210.105 of the NS Accord Act (found in clause 84).

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72. This section summarizes new sections 194(3) (clause 39 of Bill C-5), 195 to 195.5 (clause 40), 202.1 (clause 43) and 205.104 to 205.117 (found in clause 45) and amended section 199 (clause 41) of the NL Accord Act; and new sections 199(3) (clause 78), 200 to 200.5 (clause 79), 207.1 (clause 82) and 210.106 to 210.119 (found in clause 84) and amended section 204 (clause 80) of the NS Accord Act.
73. This section summarizes new section 205.118 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.12 of the NS Accord Act (found in clause 84).
74. This section summarizes new section 205.119 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.121 of the NS Accord Act (found in clause 84).
75. This section summarizes new section 205.12 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.122 of the NS Accord Act (found in clause 84).
76. This section summarizes new sections 205.124 and 205.125 of the NL Accord Act (found in clause 45 of Bill C-5) and new section 210.126 and 210.127 of the NS Accord Act (found in clause 84).
77. To incorporate material by reference means to include that material (text, information, etc.) in a legislative text by referring to it in the text rather than by reproducing it in the text.
78. This section summarizes new sections 26.1 (clause 9 of Bill C-5) and 46(1)(c.1) (clause 16) of the NL Accord Act and new sections 27.1 (clause 59) and 46(1)(c) (clause 62) of the NS Accord Act.
79. This section summarizes clauses 53, 54, 92 and 93 of Bill C-5.
80. This section summarizes amended sections 206 to 211 and 216(a) and new section 214(1.1) (clauses 46 to 51 of Bill C-5) of the NL Accord Act and amended sections 211 to 216, 220(2) and 221(a) (clauses 85 to 90) of the NS Accord Act.
81. This section summarizes amended sections 144 (clause 94 of Bill C-5) and 149(4) (clause 95) of the *Canada Labour Code*.
82. This section describes amendments to the *Access to Information Act* made by clauses 99 and 100 of Bill C-5, which add new section reference numbers to Schedule II.
83. This section summarizes new sections 205.022(d) and 205.022(e) (found in clause 45 of Bill C-5) of the NL Accord Act and new sections 210.022(d) and 210.022(e) (clause 84) of the NS Accord Act. It also summarizes new sections 10(4) and 43(2.1) and amended sections 11(2), 13(1), 16(1), 16(4), 16.1(1), 16.1(4), 17(1) and 17(4) (clauses 105 to 111) and new section 46(2)(c.1) (clause 112) of the *Hazardous Materials Information Review Act*.
84. This section refers to the following: *Access to Information Act*: clauses 96 to 100 of Bill C-5, amending references in the schedules; *Excise Tax Act*: clause 101, amending the definition of “offshore activity” in section 123(1) of the Act; *Canada Oil and Gas Operations Act*: clause 102, amending section 5.4(1) of the Act; *Privacy Act*: clauses 103 and 104, amending a reference in the schedule; *Hibernia Development Project Act*: clause 113, amending the definition of “Board” in section 2(1) of the Act; *Federal Authority Regulations* (made under the *Canadian Environmental Assessment Act*, which has been repealed, but which, in limited circumstances, remains in effect during a transition period): clause 114, amending the schedule; and various other Acts, regulations and orders: clauses 115 to 119.
85. This section summarizes clause 120 of Bill C-5, **which was added at report stage, replacing an amendment that was no longer necessary due to the enactment of the [Technical Tax Amendments Act, 2012](#), S.C. 2013, c. 34.**
86. **[Economic Action Plan 2013 Act, No. 2](#), S.C. 2013, c. 40, s. 194.**
87. This section describes the provisions set out in clause 122 of Bill C-5.

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88. [“Governments bring in sweeping offshore safety law,”](#) *The Telegram* [St. John's], 2 May 2013.
89. *Ibid.*; and NTV, [“Bill 1 to Amend Atlantic Accord to Include Health and Safety Rules,”](#) 2 May 2013.
90. Wells (2010), p. 3.
91. *Ibid.*, Recommendation 29(a), p. 302.